

1932

*Present : Garvin S.P.J. and Maartensz A.J.*

JINADASA v. SILVA.

315—D. C. Kalutara, 16,193.

*Contract—Stipulation in favour of third party—Right of action—Roman-Dutch law.*

Under the Roman-Dutch law a stipulation in a contract in favour of a third party may be enforced by such party where it has been accepted by him.

**A** PPEAL from a judgment of the District Judge of Kalutara.

*Hayley, K.C.* (with him *Molligodde* and *Weerasooria*), for defendant-appellant.

*H. V. Perera*, for plaintiff-respondent.

<sup>1</sup> 31 N. L. R. 438.

<sup>2</sup> 9 *Times Law Reports* 93.

November 3, 1932. GARVIN S.P.J.—

By the document P 1, dated June 12, 1927, one Don Peter sold and conveyed certain premises to Don Kornelis Silva. The conveyance was made subject to a further agreement which is expressed in the deed as follows: "These presents further witness that the said vendee for himself and his aforewritten doth hereby covenant and agree to retransfer the said premises to the said vendor or, failing him, to his brother-in-law Walatara Acharige Jinadasa or the heirs, executors, administrators, and assigns of the said Jinadasa if called upon by the said vendor or the said Walatara Acharige Jinadasa or his aforewritten at any time within five years from the date of these presents and on payment by the said vendor or the said Jinadasa or his aforewritten of the said sum of Rs. 1,000, with interest thereon at 16 per cent. per annum from the date of these presents." Don Peter died without exercising his rights to obtain a reconveyance of these premises upon payment of the sum of Rs. 1,000 together with such interest as may have accrued in the meanwhile. The present action is brought by Jinadasa. He claims that he is personally entitled to maintain an action to obtain the rights secured to him by this stipulation and alternatively, that in his capacity of administrator of the estate of Don Peter, deceased, he is entitled to maintain an action to compel the fulfilment of the obligation undertaken by Don Kornelis Silva by obtaining from the Court a decree directing Don Kornelis Silva to accept from him in his personal capacity the sum of Rs. 1,000 and convey the premises to him. The learned District Judge has, as a matter of interpretation, come to the conclusion that the true meaning of the language used in this deed is that the benefits of this covenant shall be available to Don Peter during his lifetime and that upon his death these benefits were to pass to Jinadasa or his heirs, executors, or administrators and not to the heirs or representatives of the estate of Don Peter, and with this interpretation I agree.

The question, which has been raised, and argued before us is this: The stipulation being one which was made in favour of a third party is it actionable by or at the instance of such third party? That such an agreement may be validly made between the parties to a contract such as this, is, I think, beyond question for the Roman-Dutch law authorities, to which reference has been made in the course of this argument and which are collected in the case of *McCulloch v. Fernwood Estate, Ltd.*<sup>1</sup>, are overwhelmingly in favour of the contention not only that such an agreement is valid but that when accepted by the third party whom it is desired to benefit by the stipulation it is actionable by that third party and at his instance. The whole of the question is so fully discussed and considered in the case referred to and also in the Chapter headed "Stipulations in favour of a third person" in the Appendix to *Van Leeuwen's Commentaries on the Roman-Dutch Law* by Kotze, Vol. II., pp. 598-604, that there is nothing that one can profitably add to what has been said there. It seems clear that whatever difference of opinion there may have been between the Dutch Jurists they were all unanimously of opinion that a stipulation in favour of a third party

<sup>1</sup> S. A. L. R. (1920) App. Div. p. 204.

once it has been accepted by the third party gave to that party a right to obtain for himself the benefits of the stipulation by action. Now in the case before us there can be no question that Jinadasa has been shown to have accepted the stipulation. It has moreover been proved that he tendered the sum of Rs. 1,000, with interest computed up to the date of the tender and demanded the fulfilment by the defendant of his obligation to convey to him the premises referred to in the deed P 1. He was therefore in my opinion entitled to that reconveyance and to the benefit of the decree in his favour entered by the learned District Judge.

The appeal will stand dismissed with costs.

MAARTENSZ A.J.—I agree.

*Appeal dismissed.*

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