1967 *Present :* **Tambiah, J., and Sirimane, J.**

V. MURUGESU, Appellant, *and* T. SUBRAMANIAM, Respondent

S. C. 453/64—D. C. Jaffna, 1668/L

Thesavalamai—Dowry given by father to a daughter—Execution of deed when no marriage is actually in view—Validity of such previous apportionment — Restriction of dowried daughter's right to inherit father's property—Tesawalamai Ordinance (Cap. 63), Part I, ss. 1 to 11.

Under the Thesavalamai a father can grant immovable property to his daughter even before any marriage has been arranged for her. If the daughter marries subsequently, she will not be entitled to inherit immovable property from her father if he leaves sons surviving him.

Kandappu v. Veeragathy (53 N. L. R. 119) discussed.

APPEAL from a judgment of the District Court, Jaffna.

C. Ranganathan, Q.C., with *P. Nagendran*, for the defendants-appellants.

V. Arulambalam, with *C. Ganesh*, for the plaintiff-respondent.

Cur. adv. vult.

June 10, 1967. TAMBIAH, J.—

The plaintiff brought this action for the declaration of title to the land described in the schedule to the plaint. The plaintiff's case is that one Kanagasabai Thamboo became entitled to the land by deed No. 1382 of 28.12.1929, marked P1. By deed No. 1365 of 21.3.1912, marked P2,

Kanagasabai Thamboo dowried his eldest daughter Ponnammah and by deed No. 9458 of 21.10.1925 marked P3, he dowried his second daughter, Valliammai and the property, which is the subject matter of this suit, devolved on him as sole heir since dowried daughters do not inherit their father's property when there are surviving sons.

The case for the first and second defendants is that deed P3 is only a donation and not a dowry and therefore Valliammai was not precluded from inheriting along with the plaintiff a half share of the property, as heir of Kanagasabai Thamboo and deed P4, a transfer by the first defendant and his wife Valliammai conveyed this half share to the second defendant. The parties are agreed that Ponnammah was given a dowry by deed P2 of 21.2.1912 and therefore she is not entitled to any inheritance in this property.

The parties also relied on prescription and the learned District Judge has found prescriptive title in the plaintiff. If, however, the second defendant is entitled to a half share then the plaintiff would not be in a position to prescribe since he becomes a co-owner of the plaintiff, and no ouster had been proved.

The only point for decision is whether the deed P3, which on the face of it purports to be a dowry deed, is a dowry within the meaning of the Thesawalamai or whether it should only be regarded as a deed of donation.

This point was not, however, specifically raised in the court of first instance and Mr. Arulambalam, who is the Counsel for the respondent, took the preliminary objection that the appellant's Counsel cannot urge this point in this court in view of the well known rule that mixed questions of fact and law cannot for the first time be raised in appeal. Mr. Ranganathan, Counsel for the appellant, however relied on the issues raised by the plaintiff's Counsel. The particular point raised in appeal was neither raised in the form of a specific issue nor argued. The plaintiff in order to succeed in this action has to prove that Valliammai was duly dowried and therefore should have led all the evidence to prove this fact. Therefore, it was decided to hear this case on its merits.

The parties to this case are governed by the Thesawalamai. The point raised is one of importance and has been the subject matter of conflicting decisions. The Counsel for the appellant contended that dowry could only be given on the occasion of marriage of one's daughter and therefore the dowry deed should be executed either at the time of marriage or, where a particular marriage was in contemplation, the deed of dowry should be executed in order to promote such a marriage. Mr. Arulambalam, Counsel for the respondent, urged that under the law of Thesawalamai a father, being the manager of a joint estate, has the discretion to give by dowry any property to his daughter at any time. He submitted that long before marriage was arranged the father can grant a particular property to a daughter as dowry. He urged that the guiding principle to determine whether a grant is a dowry or a donation

is the intention of the donor. On the facts, Mr. Arulambalam urged that the finding of the learned Judge that Deed P3 was a dowry deed, is amply supported by the evidence. In the recitals in deed P3 it is specifically stated that the property is given by way of dowry. Valliammai and the first defendant themselves regarded this as dowry, because when they transferred the property by deed P4 of 1959, they recited their title to the land, in the deed in favour of Valliammai, as based on a dowry deed. There is no evidence that Valliammai was ever dowried any other property other than the land given to her by deed P3.

