1906.
July 9.

Present: Mr. Justice Wendt and Mr. Justice Wood Renton.

TIKIRI KUMARIHAMY *v.* DE SILVA *et al.*

D. C., Kegalla, 1,879.

Kandyan Law—Deed of gift for past services—Revocation—Clause renouncing the right of revocation.

A Kandyan deed of gift made for past services rendered by the donee to the donor and containing a clause renouncing the right of revocation is irrevocable under the Kandyan Law.

Kiri Menika v. Cau Rala (3 *Lor.* 76) and *Heneya v. Rana* (1. *S. C. C.* 47) followed.

D. C., Kegalla, No. 888 dissented from.

THE plaintiff sought to vindicate a land called Galgodahena from the defendant. He alleged that the land originally belonged to Eraupola Dissa Mahatmaya of Dodantala; that he by deed No. 12,848, dated the 27th March, 1851, conveyed it to his wife Golahela Loku Kumarihamy, who by her deed No. 9,617, dated the 25th May, 1867, conveyed it to her daughter, the plaintiff. The defendant claimed to hold the land under lease No. 3,868,

dated 25th April, 1904, executed by Punchi Banda Basnayake Nilame and Robert George Ekneligoda, who, the defendant alleged, were the rightful owners of the land.

Punchi Banda Basnayake Nilame and Robert George Ekneligoda were added as defendants to the action. Punchi Banda Basnayake Nilame, the first added party, claimed the land under deed of gift No. 6,919, dated the 25th May, 1864 executed by the said Golahela Loku Kumarihamy in favour of her daughter Eraupola Medduma Kumarihamy, the mother of the first added defendant. By deed No. 6,321, dated the 18th November, 1865, the said Golahela Loku Kumarihamy purported to revoke the deed of gift No. 6,919, dated the 25th May, 1864.

The deed of gift No. 6,919 was in the following terms:—

"Whereas I, Golahela Loku Kumarihamy residing at Eraupola in Egodapota pattuwa in Galboda korale of the Four Korales, appertaining to the Western Province of the Island of Ceylon, being now of the age of 69 years, am stricken with disease; and whereas it is uncertain that I will live in this world for a long time:

"And whereas Dodantala Jayatilleke Seneviratne Wijayakoon Wasala Mudiyanse Ralahamillage Eraupola Medduma Kumarihamy, who is my daughter born of me, and who ever since four years past up to this day without any insincerity is rendering me all and every succour and assistance, has been heretofore on diverse occasions when I was suffering from disease, and is at the present time when I am stricken with disease, spending money for getting down many a physician and for causing them to attend on me and curing my said diseases:

"And whereas my said daughter Medduma Kumarihamy has incurred an expenditure in cash of about £100 by way of presents on the said physicians and for medicines, and whereas all my other kinsfolk and my children and grandchildren have, without rendering me any assistance, abandoned me uncared for:

"And whereas by the deed of revocation No. 6,898 I have revoked the deed of assistance No. 4,504, bearing date the 9th August, 1859, by which I had heretofore settled upon my grandson Rajakaruna Jayatilleke Seneviratne Wijayakoon Wasala Pandita Mudiyanse Ralahamillage Elapata Bandara Mahatmaya residing at Dodantala certain lands situated at Erabugolla out of the lands appearing in this deed, who, though he had undertaken to properly render me all and every assistance, has nevertheless proved disobedient to me, has on diverse occasions quarrelled with me, and forcibly taking the lands belonging to me is litigating with me:

1906. *July* 9.

" I, being of my proper mind and sense, do hereby, by way of donation for assistance rendered, cause to be written, settled upon, vested in, and delivered unto my well obedient and faithful daughter Medduma Kumarihamy (to whom for all the assistance rendered unto me I have nothing else to give) the under-mentioned lands, which I am indisputably seized and possessed of as my own *paraveni* property up to this day upon the authority of the *paraveni* deed in my favour No. 12,848, and bearing date the 21st day of March, 1851, from my deceased husband Eraupola Dissa Mahatmaya, namely:—

* * * *

" All these high and low lands, including the trees and plantation, being of the value of £400 lawful currency of Ceylon, have been hereby settled by way of donation upon my daughter Medduma Kumarihamy.

