1916.

Present: Wood Renton C.J. and De Sampayo J.

CADER *v.* PITCHA.

383—D. C. Kurunegala, 5,447.

Muhammadan law—Donation by father to children—Power of revocation.

It is competent under the Muhammadan law applicable to Ceylon (Shafei law) for a father to revoke a donation to his son without the decree of a Court of law. The right to revoke the gift is not limited by the condition that the property is wanted for the maintenance of the children.

THE facts are set out in the judgment of De Sampayo J.

H. J. C. Pereira and *F. M. de Saram*, for plaintiff, appellant.

Bawa, K. C., J. W. de Silva, and *M. W. H. de Silva*, for added defendants, respondents.

Cur. adv. vult.

October 20, 1916. WOOD RENTON C.J.—

My brother De Sampayo has fully stated the facts in this case, and there is no need for me to recapitulate them. The point for determination is whether under the Shafei law applicable to Muhammadans in this Colony it is competent for a father to revoke a donation to his son without the decree of a Court of law and without any reason for the revocation. The local Code of 1806 throws no light on the question. But with one exception, to which I will refer in a moment, all the recognized text books on Muhammadan law support an affirmative answer to it. Most of the schools of Muhammadan law assimilate gifts to alms (see Nauphal's *Droit Musulman, La Propriete* [1]). But to this principle the Shafei law presents an exception in the case of donations by a father to a son, provided that the donee has not irrevocably disposed of the object received (MacNaghten's *Muhammadan Law*,[2] Amir Ali's *Muhammadan Law*,[3] and De Tornauw *Le Droit Musulman* [4]). Vandenberg in his *Minhadj At Talibin*[5]—a treatise on the Muhammadan law as it prevailed in the Indian Archipelago—discusses the whole subject in the same sense. It results from these authorities that such a donation as we have here to deal with can be revoked by any apt words, although not by implication from subsequent dealings by the father with the subject-matter of the donation. There is no trace in any of the writers above mentioned of any requirement that the

[1] *Pages 112 et seq.*
[2] *Pages 202 and 203.*
[3] *Vol. I., p. 190.*
[4] *Page 182.*
[5] *Vol. II., pp. 193 to 195.*

donor should have recourse to a legal tribunal, or that any just cause for the revocation should be assigned, or that any other condition than that the property donated should still be at the donee's disposal has been attached by Shafei law to the exercise of the donor's right.

The appellant's counsel drew our attention, however, to a passage in the *Hedaya*,[1] in which the meaning of the Shafei rule is stated to be that a father may retract a gift to his son " when he wants it for the maintenance of the son," and this passage is cited by Wilson[2] in the notes to section 316 of his treatise, which deals with the revocation of gifts. But it must be remembered, and Sir Roland Wilson is careful to point out,[3] that such works as the *Hedaya* are not so much law books in the strict sense of the term as discussions on Muhammadan moral philosophy and theology. I am very far from being satisfied that the clause in the citation on which the appellant's counsel relies is anything more than an illustration of one class of cases, namely, where the subject-matter of a donation is required for the maintenance of the donee, in which the power of revocation could not rightly be withheld. The *Hedaya* itself,[4] a few lines above the passage in question, expressly points out that the revocability of donations by a father to a son results from the father's power over the property of his son.[5]

On these grounds I would dismiss this appeal with costs.

DE SAMPAYO J.—

This case raises an important question of Muhammadan law. The plaintiff is son and one of five children of Packir Meedin by one wife; and the added defendants are Packir Meedin's children by another wife. Packir Meedin, who was entitled to an undivided one-third share of certain lands, by deed dated November 28, 1902, gifted half of the share to the plaintiff and the other half to the plaintiff's brothers and sisters, who were all then minors, but by deed dated January 8, 1909, he purported to revoke the gift, and by another deed of the same date gifted the whole one-third share to the added defendants. The plaintiff has brought this action to vindicate half of one-third share gifted to him, and the principal issues that arise are whether the gift was valid, and, if so, whether it was validly revoked.

