occupy it herself. She cannot by any stretch of the imagination be described as being a dependant of the plaintiff. She is quite an independent person, with property of her own and an income of her own. The fact that the Commissioner without any agreement between the parties thought fit to direct that the writ of ejectment should not issue for two months shows that subsconsciously, perhaps, he felt that he was doing an injustice to the defendant.

I set aside the judgment and decree appealed against, and dismiss the plaintiff's action with costs both here and below.

Appeal allowed.

1949 *Present :* **Windham J. and Gratiaen J.**

BISO MENIKA *et al.*, Appellants, *and* PUNCHIAMMA *et al.*, Respondents

S. C. 294—D. C. Matale, L 125

Kandyan Law—Deed of gift in consideration of marriage—Revocability—Kandyan Law Declaration and Amendment Ordinance, No. 39 of 1938—Sections 4 (1) and 5 (1) (b)—Meaning of " expressed to be in consideration of a future marriage ".

A deed of gift in consideration of marriage, to be irrevocable in terms of section 5 (1) (*b*) of the Kandyan Law Declaration and Amendment Ordinance, No. 39 of 1938, must not only be proved to be in consideration of a future marriage, but must also be " expressed to be " in consideration of a future marriage. The deed of gift must state expressly, and not merely use words from which the inference might or even must be drawn, that the gift is in consideration of a future marriage.

APPEAL from a judgment of the District Court, Matale.

Vernon Wijetunge, for plaintiffs appellants.

B. S. C. Ratuwatte, for defendant respondents.

Cur. adv. vult.

October 31, 1949. WINDHAM J.—

This appeal raises a question regarding the proper interpretation to be placed on paragraph (*b*) of section 5 (1) of the Kandyan Law Declaration and Amendment Ordinance, No. 39 of 1938. The first plaintiff-appellant is the wife of the second plaintiff-appellant and the defendant-respondents are her parents. In 1941 the second plaintiff agreed with the defendants to marry the first plaintiff, then a young widow, upon their promising to give him as dowry certain lands. Second plaintiff gave notice of the marriage on 11th September, 1941, and later, the defendants having failed to execute the dowry deed, he gave fresh notice of the marriage on 5th January, 1942. On this same date the defendants executed a deed of gift, P3, giving to the first and second plaintiff the lands which they had promised. The plaintiffs got married

on 2nd February, 1942. Thereafter the second plaintiff possessed the lands for three or four years, after which he allowed the second defendant to possess it on his promising to give the plaintiffs their share. The defendants failed to do so, and accordingly on 22nd December, 1948, the plaintiffs filed action against them. The plaintiffs then became aware that the defendants, by deed of revocation P5, dated 26th April, 1946, had revoked the deed of gift P3. The plaintiffs accordingly withdrew their action and filed a fresh action, seeking a declaration that the deed of gift P3 was irrevocable and asking that the deed of revocation P5 be set aside.

In dismissing their action, the learned District Judge found that in the circumstances of the case the deed P3 had clearly been executed by the defendants in consideration of the marriage of the plaintiffs. I entirely agree with his finding on this point, which was the only reasonably possible conclusion. But he dismissed the action on the ground that the gift in P3 was not " expressed to be in consideration of a future marriage ", and that accordingly in view of the provisions of sections 4 (1) and 5 (1) (*b*) of the Kandyan Law Declaration and Amendment Ordinance, No. 39 of 1938, the gift was not irrevocable.

Section 4 (1) of the Ordinance provides as follows :—

" 4. (1) Subject to the provisions and exceptions hereinafter contained, a donor may, during his lifetime and without the consent of the donee or of any other person, cancel or revoke in whole or in part any gift, whether made before or after the commencement of this Ordinance, and such gift and any instrument effecting the same shall thereupon become void and of no effect to the extent set forth in the instrument of cancellation or revocation :

Provided that the right, title, or interest of any person in any immovable property shall not, if such right, title or interest has accrued before the commencement of this Ordinance, be affected or prejudiced by reason of the cancellation or revocation of the gift to any greater extent than it might have been if this Ordinance had not been enacted ".

Section 5 (1) (*b*) provides as follows :—

" 5. (1) Notwithstanding the provisions of section 4 (1), it shall not be lawful for a donor to cancel or revoke any of the following gifts where any such gift is made after the commencement of this Ordinance :—

. . . . . .

(*b*) any gift in consideration of and expressed to be in consideration of a future marriage, which marriage has subsequently taken place ".

Now it is clear from the terms of section 5 (1) (*b*) that in order that any gift shall fall within its terms and thereby be irrevocable, it must not only be proved to be in consideration of a future marriage, but it must also be " expressed to be " in consideration of a future marriage. The main point for decision is what is meant by these words " expressed to be ". It has been argued that these words do not necessarily mean, in the case

of a deed of gift, that there must appear in the body of that deed words to the effect that the gift is in consideration of a future marriage, but that it would be sufficient if the gift were expressed to be in consideration of such a marriage by the spoken words, or even the conduct, of the donor before or at the time of the making of the gift. This conclusion, however, does violence in my view to the ordinary accepted meaning of the expression. In accordance with English usage, if one says of a gift that it is expressed to be in consideration of a future marriage, one means that such expression shall be found in the wording of the gift; and if the gift is effected (as in the present case) by means of a deed, then the expression must appear in the wording of the deed.

Now in the deed of gift P3 there are no words to the effect that the gift was in consideration of the marriage of the plaintiffs. The only words in P3 which are relevant to the question of consideration are the following:—"which said premises . . . . we do hereby gift unto a beloved daughter of ours, Purijjala Biso Menika of Pamunuwa aforesaid and a beloved son-in-law Muthu Banda Ekanayake of Pamunuwa aforesaid for the love and affection we bear towards them, and for other various good reasons, and with a view of obtaining all necessary aid and help during our life time from the said Biso Menika and Muthu Banda Ekanayake". It is suggested that by the reference in the above passage to the second plaintiff Ekanayake as "our beloved son-in-law" the deed is "expressed to be in consideration of a future marriage". But this contention cannot succeed. No doubt that reference is evidence of the fact (of which there was abundant other evidence outside the deed) that the gift was in consideration of a future marriage. But section 5 (1) (*b*), *in addition to* proof of this fact, requires that the gift shall be *expressed* to be in consideration of a future marriage; and this in my view means that the deed of gift shall state expressly, and not merely use words from which the inference might or even must be drawn, that the gift is in consideration of a future marriage. This additional requirement of section 5 (1) (*b*) was clearly inserted by the draftsman for good reason, and its clear provisions, as also those of section 4 (1), were very possibly the outcome of a resolve on the part of the legislature to do away with somewhat uncertain state of the law previous to 1938 regarding the revocability or irrevocability of deeds of gift in consideration of marriage under the Kandyan law, as reviewed in such cases as *Kandappa v. Charles Appu* [1] and *Ukku Banda v. Paulis Singho* [2].

I accordingly hold that the deed P3 was not "expressed to be in consideration of a future marriage", and that it was therefore revocable, falling within the provisions of section 4 (1), and not within the exception afforded by section 5 (1) (*b*), of the Kandyan Law Declaration and Amendment Ordinance, No. 39 of 1938. The appeal is therefore dismissed with costs.

GRATIAEN J.—I agree.

Appeal dismissed.

[1] (1926) 27 *N. L. R.* 433. [2] (1926) 27 *N. L. R.* 449.