" Further, whereas I, Loku Kumarihamy afore-mentioned, have heretofore distributed upon deeds the lands which my other children and grandchildren, &c., ought to get from me; and whereas the above-mentioned lands I had reserved for my own livelihood, I hereby disentitle my other children, grandchildren, heirs, &c., to these lands, and I, in consideration of the assistance rendered unto me by my very obedient and affectionate daughter Medduma Kumarihamy, do hereby by way of donation cause to be written and delivered and covenant as follows:—

" That henceforth I or my descending or inheriting children, grandchildren, heirs, administrators, or assigns whosoever shall not from this day forth by act or word raise any dispute whatsoever against this donation; that in the event of any such dispute arising in respect of the said lands during my lifetime such dispute shall be settled by me and deliver the lands unto the donee free from dispute; that from this day forth my daughter Medduma Kumarihamy, who has received the aforesaid *gampanguwa* from me by way of donation, and her descending or inheriting children, grandchildren, and heirs, &c., shall according to pleasure without dispute as their own property hold and possess for ever. "

The deed of revocation (No. 6,321) was as follows:—

" That the deed of gift and the donation dated at Kegalla on the 5th day of May, 1864, No. 6,919, attested by D. Arachchige Pedro Perera Appuhamy, Northern Province, given by me, Golahela Loku Kumarihamy, residing at Eraupola in Egodapota pattuwa in Galboda korale of the Four Korales, appertaining to the District of Kandy of the Western Province of the Island of Ceylon, unto my daughter Dodantala Jayatilleke Seneviratne Wijayakoon Wasala

Mudiyanse Ralahamillage Eraupola Medduma Kumarihamy, is, for the reasons hereinafter mentioned, hereby revoked, namely:—

" Because I, the aforesaid-mentioned Golahela Loku Kumarihamy have now recovered from the illness with which I was suffering at the time when the said deed of gift was caused to be written;

" Because, although it is stated at that time I was in my proper mind, I now think that owing to the illness with which I was suffering I must not have been in my proper mind;

" Because some lands which do not belong to me have been included in that deed;

" Because the boundaries and the extents of the lands appearing in that deed are wrong;

" Because no mention has been made in that deed of the usual rendering of assistance which I was in need of;

"Because I have now been left uncared for by the said Medduma Kumarihamy.

" Because there is no way of obtaining my livelihood, and because I am of opinion that the said Medduma Kumarihamy will squander the lands gifted upon the above-mentioned deed in the same way as she had already squandered the lands which had been given to her heretofore.

" In consideration and in view of these reasons I consider it altogether improper that the above-mentioned donation should have been given.

" And whereas according to the law of this country I have authority to exercise power over the said lands, I, Golahela Loku Kumarihamy, by virtue of my legal rights, hereby entirely change and revoke the aforesaid deed of gift No. 6,919 and the said donation, and also make the said Medduma Kumarihamy disentitled to the lands appearing in that deed and shown herein:—

* * * *

" And I, the aforesaid Golahela Loku Kumarihamy, disentitling the said Medduma Kumarihamy, do hereby vest in and make myself the owner of, entitled to, and possessed of all and every the aforesaid lands.

" Wherefore the aforesaid Medduma Kumarihamy or any heirs, executors, and administrators on that behalf shall not be entitled upon the authority of the said deed of gift No. 6,919 to raise any dispute whatsoever or to exercise any rights of ownership or to set forth any claim over the said lands or anything whatsoever, and hereby entirely revoking the powers and authority which had been granted to the said Medduma Kumarihamy, and annexing hereto a true copy of the said deed of gift, this deed of revocation has been caused to be written and signed and sealed in two other copies also of the same tenour by me the said Golahela Loku Kumarihamy

1906. *July* 9.

on this 18th day of November, 1865, of the Christian Era, at Kandy, in the presence of the two witnesses hereof, Madugalla Basnayake Nilame of the Kandy Maha Dewala, residing at Kandy, and Attanayakagoda Mohottallage Appuhamy Mohottala residing at Eraupola in Galboda Egodapota pattuwa of the Four Korales. "

Among the issues framed in the case were—

(14) Is the deed No. 6,919 revocable?