Counsel for the appellant submitted that the only source of Thesawalamai is the Tesawalamai Ordinance (Cap. 63) and if one examines the provisions of this enactment, it will be evident that dowry could be given only at the time of marriage. In order to establish this proposition he referred to the provisions of Part I sections 1 to 11 of the Tesawalamai Ordinance (Cap. 63).

All the passages relied on by Mr. Ranganathan are found in Part I of the Tesawalamai Ordinance under the heading "Inheritance and Succession to Property". In dealing with different kinds of property, the Tesawalamai Ordinance states:

> "From ancient times all the goods brought together in marriage by such husband and wife has from the beginning been distinguished by the denomination of *modesium* or hereditary property, and when brought by the wife were denominated as *chidenam* or dowry, the profits during the marriage are denominated as *thediathettam* or acquisition. On the death of the father, all the goods brought in marriage by him should be inherited by the sons or son and when a daughter or daughters marry they should each receive a dowry or *chidenam* from their mother's property so that invariably the husband's property always remains with the male heirs and the wife's property with the female heirs, but the acquisition of *thediathettam* should be divided among the sons and daughters alike; sons must however always permit that any increase thereto falls to the daughters' share." (vide section 1 Part I of Cap. 63).

Nowhere in this passage is it stated that the dowry must be given only at the time of marriage or to promote a particular marriage which is in contemplation. All the properties brought by the wife, whether they were inherited by her, dowried to her or even acquired by her before marriage become her dowry (*cheedanam*) at the time of marriage. Viewed from this angle, the property granted by P3 is dowry since it was not only given with the intention of being given as dowry but also was Valliammai's property at the time of marriage.

Part I section 2 of the Tesawalamai Ordinance states as follows:

> "But in process of time, and in consequence of several changes of Government, particularly those in times of the Portuguese,..... several alterations were gradually made in those customs and usages,

according to the testimony of the oldest Mudaliyars, so that, at present, whenever a husband and wife give a daughter or daughters in marriage the dowry is taken indiscriminately either from the husband's or wife's property, or from the acquisition, in such manner as they think proper."

In this context the sentence "whenever a husband and wife give a daughter or daughters in marriage the dowry is taken indiscriminately, either from the husband's or wife's property, or from the acquisition, in such manner as they think proper," suggests that the parents could give a dowry out of the dowry of the wife or the property of the husband. This passage does not necessarily imply, as Mr. Ranganathan contended, that dowry could be given only at the time of marriage.

Part I section 3 of the Tesawalamai Ordinance refers to the duty of the nearest relations, either on the father's or mother's side, to enlarge the dowry by giving some of their own property. In dealing with this matter the Tesawalamai Ordinance enacts that "such a present should be particularly described in the *doty*, marriage act or *ola*, which must specify by whom the present or gift is made and the donor must also sign the act or *ola*". The *doty* referred to is the dowry deed. The marriage act during the Dutch period took place in the Church. (During the Dutch period the Tamils of the North were Christians and marriages were registered in Church.) By *ola* is meant the palm leaf on which the deed was written. A perusal of this section of the Tesawalamai does not compel one to the conclusion that a deed in order to be construed as a dowry deed could only be executed at the time of marriage or on the occasion when a particular marriage is contracted.

The citation of a Tamil proverb "*ottiyum cheethanamum patriyal*", i.e., immediate possession must be taken of dowry and pawns, was also relied on by Mr. Ranganathan for the proposition that dowry could only be given at the time of marriage. This maxim contains rules governing prescription to otti and dowry property. The sentence following this citation enables a married couple to set out excuses for the delay in obtaining possession. The existence of this provision shows, by implication, that possession of dowry property need not be taken immediately after marriage. Since an unmarried daughter is under the guardianship of her father there will be no necessity for her to take possession of the property given as dowry till her marriage. Her father, as natural guardian, would necessarily look after such property on her behalf till her marriage.

A critical examination of the provisions of Part I, sections 4, 5, 6, 7, 8, 9, 10, 11, 12 and 14 relied on by Mr. Ranganathan does not compel one to the conclusion that in order that a gift may be construed as a dowry it should be given at the time of marriage or in contemplation of a particular marriage which has already been arranged. No doubt in some of these passages reference is made to the obligation of the parents to give dowry to their daughters when they get married. But no particular passage deals with the exact time at which such a dowry deed could be executed.