The parties are Muhammadans resident in Kurunegala. The deed of gift is in Sinhalese, and has been drawn and attested by a Sinhalese notary practising in Kurunegala, and has probably on that account taken the form, in some respects, of a Kandyan deed of gift for maintenance. It recited that the gift was made in consideration of the love and affection the donor bore to his children, the donees, " for the purpose of my obtaining succour and assistance

[1] *Vol. III., p. 301.*
[2] *Digest of Anglo-Muhammadan Law.*
[3] *Pages 25 and 47.*
[4] *Page 300.*
[5] *Wilson's Notes to S. 316.*

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from them until I am living in this world, for getting my remains buried according to custom after my death, and for doing and performing religious rites and almsgiving for the good of my soul in the other world," and it conveyed the property to the donees in the above proportion subject to a life interest in the donor.

The District Judge has held that, the donees being the donor's minor children, the deed, notwithstanding the reservation of a life interest, constituted a valid gift under the Muhammadan law. This appeal has been argued on the basis of that finding. The only question debated is whether it was competent for Packir Meedin to revoke the gift. In the deed of revocation the reason stated is that the donees failed to render him any assistance whatsoever. If a good and true reason be necessary to be stated for the purpose of revoking a gift, I should find it difficult to hold on the facts that the reason mentioned in the deed was well founded. But in the view I take of the Muhammadan law on this subject, it is unnecessary to decide that question of fact.

There is no available local decision on the subject of revocation of deeds of gifts among Muhammadans in Ceylon. The argument has, therefore, proceeded on what may be gathered from the text books on the Muhammadan law as prevailing in India and other Muhammadan countries. It is conceded that by the law applicable to the Shafei sect, to which Ceylon Muhammadans belong, a gift to children, as distinguished from one to strangers, may be revoked by the donor himself. This is admittedly subject to certain exceptions, which are not relevant to this case, and need not therefore be noticed. A gift to persons other than children cannot be revoked, except by decree of the *Kazee* or Judge, with the consent of the donor. It is contended on behalf of the plaintiff that even in the case of a gift to children the donor may not revoke it by his own act, except when he wants it for their maintenance. Such a condition is not stated in any of the text books, such as Amir Ali's *Muhammadan Law*, Wilson's *Anglo-Muhammadan Law*, Tyabji's *Muhammadan Law*. The whole argument is founded on a somewhat obscure passage in *3 Hedaya*, p.*301*, where it is said: " With respect to the tradition of the Prophet quoted by Shafei, the meaning of it is that the donor is not himself empowered to retract his gift, as this must be done by decree of the *Kazee* with the consent of the donor, excepting in the case of a father, who is himself competent to retract a gift to his son when he wants it for the maintenance of the son." It is not at all clear that these last words constitute an invariable condition for the retraction of the gift by the father. Considering that the law as to the competency to revoke is founded, as appears from the earlier part of the same passage, on the principle that " the conveyance of property from a father to the son can never be complete," and that " the father has a power over the property of his son," it seems to me that the words in question do not lay down a condition, but state an

instance. The tradition of the Prophet himself, when he said, " Let not a donor retract his gift, but let a father, if he please, retract a gift he may have made to his son," is plain and unconditional, and if any qualification was introduced by any school of doctrine, one would expect the recognized commentaries on the text to state it in equally plain language. On the other hand, the form of revocation mentioned in the commentaries indicates that the revocation in the case of a gift by a father to his son is effected by the act of the father himself without the intervention of the Court. Thus, in *Amir Ali, Vol. 1., p. 126*, it is stated: " The revocation must be effected in appropriate terms, such as ' I have revoked the gift,' or ' restored it to my own property,' or ' I have cancelled or dissolved it.' " Vandenberg's *Minhadj* is an exposition of the Muhammadan law according to the Shafei school, and at page 234 of Howard's translation the power of the father or ancestor to revoke a gift is stated with certain qualifications, but the condition contended for in this case is not one of these qualifications. He, too, says that the revocation should be effected by some such words as " I revoke my gift," or " I claim back the object," or " I wish the thing to become my property again," or " I wish to put an end to the donation." Mr. H. J. C. Pereira, who ably argued the case for plaintiff, suggested that these passages had reference to the form in which the donor would express to the *Kazee* his consent to the revocation. But I do not think that either the language or the context in which it occurs supports the suggestion.

In my judgment, not only is the intervention of the Court unnecessary for the purpose of revocation in the particular case of a gift by a father to his children, but the power of the father to revoke the gift is not limited by the condition that the property is wanted for the maintenance of the children. I accordingly think that the appeal fails, and should be dismissed with costs.

Appeal dismissed.