(15) Was deed No. 6,919 revoked by deed No. 6,321 of the 18th November, 1865?

The District Judge (J. Davies, Esq.) held as follows on the above issues:—

" On the question of the revocability of Kandyan deeds of gift the law seems to be unsettled. First of all, there is a difference of authorities between Armour and Solomons. Solomons at page 50 in *Perera's Collection* says: ' Deeds to any person in return for favour and assistance already rendered are irrevocable.' '

" Armour, at page 95 in *Perera's Armour* requires also the condition that the deed should expressly debar this donor and his heirs from reclaiming.

" There is also a conflict of Supreme Court authority. *Kiri Menika v. Cau Rala* (1) has been quoted to me by defendant's advocate. (But in this case all the reports I can find are defective.) However in *Heneya v. Rana* (2) it was clearly held that a deed of gift in consideration of past services was irrevocable. This deed in the case is such a deed. On the other hand as authority that this deed was revocable there are quoted to me D. C., Kandy, No. 19,064 (3); D. C., Kandy, No. 21,314 (4); D. C., Kandy, No. 28,626 (5); D. C., Kandy, No. 29,890 (6).

" D. C. Kandy, No. 28,626, seems to me to have most bearing on the present case. It is stated therein that the Supreme Court followed previous decisions which established the doctrine that deeds for previous services, as well as deeds for future services, are revocable. If so, the present deed is revocable.

" Again, in D. C., Kegalla, No. 888, (an unreported case), there is a direct conflict with the decision in *Heneya v. Rana* (2). In D. C., Kegalla, No. 888, the whole question seems to have been gone into. It was held that *Kiri Menika v. Cau Rala* (1) was too incomplete to be of use, and that *Heneya v. Rana* (2) was a mistaken judgment. It also followed the statement of law as in *Perera's Armour*, and not as in Solomons (in *Perera's Collection*). It further held that the clause in the deed then in question, which was claimed

(1) (1858) 3 *Lor.* 76.
(2) (1878) 1 *S. C. C.* 47.
(3) *Austin, p.* 103.
(4) *Austin, p.* 127.
(5) *Modder* 134.
(6) *Austin, p.* 214.

to be a clause or revocation (and which is very similar to the clause in this case), did not amount to a clause of revocation. The Supreme Court in this case had all the previous facts before them, and I am content to follow this judgment.

"I accordingly hold that the Kandyan Law requires that a deed for past services should be revocable, unless a special clause debarring the donor and his heirs from reclaiming is inserted, and that this deed does not contain such a clause; and that therefore this deed (No. 6,919) in this case is revocable and was revoked by deed No. 6,321."

The defendant and the added defendants appealed.

W. Pereira, K.C. (*H. J. C. Pereira* with him), for the defendant and added defendants, appellants.

Dornhorst, K.C. (*Bawa* with him), for the plaintiff, respondent.

Cur. adv. vult.

9th July, 1906. WENDT J.—

The sole question upon this appeal is whether a certain deed of gift, No. 6,919, dated 25th May, 1864, and executed by a Kandyan lady of rank, Golahela Loku Kumarihamy, the widow of Eraupola Disawa, was revocable. The defendant is a lessee under the added defendants, who claim under the donee (daughter of the donor), while plaintiff, who is the donor's son, claims under a later conveyance from the donor, dated 1867, on the footing that the donation was revoked by deed No. 6,321, dated 18th November, 1865. The question of the revocability of the donation was made the subject of a preliminary issue, which alone has been tried, and upon which the only evidence placed before the Court was that afforded by the two conflicting deeds.

Deed No. 6,919, after reciting that the donor was 69 years of age and stricken with disease, proceeded as follows:—

"And whereas Dodantala Jayatilleke Seneviratne Wijayakoon Wasala Mudiyanse Ralahamillage Eraupola Medduma Kumarihamy, who is my daughter born of me, and who ever since four years past up to this day without any insincerity is rendering me all and every succour and assistance, has been heretofore on diverse occasions when I was suffering from disease, and is at the present time when I am stricken with disease, spending money for getting down many a physician and for causing them to attend on me and curing my said diseases:

"And whereas my said daughter Kumarihamy has incurred an expenditure in cash of about £100 by way of presents on the said physicians and medicines; and whereas all my other kinsfolk and

1906. *July* 9.

