Present : Ennis A.C.J. and Schneider A.J.

1919.

In re SITHAMPARAPILLAI

8—D. C. Batticaloa, 980.

Doctrine of election—Last will—Bequest of all property to a natural son on condition that he supports testator's wife—Claim by wife of half acquired property—Tésawalamai.

A testator who was subject to the *Tésawalamai* left all his property to his adopted son (natural son), subject to the condition that he should support the testator's wife. The testator's wife claimed one-half the acquired property as her property, over which the testator had no disposing power, and further claimed an allowance for her maintenance.

Held, that the wife was entitled to an order for maintenance, and that she was not bound by the doctrine of election.

THE testator by his last will devised all his property to his natural son, and directed him in consideration thereof to support his wife, a sister of the minor's mother. The testator was a native of Jaffna, and the parties are governed by the *Tésawalamai.*

1919.

In re Sithamparapillai

The first respondent claimed half the acquired property, which was allowed, and thereafter made application to the Court that the minor should contribute for her support.

The District Judge, C. Coomaraswamy, Esq., ordered the appellant to pay the respondent Rs. 30 per mensem.

The last will was as follows:—

Whereas to avoid certain legal technicalities and complications I have not registered in my name my son Sithampara Saravanapava Arambamoorthy born to me of Venayaga Mudaliar Sivapakiam on January 18, 1912:

Whereas he is my own son, and also I have adopted him as my son for all purposes of inheritance under the law of *Tésawalamai;* and whereas it is necessary to safeguard his interest, I make this my last will and testament:

I, Arambamoorthy Sithamparapillai, of Point Pedro, presently of Batticaloa, do give, devise, and bequeath all (my) property of what kind or nature soever, movable as well as immovable wherever found or situate, in possession or expecting in remainder or reversion, real or fiduciary, or held in trust, all religious, charitable, and educational institutions founded by me or my ancestors, or to be founded by me or managed by me or my ancestors, or to be managed by me hereditarily or otherwise, nothing excepted, to my son Sithampara Saravanapava Arambamoorthy.

Now, the conditions of this my last will and testament are that my said son should remain a Hindu throughout his lifetime, and complete proceeding as far as possible continuously a full course of education in some university, and continue to support his mother and my wife Valliammal, his aunt, provided they do not marry.

On failure of any of the conditions, and in case my said son should die unmarried and issueless and intestate, my entire property shall accrue to the benefit of the Point Pedro Samundy Amman Temple and the Point Pedro Vivekananda Girls' School, my wife Valliammal and his mother Sivapakiam retaining therein a life interest, provided they do not marry. If such contingency arises, I appoint my friend Valayuthampillai Arunasalam, B.A., Madras, of Puloly, Point Pedro, to manage and distribute for the said two purposes alone the said property, and the said Arunasalam shall have power to nominate a successor to the said management, and on failure to nominate such successor, the entire property shall be managed by the then managers of the said two institutions.

I hereby appoint my brother-in-law Venayaga Mudaliyar Vadivelu as the executor of this my last will and testament, and as the guardian of the person of my said son.

It shall be competent, with the permission of the Court, for the executor, my said son, to sell, to lease out any of my property for the purpose of educating my said son.

This last will and testament is made, &c.

Signed, witnessed.

June 17, 1915.

Samarawickreme, for the appellant.—It is clear from the terms of the will that the testator devised all his property to his adopted son, and only gave the widow a right of maintenance. The widow has, however, insisted on getting a half share of all the acquired property, and this the testator did not give to the widow. If the widow repudiates the will, she is not entitled to claim maintenance under the will. The testator was a resident of Batticaloa, and he was of the opinion that he had a right to dispose of all his acquired property by will under the general law of Ceylon. But the widow has claimed her rights under the *Tésawalamai*.

Counsel cited *Halsbury, vol. XIII., p. 132.*

Balasingham, for the respondent, not called upon.

May 22, 1919. ENNIS A.C.J.—

This is an appeal from an order in a testamentary case. It appears that the testator executed a will in favour of the appellant, in which he recited that the appellant was his natural son, and that he had adopted him as his son "for all purposes of inheritance under the law of *Tésawalamai*," and he went on further to recite that it was necessary to safeguard this son's interest, and that the will was made in consequence. By the will he disposed of all his property to the appellant upon certain conditions, one of which was that the appellant should continue to support the testator's wife and other persons mentioned in the will. The widow claimed from the estate her share in the acquired property, and the appellant contends that, having elected to take her share separately, he is no longer bound to maintain her. The order appealed from is an order for maintenance. The law applicable to the doctrine of election is very clear, and has been concisely set out in Thompson's *Institutes of the Laws of Ceylon, vol. II., p. 243:* "*Primâ facie*, it is not to be supposed, nor must it be proved by extrinsic evidence, that the testator disposed of that which is not his own so as to raise a case of election. It must appear on the will itself by a plain demonstration or by necessary implication." The learned Judge is right in holding that it does not appear explicitly or implicitly in the will that the testator intended to dispose of his wife's property, as well as his own. I would go further and say that, in my opinion, the will shows that it was made merely to secure that the adopted son should obtain an inheritance according to the law of *Tésawalamai*, and avoid any question which might arise, because he was not a legitimate son.

I would accordingly dismiss the appeal with costs.

SCHNEIDER A.J.—I agree.

Appeal dismissed.