Present : Wood Renton C.J. and De Sampayo A.J. 1914.

HAMINE *v.* GOONEWARDENE.

267—D. C. Negombo, 9,734.

Deed of gift—Revocation—Ingratitude—Son calling mother (donor) "whore"—Inconsistent pleas by way of defence.

Plaintiff, who had granted a donation to her son, sought in this action to have the deed of donation revoked on the ground that the defendant had applied the term "whore" ("huthi") to her.

Held, that in the circumstances of the case there was no ground for the revocation of the gift.

THE facts appear from the judgment.

Bawa, K.C. (with him *De Zoysa*), for plaintiff, appellant.

A. St. V. Jayewardene (with him *Samarawickreme*), for defendants, respondents.

October 9, 1914. WOOD RENTON C.J.—

The elaborate and able judgment of the learned District Judge renders it unnecessary either to re-state the facts in this case, or to analyse the evidence applicable to the main issue on which the

[6] *3 Browne 80.* [7] *1 C. A. C. 95.*

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action went to trial, viz., whether the plaintiff-appellant was induced to sign the deed sought to be revoked by the misrepresentation and fraud of the defendants. The plaintiff's counsel, while he expressly reserved his right to contend, in the event of a further appeal, that the District Judge had wrongly answered that question in the negative, saw that it would be difficult to invite us to reverse the decision of the Court of trial on that point, being, as it is, purely an issue of fact, and limited his argument here to two contentions: (i.) That the District Judge was in error in refusing to accept an alternative issue of undue influence at the trial, and that the case should go back for the framing and determination of that issue; (ii.) that there is, in the record as it stands, evidence of such "ingratitude," within the meaning of Roman-Dutch law, on the part of the defendants towards the plaintiff as to entitle the latter to have the impugned deed revoked. I will deal briefly with these points in turn.

(i.) I am not prepared to say that in law, whatever may be the effect of the adoption of such a course as a matter of evidence, a litigant may not, under our Code of Civil Procedure, set up alternative and inconsistent pleas. But I am clearly of opinion that it would be hopeless now to send this case back for any further inquiry on the subject of undue influence. The plaintiff's case at the trial was that she had been tricked into the belief that the impugned deed was not a deed of gift but a power of attorney. Her position may be compendiously described in her own language: "I agreed to sign the deed of authority asked for. I was not forced to do so. I told no one one I was forced. I signed willingly, thinking it was all right."

What Court would believe her now if she were to come forward and say that she knew the real nature of the deed quite well, but that she had been induced to sign it by undue influence? I may add that this is one of the cases in which the refusal of the Court of first instance to accept an issue, if it was not acquiesced in, might with advantage have been made the subject of an immediate interlocutory appeal.

(ii.) The plaintiff's case as to ingratitude cannot, in my opinion, be put higher than this on the evidence as I interpret it. The dispositions of the impugned deed were in accordance with the general intentions and wishes of the plaintiff's deceased husband, the original owner of the properties. She was endeavouring to induce the defendants, who are her sons, to re-convey to her the properties donated. Rightly as the learned District Judge has held, but whether rightly or wrongly, at any rate honestly, the defendants believed that the plaintiff's action in this matter was inspired by her daughters, and they quarrelled with their mother on that account. It is alleged by the plaintiff that in the course of this quarrel the infamous term "huthi" (whore) was applied by the

second defendant to her. The learned District Judge holds that it was spoken "*at* rather than *to*" the plaintiff. It is needless to say that language of this description admits of no extenuation. But there is some excuse for the defendants' irritation with their mother, although none for the manner in which the second defendant gave expression to it. Apart altogether from the fact that they believed that under the undue influence of their sisters she was endeavouring to defeat their father's intentions in regard to them, the evidence shows that she described them as "rogues," and roundly charged them with fraud. As the learned District Judge has pointed out, the whole quarrel between the plaintiff and her sons centred in the impugned deed. She was not, as she alleged in her petition (P 2) to the Police Magistrate, turned out of her house by her two sons, or prevented from removing her property.

Does such conduct on the part of the defendants, as is disclosed by the circumstances just stated, amount to ingratitude within the meaning of the Roman-Dutch law? To this question there can, in my opinion, be but one answer, and that is an answer in the negative. "There are," say Voet (*39, 5, 22;* see also *Maasdorp, vol. III., 101*), "five instances of ingratitude, which, if the donee is guilty of them towards the donor, are considered just causes for revocation or change of mind, notwithstanding that at the time of the donation it may have been agreed by a pact, confirmed even by oath, that the donation should not be revoked on account of ingratitude, since such an agreement is null and void, as being an incentive to misconduct, and invoking condonation of future crime. The causes are these: If the donee should lay impious hands upon the donor, or outrageously defame him, or cause him enormous loss, or plot against his life, or, lastly, fail to fulfil the conditions annexed to the donation"..... Nor does it seem "to admit of doubt, that for other similar or graver causes donations can be revoked" ..... Lesser causes of ingratitude than the above are certainly not sufficient for revoking a donation, "for though both law and right reason reprobate the stain and baseness of ingratitude, however slight, yet they do not on that account sanction its being penalized forthwith by revocation of the donation. The truth is that legislators ignore the smaller faults which they cannot amend, well knowing that, if every case of even slight ingratitude were to be visited with the severity of the law, all the courts and tribunals would not suffice for the number of actions likely to be brought against ingrates."

It is obvious that there is no analogy between the class of cases contemplated by Voet and the circumstances with which we have here to deal. The case of *Sansoni v. Foenander* [1] is clearly distinguishable from the present case. In *Sansoni v. Foenander,* [1] not only

[1] *(1872) Vanderstraaten 144; (1876–78) Ram. 32.*

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was the abuse both atrocious and systematic, but the facts brought the case within one of the express grounds of revocation recognized by the Roman-Dutch law, namely, failure on the part of the donee to fulfil one of the conditions of the donation.

I would dismiss the appeal with costs.

DE SAMPAYO A.J.—I entirely agree.

Appeal dismissed.