WENDT J.

my children and grandchildren have, without rendering me any assistance, abandoned me uncared for:

"And whereas by the deed of revocation No. 6,898, I have revoked the deed of assistance No. 4,504, bearing date the 9th day of August, 1859, by which I had heretofore settled upon my grandson Rajakaruna Jayatilleke Seneviratne Wijayakoon Wasala Pandita Mudiyanse Ralahamillage Elapata Bandara Mahatmaya residing at Dodantale, certain lands situated at Erabugolla out of the lands appearing in this deed, who, though he had undertaken to properly render me all and every assistance, has nevertheless proved disobedient to me, has on diverse occasions quarrelled with me, and forcibly taking the lands belonging to me is litigating with me;

"I, being of my proper mind and sense, do hereby, by way of donation for assistance rendered, caused to be written, settled upon, vested in, and delivered unto my well obedient and faithful daughter Medduma Kumarihamy (to whom for all the assistance rendered unto me I have nothing else to give) the under-mentioned lands, which I am undisputably seized and possessed of as my own *paraveni* property up to this day upon the authority of the *paraveni* deed in my favour, No. 12,848, and bearing date the 21st day of March, 1851, from my deceased husband Eraupola Dissa Mahatmaya, namely:

* * * *

"Further, whereas I, Loku Kumarihamy afore-mentioned, have heretofore distributed upon deeds the lands which my other children and grandchildren, &c., ought to get from me; and whereas the above-mentioned lands I had reserved for my own livelihood. I hereby disentitle my other children, grandchildren, heirs, &c., to these lands, and I, in consideration of the assistance rendered unto me by my very obedient and affectionate daughter Medduma Kumarihamy, do hereby by way of donation cause to be written and delivered and covenant as follows:—

"That henceforth I or my descending or inheriting children, grandchildren, heirs, administrators, or assigns whosoever shall not from this day forth by act or word raise any dispute whatsoever against this donation; that in the event of any such disputes arising in respect of the said lands during my lifetime such dispute shall be settled by me and deliver the lands unto the donee free from dispute; that from this day forth my daughter Medduma Kumarihamy, who has received the aforesaid *gampanguwa* from me by way of donation, and her descending or inheriting children, grandchildren, and heirs, &c., shall according to pleasure without dispute as their own property hold and possess for ever."

" Thus giving this authority, this *paraveni* deed of gift has been caused to be written. "

The deed of revocation No. 6,321 declared that the deed of gift was thereby revoked for the following reasons, viz., (1) the donor has now recovered from her illness; (2) although the gift stated that the donor was in her proper mind, she now thought owing to her illness she must not have been in her proper mind; (3) some lands not belonging to the donor were included in the gift; (4) the boundaries given were wrong; (5) " no mention was made of the usual rendering of assistance which I was in need of; " (5) the grantor was not left uncared for by the donee; (6) " there is no way of obtaining my livelihood, and because I am of opinion that the said Medduma Kumarihamy will squander the lands gifted in the same way as she has already squandered lands given to her heretofore. In consideration and in view of these reasons, I consider it altogether improper that the donation should have been given; and whereas according to the law of this country, I have authority to exercise power over the said lands, I, by virtue of my legal rights, hereby entirely change and revoke the said deed of gift and the said donation and also make the said Medduma Kumarihamy disentitled to the lands appearing in that deed and shown below. "

The District Judge, in holding the deed of gift to have been revocable, followed the Supreme Court's decision in D. C., Kegalla, No. 888, dated 5th July, 1898, and also relied upon D. C., Kandy, No. 28,626 (*Beven & Siebel* 52, *Perera's Collection* 74) as establishing that deeds for past services, as well as those for future services, were revocable. Against their decision the present appeal is brought.