The duty cast on a father to give a dowry when he gives his daughter in marriage is set out in Part I section 11 of the Tesawalamai Ordinance. A father in such a case " is obliged to give at the same time with his child or children the whole of the property brought in marriage by the deceased wife and the half of the property acquired during his first marriage ". The whole of the property brought by the wife, as contemplated in this action necessarily refers to her inherited property, acquired property, as well as even gifts granted to her before marriage. All such property would come under the designation of her *cheedenam* or dowry.

If Mr. Ranganathan's contention is carried to its logical conclusion it would not be possible under the law of Tesawalamai for a parent or a near relation to grant a dowry to a married woman after her marriage.

Part I section 5 of the Tesawalamai Ordinance is of relevance. It enacts as follows :

> " Should it happen that after the marriage of the daughter or daughters the parents prosper considerably, the daughters are at liberty to induce their parents to increase their *doty*, which the parents have an undoubted right to do."

This provision contemplates parents, who are in affluent circumstances, to give dowry even long after the marriage. Mr. Ranganathan however stressed on the words " increase the *doty* " and suggested that only when a dowry deed had been given at the time of marriage, parents were allowed to increase the dowry. I am afraid such a narrow interpretation cannot be placed on these words. The Tamil translation of the Tesawalamai, approved by the " Twelve sensible mudaliyars ", makes it abundantly clear that even if no dowry was given at the time of marriage parents, who later are in affluent circumstances, could be induced by their daughters to give a dowry.

The Tamil version of this part of the Tesawalamai is as follows :

> "தங்கள் பெண்பிள்ளையை அல்லது பெண்பிள்ளைகளைக் கலியாணம் முடித்துக் கொடுத்ததின் பின்பு அந்த பிதாவும் மாதாவும் வெகுபாக்கியம் பெற்றிருந்தார்களேயாஞல், அப்போது அந்தப் பெண்பிள்ளை அல்லது பெண்பிள்ளைகள் பிதா மாதாவின் மனசுகளை வசப்படுத்தி அந்தப் பாக்கியங்களிற் சிலது பலது பெற்றுக் கொள்ளுகிறதற்கு இடமாயிருக்கும். அந்தப் பிதா மாதாவும் யாதொரு துவசமில்லாமல் கொடுக்கவும் உரித்துண்டு."

(vide Mutukrisna, Appendix p. 4.)

It means that parents, after giving their daughter in marriage, if they are in affluent circumstances could be induced by such daughter or daughters to give them a dowry and may obtain the same and such a parent has the right to give the dowry.

In the Tesawalamai there have been instances where dowry had been given to children long before their marriage (vide *Ayate, widow of Coonjitamby of Delft v. Tanecoody Ramen and others*, Mutukrisna, p. 115, in which reference is made to a land being given as dowry to a plaintiff when he was a child). Dowry had been given before and after marriage. In *Chinnepodichy v. Sewagamy* (Case No. 3524, Mutukrisna, p. 114), Forbes J. says: "It appearing that Dowry is given for years "prior and subsequent to marriage", I admonished and discharged the plaintiff's eighth witness, as I still am impressed that he has not stated the truth." The learned Judge in this case who was acquainted with the customary usages of the Tamils of Jaffna, went to the extent of admonishing a witness who perjured himself by stating that dowry could only be given at the time of marriage. In *Jaccohal v. Mootocarpen* (Case No. 4079, Mutukrisna, p. 117), Wright J. refers to a second dowry ola executed subsequent to the first deed after the father had incurred a debt.

Mr. Ranganathan relied on the case of *Vinayagar Welen and another v. Waliar Welen and another* (Case No. 319–1580, Mutukrisna, p. 120) for the proposition that dowry can only be given if there is a regular marriage. There is no doubt a casual statement by Toussaint J. in that case to the effect that the plaintiff's mother could not have obtained a dowry if she had not contracted a regular marriage. This dictum cannot be relied on as an authority for the proposition that only in regular marriages a dowry could be given. In the case relied on by Mr. Ranganathan, it is not clear whether the dowry was given to the plaintiff's mother by deed or whether the parties were relying on an oral dowry. The decision found in Mutukrisna on Thesawalamai are of evidentiary value to determine the prevailing custom at that time, although they have no binding effect as precedents. The cases refered to in Mutukrisna show that dowry could be given long before, at the time, or after marriage.

