1905.
February 14.

Present: The Hon. Sir Charles Peter Layard, Chief Justice, and Hon. Mr. Justice Moncreiff.

KALU *v.* LAMI.

D. C., Kurunegala, 697.

Kandyan Law—Widow, rights of—Property of husband acquired before marriage.

A Kandyan widow has the right to retain possession, during her lifetime, of the acquired property of her husband whether such property be acquired before or after the marriage.

APPEAL from a judgment of the District Judge of Kurunegala. The facts sufficiently appear in the judgment of Layard C.J.

Van Langenberg, for the administratix, appellant.

H. Jayewardene, for the respondent.

Cur. adv. vult.

February 14, 1905. LAYARD C.J.—

The only question raised in this appeal is as to whether Kalu, the appellant, is entitled to retain possession of all the acquired property of her deceased husband, or whether her right of retention is limited to property acquired by her husband during his marriage with her.

With regard to the right of a Kandyan widow to her deceased husband's lands, Armour lays down as follows: "If the deceased husband left other landed property, besides his paraveni or ancestral lands, that is to say, lands acquired by purchase, or lands which he,

the deceased, had received from his adopted father, in such case the widow may have possession of the whole of such acquired land for the remainder of her life, provided she remain single." As far as that passage of Armour goes, no distinction is drawn between the lands acquired by the husband prior to his marriage and lands acquired by him subsequent to his marriage, and neither appellant's counsel nor respondent's counsel have been able to lay before us any case in which it was distinctly laid down by this Court that the retention by the widow was limited to lands acquired by her husband during the marriage. The first case to which we have been referred is one reported in *Ramanathan's Reports for 1861, p. 112*, which merely lays down the general principle of the right of possession with respect to lands the acquired property of her husband, viz., that the widow was entitled to a life estate therein. The Full Court in that judgment does not draw any distinction between lands acquired prior to the marriage of the deceased husband and his widow and lands acquired during the continuance of the marriage. That case, however, is followed by a subsequent judgment of this Court reported in *Ramanathan's Reports, 1863-1868, p. 190*, in which three Judges, two of whom sat in the former case, say, with respect to landed property acquired during the marriage, her rights are different, as is pointed out in the judgment of the case I have above referred to. Now, reading the first judgment, as I said before, it draws no distinction between lands acquired prior to the marriage and lands acquired during the continuance of the marriage; and the Judges in the later decision do not state why they considered that the former decision referred only to landed property acquired during the marriage, neither do they lay down the general principle that landed property acquired prior to the marriage is not such as the widow would have a right of retention over. We are as capable as those Judges were of judging what the meaning of the words in the original judgment of 1861 is, and certainly I cannot say that the opinion expressed in the earlier judgment is limited to landed property acquired during the marriage as suggested by the Judges in the later decision. We have also been referred to the judgment in the case of *Menika v. Horatala* reported in *3 S. C. R. 169*. Sir Archibald Lawrie, then Acting Chief Justice, said as follows: "I do not find authority of a kind which I think sufficient, that the widow's possession of acquired land was to come to an end on a second marriage. One reason why she was allowed to possess it for her life was that in most cases it had been purchased by the savings and exertion of the wife as much as of the husband." There he does not limit the widow's rights to the possession of land acquired during the marriage, but he merely gives, as one of the reasons why she was allowed to possess such land, that in most cases, not in all, it had been purchased by the savings of the wife as much as the husband. This does not amount to a finding on the part of Sir Archibald Lawrie

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that the widow's right of retention was limited to the possession of land acquired during the second marriage. There is another case in which Sir Archibald Lawrie gave a judgment, which is reported in *5 N. L. R. 177*. That case only dealt with lands acquired after the marriage. In the course of that judgment he says that the action was premature, because the defendant was entitled to a life rent of the property acquired by her husband during their marriage. The point to be decided in that case was not whether the defendant was only entitled to a life rent of the property acquired by her husband during their marriage, or whether she would be entitled to a life rent of the whole of her husband's acquired property. All that was in issue in that case was property acquired by her husband during their marriage, and there was no question raised for decision as to a widow's rights in respect of property acquired prior to the marriage, and it cannot be said the Acting Chief Justice intended to lay down that widows had no right to retention of property acquired by their husbands prior to their marriage. The question was not before him, and consequently he did not decide it. As we can find no actual ruling of this Court reducing the right of a widow to the possession of only land acquired during the marriage, we think that we must follow the general rule laid down in Armour that if the deceased, in addition to his ancestral property, left acquired lands, the widow will have the possession of the acquired lands in their entirety for the remainder of her life.

The ruling of the District Judge on the question must be set aside, and the appellant is entitled to the costs of the contention in the Court below and of this appeal.

MONCREIFF J.—Agreed.

Appeal allowed.