So far back as the year 1850 the District Judge of Kandy remarked (*Austin* 140) that " there was no part of the Kandyan Law which was in a more unsettled state than the power of revocation of deeds, " and unfortunately it cannot be said that later judicial decisions have tended to make the law more certain. But I think it may fairly be said that the tendency has been in the direction of restricting the power of revocation and thereby assimilating the Kandyan customary law to the common law of the land. Sir John D'Oyley (quoted by Marshall, *Judgments*, *p.* 320) says: " Transfers, the donations or bequest of land are revocable at pleasure during the life of the proprietor who alienates it. It is held that any land proprietor, who has even definitively sold his land, may resume it, at any time during his life, paying the amount which he received and the value of any improvements, but his heir is excluded from this liberty. The reason of this custom is respect and attachment which belong to ancient family rank and the importance ascribed to

1906. *July* 9. WENDT J.

the preservation, as it is called, of name and village; the name by which every person of rank is distinguished and generally known being that of the village in which his ancient or principal estates are situated. When a land proprietor is become old and infirm, and has no near relations, or none who look after him, it is a common practice for him to transfer his lands to another, frequently a relation, on condition of receiving support and assistance till death. In this case the latter sends one or more servants to wait upon and administer to him, and supplies provisions and medicines, according to his ability, the condition of the party, and the value of the land. If the owner—for so he must still be called—be dissatisfied with the assistance afforded, he can at any time revoke the gift, as well by virtue of the rule above-stated, as because it is conditional (here Sir Charles Marshall interposes this remark: 'The latter ground, viz., the conditional nature, being the true foundation of the power of revocation'), and may make over his property to another person, who thereupon reimburses the first acceptor for the expenses incurred by him. This change of possession is not infrequent, and there have been instances of five or six successive resumptions and new assignments by the same capricious proprietor. It follows that the last bequest or transfer supersedes all which may have preceded." Sawers (*ibid.*, p. 321) modified this statement of the law and the extent of making absolute sales non-revocable. Marshall sums the law up thus: "In all transfers for assistance to be rendered the condition must be shown to have been faithfully and strictly performed, in failure of which the transfer ought not to be enforced; the donor has the right of revocation by any subsequent transfer." It will be observed that Sir Charles Marshall says nothing as to gifts in consideration of past services, or as to the effect of the donor's renouncing the right to revoke.

Some years after the publication of Sir Charles Marshall's work, viz., in 1842, there appeared serially in the *Legal Miscellany* Armour's "*Niti-Nighanduwa, or Grammar of the Kandyan Law*" ["mainly a translation of the *Niti-Nighanduwa*"—per Lawrie J. in *Kirimenika v. Muttu Menika* (1)]. In 1861 Perera published his edition of Armour in which the original work was methodically arranged under appropriate heads, and this edition has ever since been in use. At page 90 Sawer is quoted to the following effect: "All deeds or gifts, excepting those made to priests and temples, whether conditional or unconditional, are revocable by the donor in his lifetime, but should the acceptance of the gift involve the

(1) (1889) 3 *N. L. R.* 376.

donee in any expense, he (the donee) must be indemnified, on the gift being revoked, to the full amount of what the acceptance of the gift may have cost him, either directly or by consequence, but this rule applies only to gifts made by laymen. Moreover, this rule is to be understood to apply only to gifts of land, or of the bulk of the donor's fortune of goods and effects; as presents if given out of respect or from affection at the moment (or in thankful acknowledgment of a benefit or service rendered to the donor) are not revocable." Then, on page 95, Armour lays down: "But all conditional and unconditional gifts are not revocable; some gifts are irrevocable; for instance, if the proprietor executed a deed and thereby made over his lands to another person, stipulating that the donee shall pay off the donor's debts and also render assistance and support to the donor during the remainder of his life, and if the said deed contain also a clause debarring the donor from revoking that gift, and from resuming the land, and from making any other disposal thereof. If the donee did discharge the said debts, he will have acquired thereby the rights of a purchaser to the lands in question; and consequently that deed will be irrevocable, but the donee, although he acquired the title of purchaser will yet continue under the obligation of rendering assistance and support to the former proprietor.....If the proprietor did by a regularly executed deed transfer any landed property to a public functionary in lieu of a fee that was justly due, or to any person whomsoever, in recompense for favour and assistance already received, and if that deed expressly debarred the donor and his heirs from reclaiming the said property, in such case the gift or transfer shall be irrevocable."