In *Murugasar et al. v. Ramalingam* [1], it was held that a deed, purporting to be a dowry deed given by a grandparent long after the marriage of the parents, was regarded as a dowry granted by the grandparents. In this case a Divisional Bench of the Supreme Court rejected the view of the District Judge who purporting to follow the case reported in Mutukrisna, relied on by Mr. Ranganathan, and held that dowry could be given at the celebration of a regular marriage. Dias J. based his decision on the fact that the deed on the face of it stated that it was a dowry. Cayley C.J. while feeling doubtful whether a grant which purports to be a "dowry deed" can be considered as operative if the marriage of the grantee did not take place, based his decision on the fact that on this deed the parties were put in possession. But Grenier J. categorically said that *according to the Thesawalamai dowry may be given before or after marriage.*

In *Tambipillai v. Chinnatamby* [2] it was held that the husband can, after his wife's death, allocate to his daughter as dowry all the property which the deceased wife left, to the exclusion of the son, and such

[1] *D. C. Jaffna 10315, (1881) 4 Tambyah Reports, p. 176.* [2] *(1915) 18 N. L. R. 348.*

property may be allocated, even though the marriage may not be in actual contemplation. In dealing with this question Ennis J. said (at page 350) :

> " The father, then, has the right to dispose of the whole of the deceased wife's property in dowry to the daughters, and the sons take nothing unless something remains after the daughters have been dowried. This view finds support in the judgment of Pereira J. in *Chellappa v. Kanapathy* (1914) 17 N. L. R. 294.
>
> The same clause, also, it seems to me, answers the second point. The dowry may be given when the daughters are " able to marry ". Clause 3 also throws light on the point. That clause speaks of a dowry being enlarged in order that the daughter may make a ' better marriage '. It would seem that dowry, then, may be given before marriage. "

In that case the marriage took place in 1891, i.e., two years after the dowry deed had been executed and at the time the deed was executed there was no marriage in contemplation. De Sampayo J. said : (at page 350).

> " I never understood dowry under the Tesawalamai to mean the same thing as a marriage settlement. It is undoubtedly the duty of the father or the mother, as the case may be, to settle the daughters in marriage and to give a dowry in that connection. But I do not know that the customary law prevents the parents from determining before hand what they shall give to the daughters as dowry and from gifting to them the destined property, even though a marriage may not be actually in view. There is nothing in the Tesawalamai to show that such previous apportionment is wrong ; and, on the contrary, it seems to me that the Tesawalamai contemplates it, in order that marriages, which it is the object of the dowry system to promote, may be brought about. I think that instances of this kind are not uncommon."

With respect, I am in agreement with the views expressed by these eminent judges.

Mr. Ranganathan relied on the decision in *Kandappu v. Veeragathy* [1] for his proposition that dowry could be given only at the time of marriage or on the occasion of a contemplated marriage. That case however dealt with the question as to whether a dowry could be given after marriage and did not deal with the question raised in the instant case.

The provisions of the Tesawalamai Ordinance were neither analysed nor the authorities cited, considered in this case. Basnayake J. in the course of his judgment said : (vide at page 120) " It is clear from the Tesawalamai that the granting of the " doty " or " doty ola " is an act performed at the time of the marriage and not during the marriage." As stated earlier, there is nothing in the provisions of the Tesawalamai Ordinance to warrant this view. This case was not followed in *Thesigar v. Ganeshalingam* [2]. In that case in dealing with this question Gratiaen J. said :

[1] *(1951) 53 N. L. R. 119.* [2] *(1952) 55 N. L. R. 14.*

"It is common ground that "under the Tesawalamai a dowried daughter loses her rights to her parents' inheritance". (*Eliyan v. Vellan et al.* (1929) 31 N. L. R. 356). Mr. Tambiah contends, however, that the effect of a more recent ruling of this court in *Kandappu v. Veeragathy* (1951) 53 N. L. R. 119, is to limit the operation of this principle to cases where the dowry has been received either before or at the time of the daughter's marriage.

