1941 *Present :* **Soertsz and de Kretser JJ.**

MUSTAPHA *v.* UMMA KANIA.

170—D. C. Kalutara, 21,620.

Muslim law—Gifts between spouses—Irrevocable—Gift in lieu of Mahar—Delivery of possession not essential.

Under the Muslim law gifts between spouses are irrevocable.
A gift in lieu of Mahar is not invalid for non-delivery of possession.

APPEAL from a judgment of the District Judge of Kalutara.

N. K. Choksy, for plaintiff, appellant.

H. V. Perera, K.C. (with him *U. A. Jayasundere*), for defendant, respondent.

Cur. adv. vult.

September 3, 1941. SOERTSZ J.—

The short point involved in this appeal was whether the learned District Judge was right that the deed of gift which the plaintiff-appellant sought to set aside was irrevocable.

The plaintiff executed the deed in favour of his wife (the defendant), "in lieu of the Mahar due to her and in consideration of the natural love and affection" which he bore "unto her" and he declared it to be "a gift or donation absolute and irrevocable". He now seeks to set aside this donation on the ground (*a*) that "the defendant is misconducting herself with one S. M. Athas", (*b*) that "the defendant has been ungrateful and disobedient to the plaintiff", (*c*) alternatively, that "no possession has been given over the said property and therefore the donation is null and void". The charges in (*a*) and (*b*) and the allegation that there was no delivery of possession in (*c*) have not been investigated because the parties were content that the Judge should decide as a preliminary issue the question raised by the defendant, namely, whether "even if issues 1, 2 and 4 (namely, the matters in (*a*), (*b*) and (*c*) above) are answered in the plaintiff's favour is the plaintiff entitled to the declaration claimed by him"?

The learned Judge heard argument on this issue and held that the law applicable to Muslim donations not involving *fidei commissa* is the Muslim law, and that according to the branch of that law which prevails in Ceylon, gifts by spouses to each other are irrevocable. I am clearly of opinion that the trial Judge was right on both these points. Section 3 of Ordinance No. 10 of 1931 puts it beyond question that Muslim law governs the question, and once that is the case, gifts between spouses are irrevocable. I am unable to appreciate the distinction the plaintiff-appellant's Counsel sought to draw when he submitted that this irrevocability applied only as between donor and donee, but did not preclude a Court of law from setting aside a gift on grounds such as alleged in (*a*) and (*b*) if they were established. A revocation of a gift to be effective must be by proceedings in a Court of law as is made clearly explanation (2) in section 127 in "Principles of Mohamedan Law" by Mulla, 4th edition, page 93; and, clearly, a Court of law can set aside a gift only on the grounds known to the law it is administering in a particular case, and a Mohamedan husband or wife may not revoke a gift made by the other spouse. This is the law laid down without qualification in section 127 I have already referred to. It follows that the deed is not revocable on grounds (*a*) and (*b*).

In regard to ground (*c*) the deed declares that the gift is made in lieu of Mahar. In other words, that it was such a transaction as the Mohamedan law designated a "Hiba-bil-uwuz". The fact that the donor declared that he was also moved by the love and affection he bore unto the donee does not alter the real character of the transaction. There is the binding authority of the Privy Council for the proposition that a gift in lieu of Mahar is not vitiated by the non-delivery of possession. See *Muhammad Esuph Ravuthan v. Pattamsa Ammal*[1].

For these reasons, I hold that the trial Judge came to a right conclusion. I dismiss the appeal with costs.

DE KRETSER J.—I agree.

Appeal dismissed.

[1] *23 Madras 71.*