Accordingly, in 1858 in *Kiri Menika v. Cau Rala* (1) the Full Bench of the Supreme Court, composed of Rowe C.J. and Sterling and Temple JJ., held that a deed of gift of lands by a mother to her son, reciting services rendered to the donor and her debts paid by the donee, and stipulating for future assistance, and containing also the clause against revocation which my brother has quoted at length, fell within the principle just cited from Armour and was irrevocable, the grantee being, however, bound to continue rendering assistance.

The present is a stronger case, because the grant is solely for a consideration already received, while the clause against revocation is in terms closely similar. If therefore this decision is still an authority on the law, it governs the question now before us. The District Judge says that the Supreme Court in D. C., Kegalla, 888 (presently to be mentioned) considered the published reports of the

(1) (1885) 3 *Lor.* 76.

1906. July 9. WENDT J.

case in Lorenz " too incomplete to be of use, " but that is a difficulty which we have removed by sending for and consulting the original record of that action.

In the case D. C., Kandy, No. 28,826 (*Beven & Siebel* 52; *Austin* 207; *Perera's Collection* 74), which the District Judge considers to have most bearing on the present, the gift was in consideration of both past and future services, " assistance rendered and to be rendered," and the Court of first instance had held that the clause relied upon as barring the power of revocation had not that effect, but was only the usual Kandyan form of renunciation of right. The Supreme Court in its judgment does not mention cases in which the right of revocation has been expressly waived, and apparently decided the case on the same footing as the District Court. Certainly the cases cited in the judgment (which are to be found reported in Austin and Ramanathan) say nothing as to the effect of such waiver. This case was decided in 1857, a year before the Kurunegala case in Lorenz, already mentioned.

In 1878 the case of *Heneya v. Rana* (1) was decided by Phear C.J. and Dias J. The deed of gift there in question was made in consideration of services rendered to the donor and money borrowed by him " and with the view of obtaining assistance for the future," and it contained a covenant by the donor that " neither he nor any of his heirs, descendants, nor any person whomsoever on his behalf could thereafter make any dispute whatsoever either by word or deed with respect to this gift. " It then empowered the donee and his heirs, descendants, and administrators to possess the land for ever undisturbedly in *paraveni* and do whatever they pleased with the same. The Supreme Court, reversing the decision of Lawrie D.J., held that the conveyance was for valuable consideration and irrevocable. They acted, I take it, upon the principle I have quoted from Armour, that in such circumstances the donee acquires the rights of a purchaser and the donation consequently becomes irrevocable.

On 5th July, 1898, the case D. C., Kegalla, 888 came in appeal before Lawrie and Browne JJ. The gift was to the donor's brother-in-law's son, and purported to have been executed " in consideration of the kind treatment and assistance rendered to me for about the two years last past, and also by reason of a sum of Rs. 750 having been spent for my needs " by the donee. The following clause also occurred: " I, the donor, do hereby debar my own right or that of any of my other heirs to raise any dispute whatsoever to or with regard to the gift hereby made " (I quote from the

(1) (1878) 1 *S. C. C.* 47.

translation, dated 13th June, 1898, made for the purpose of the appeal by the Interpretor of this Court). Browne A.J., in whose judgment Lawrie J. concurred, held that the gift, being for past services, would have been irrevocable if the donor had renounced the right of revocation, but that the clause relied upon did not amount to such a renunciation. In so continuing the clause, Browne A.J. practically over-ruled the Full Court decision in the Kurunegala case, where the clause which was considered to debar the donor's right was, if anything, less strongly worded—that decision was binding on the Court which dealt with case No. 888, and ought to have been followed. The case of *Heneya v. Rana* (1) was cited, but was also not followed, as being founded on the mistaken belief that the Kandyan Law gave the donee no right to compensation for loss suffered through the revocation of the gift. My brother has commented on the improbability that Sir John Phear and Mr. Justice Dias could have overlooked the provisions which entitled such a donee to compensation; and in addition, I would refer to Armour's statement as to the donee for valuable consideration acquiring the rights of a purchaser.

In my opinion the deed now before us being given in recompense for assistance rendered and money laid out for the donor's benefit, contains what amounts to be a provision against revocation, and therefore was not liable to be revoked by the donor.

The order of the District Judge is reversed. Unless plaintiff satisfied us that any other issue remains to be tried, the action will be dismissed with costs in both Courts.

WOOD RENTON J.—

The question to be decided in this case is whether a deed of gift containing the following material provisions is revocable under the Kandyan Law. The donor, Golahela Loku Kumarihamy, after reciting that her daughter Medduma Kumarihamy—the donee—had been maintaining her for four years previously and had incurred on her behalf an expenditure of £100 in cash on physicians and medicines, proceeds to transfer to her the lands in question, expressly disentitles her other children from succeeding to these lands, and adds that "henceforth I or my descending or inheriting children, grandchildren, heirs, administrators, or assigns whosoever shall not from this day forth by act or word raise any dispute whatsoever against this donation." If any dispute is raised the donor undertakes to settle it, and the donee and her heirs, &c., are to hold and possess the lands transferred "according to pleasure, without

(1) (1878) 1 *S. C. C.* 47.

1906. *July* 9.

WOOD RENTON J.

dispute, for ever." It will be observed that this deed, which was executed on 25th May, 1864, discloses a consideration which is both pecuniary and past. It says nothing about services to be rendered in the future. By a deed of 18th November, 1865, the donor purported to revoke the earlier deed, alleging *inter alia*, as a ground of revocation, that the donee, Medduma Kumarihamy, had left her uncared for. Under the circumstances above stated, was the earlier deed capable of being revoked under Kandyan Law? The learned District Judge has held that it was. I venture to think that it was not. Among the authorities cited to us in the argument on appeal, some may be put aside at once as irrelevant, either because no real consideration was disclosed (see D. C., Kandy, 28,626, *Perera's Collection*, p. 74; D. C., *Kegalla*, No. 29,890, *ibid.* p. 56) or because the element of future services entered into the case (D. C., Kandy, No. 21,344, *Perera* 59) or because the clause by which the donor was alleged to have barred his right of revocation was only a renunciation of title (D. C., Kandy, No. 19,064). The actual decision in *Unambuwe v. Junghamy* (1) turned on prescription. There are, however, three authorities directly in point—*Kiri Menika v. Cau Rala* (2), *Heneya v. Rana* (3); and D. C., Kegalla, No. 888 (4). According to the first and second of these cases the deed now under consideration would be irrevocable. According to the third it would be revocable. For reasons which I proceed to give it appears to me that the authority last cited should not be followed.

In *Kiri Menika v. Cau Rala* (2) which it appears both from the report in Lorenz and from the text of the record itself was a decision of three Judges, the deed in question recited past services and payment by the donee of the donor's debts (the sum paid being mentioned), stipulated for future assistance, and then transferred the lands to the donee "to hold finally in *paraveni*, so that in future I myself (the donor) or any one else who may descend from me or any person or persons who may receive administrations (*sic*) over my estates from this day shall do or say no dispute." Then follows the usual clause enabling the donee to dispose of the property "according to pleasure." The Supreme Court held that the deed was irrevocable, the grantee being bound, however, to render the future assistance for which it stipulated.

In Heneya v. Rana (3) Sir John Phear C.J. and Dias J. had to consider the question of the revocability of a deed of gift in consideration of past assistance, a previous loan of Rs. 100, and future

(1) (1892) 2 *C. L. R.* 103.
(2) (1858) 3 *Lor.* 76.
(3) (1878) 1 *S. C. C.* 47.
(4) *S. C. Min. July* 5, 1898.

services. It appears from the record, although not from the report in 1 *S. C. C.* 47, (i.) that the deed contained the following clause:— "I or any of my heirs, descendants on my behalf, cannot hereafter make any dispute whatever with respect to the gift;" and (ii.) that the District Judge had before him evidence that the condition as to future assistance had been complied with. The Supreme Court held that the challenged deed disclosed a valuable consideration of a substantial character, and in this connection I may say that I do not understand the Supreme Court in the recent case of *Dingiri Menika v. Dingiri Menika* (1) in commenting on *Heneya v. Rana* (2) to have intended to say anything further than that the character of the consideration differentiated it widely from one of a mere deed of gift.

Taken by themselves, the cases of *Kiri Menika v. Cau Rala* and *Heneya v. Rana* constitute clear and binding authority in favour of the irrevocability of the deed now in question. Here, as there, a pecuniary consideration is disclosed; and in all three cases the terms of the debarring clause are substantially identical. In D. C., Kegalla, No. 888 (3), however, a different conclusion was arrived at, on practically the same facts, by Browne J. in a judgment in which Lawrie J. concurred. The deed recited, by way of consideration, past assistance and the expenditure by the donee of a sum of Rs. 750 for the donor's needs. It then provided that the donee and his heirs, &c., from generation to generation should possess for ever the lands transferred "and do with them whatsoever to him or them shall please," and concluded as follows:—"And I do hereby debar my own rights or that of any of my other heirs to raise any dispute whatsoever to or with regard to the gift here made." Mr. Justice Browne held that the deed was revocable. He declined to follow *Kiri Menika v. Cau Rala* because the reports of the decision in 3 *Lorenz* 76 and in *Perera's Collection* at p. 86 were so confusing as to be unintelligible, and added that he was not certain "what was the ultimate result," but believed it to be "that the donee's title was ultimately upheld when the donor had by a clause of the deed deprived herself of the right of revocation." It is true that there are printers' or editor's *errata* in both the reports of this case. But when the record is referred to I do not think that there is any difficulty in understanding either the facts or the decision. As I have shown from the record itself, the deed contained no express clause against revocation: the clause which it embodied was one identical in character with that before Browne J. in D. C., Kegalla,

(1) (1906) 9 *N. L. R.* 131. (2) (1878) 1 *S. C. C.* 47.
(3) *S. C. Min. July* 5, 1898.

1906. *July* 9.

WOOD RENTON J.

No. 888, and I think that the authority which he sets aside was as binding on him and Lawrie J. as it is on us. The judgment in *Heneya v. Rana* (*ubi sup*) is dismissed by Mr. Justice Browne on the ground that the Court had overlooked the fact that, under the Kandyan Law, the donee of a revoked deed may be allowed compensation for any pecuniary loss that he had sustained. Even if we assume that Sir John Phear was ignorant of this principle of Kandyan Law, it is difficult to suppose that Mr. Justice Dias was so, in view of the importance assigned to it in *Perera's Collection*, and the frequency with which his name appears as counsel in Kandyan cases. Moreover, it is obvious that compensation would often form a very poor redress for the grievance of revocation. None of the other cases cited by Browne J. in support of his judgment seem to me to be relevant. In D. C., Kandy, No. 28,626 (*Perera's Collection* 74) no real consideration was disclosed. In D. C., Kandy, No. 19,064, the clause in question was only a renunciation of title. In D. C., Kandy, No. 25,127 (*Perera* 57) the ground of revocation appears to have been the failure of the donee to fulfil a condition as to rendering future assistance. Breach of a similar condition was the cause of revocation in D. C., Kandy, No. 23,886 (*Perera* 60). For the reasons given above, I am of opinion that the decision of the Supreme Court in D. C., Kegalla, No. 888, is not binding on us and should not be followed. The present case is therefore governed by the authority of *Kiri Menika v. Cau Rala* (1) and *Heneya v. Rana* (2). As I think that the clause in question here is a valid clause against revocation it is unnecessary to consider the point raised by the learned District Judge and in issue between Armour (*Perera's Armour* 95) and Solomon (*Perera's Collection* 50) as to whether without such a clause deeds for past consideration can be irrevocable. The decree appealed against should be set aside and judgment entered for the appellant in the terms stated by my brother Wendt. I only desire to add that in my opinion to import into the decision of cases of this description the English doctrine of consideration or ideas borrowed from English conveyancing rules as to covenants for title, instead of looking to the real nature of the transaction and to the intention of the parties, is merely to create opportunities for the evasion of obligations, which have been seriously undertaken, on the faith of which extensive dealings with property may have ensued, and which ought in the interests of public and private honesty to be strictly enforced.

(1) (1858) 3 *Lor.* 76.

(2) (1878) 1 *S. C. C.* 47.