I find myself unable to give the ruling in *Kandappu v. Veeragathy* (supra) such a narrow interpretation. In that case the Tesawalamai daughter who was not proved to have received any dowry from her parents on the occasion of her marriage subsequently obtained by way of gift a certain property from her father, brother and uncle. The Court decided, upon the facts of that particular case, that the deed of gift could not be construed as a doty ola so as to disinherit the donee.

As I understand the true principle, the question whether a subsequent gift by a parent to a married daughter operates and was intended to operate as a donation simpliciter or as a postponed fulfilment of the earlier obligation to provide her with a dowry is essentially a question of fact.

In the present case the deed of gift to the married daughter expressly purports to be "by way of dowry in consideration of her having married the said (Vythialingam) as I desired." Moreover, the gift was accepted on the face of the document in the following terms, "I the said.....dowry grantee with the consent of my husband..... do hereby accept this dowry with full satisfaction and gratitude."

Persons subject to the Tesawalamai are no doubt well aware of the legal incidence of the granting and acceptance of dower—and these questions cannot therefore be determined with reference only to the point of time when the gift was made."

It is one of the cardinal rules of Thesawalamai that the acceptance of a dowry is a renunciation by the daughter of any further rights to a share in the parent's property. This view was stated by Lyall Grant J. in *Eliyavan v. Velan* [1].

The object in granting dowry is to make provisions for a daughter in order that she may set up a new home. The *chidenam* in Tesawalamai should not be confused with *stridana* of the Hindu law. As Mayne says: Many principles of Hindu law, including the principles governing the joint family system, separate property, *stridana*, were all developed from the basic concepts known to the ancient customary laws of India." (vide Mayne, Usages and Customs of the Hindus, 7th Edition, p. 50). These usages and customs which were prevalent among the Dravidians were the basis on which the Dharmasastras were built. Ganapathi Iyer, referring to these customary usages says: (vide Ganapathi Iyer, Hindu law, Vol. I p. 36). "It will thus be seen that the Hindu law as contained in the

[1] *(1929) 31 N. L. R. 356.*

Code and other Sanskrit writings is not a myth but is based on immemorial usage and the Brahaminical writers never could have supplanted and none did supplant these usages by laws of their own fancy, although they might have been instrumental in developing the law to suit the growing needs of the society at their time." (vide also Mayne, 9th Edition, p. 4). Mayne says: " I think it impossible to imagine that any body of usages could have obtained general acceptance throughout India merely because it was included by Brahamin writers or even because it was held by the Aryan tribes."

The origin of *Cheedanam* must therefore be found in the customary usages of the Tamils which were prevalent in South India. In this connection two systems of customary laws must be examined. In the Marumakathayam law, the counterpart of which was the Mukkuwa law of Ceylon, the matrilineal system obtained. Under such a system, the property was owned by the eldest female. The husband himself had little status and the devolution was on the female line. In such a society, if the parents wanted a daughter to be set up in life they gave out of their acquisitions, a marriage settlement. This settlement established a new family unit—the "*thavazhi illam*". After marriage the daughter now formed a taward. The managers of these tawards set up new thavazhi illams when their daughters got married. There is clear evidence that Magha, with his mighty Cheras, settled in Jaffna when driven from the South. It is possible that the Chera chiefs who were the ruling classes at the time of Maghas settlement were governed by the Marumakathayam law and the concept of dowry (*cheedanam*) became entrenched in the customs of Jaffna. The later settlements during the Aryachaktravarti period, referred to in the Yalpanavypaha Malai and in the Kailasa Malai, came from the Coromendel coast in the East of South India. The customs and manners of the second settlers during the Ariyachakravarti period mingled with the customs and usages that existed earlier. Therefore in Tesawalamai we have a curious blend of the rules peculiar to the matriarchal and the patriarchal system. The basic object of granting dowry therefore is to make a marriage settlement. This could be done either before marriage or after marriage or at the time of marriage.

Mr. Ranganathan also stated that the origin of the Thesawalamai is to be found in the Tesawalamai Ordinance and one should not look elsewhere to enunciate the rules of the Tesawalamai. I am afraid I am unable to agree with this proposition. The Tesawalamai was a system of customary law which was administered by the Tamil kings in Jaffna. On the orders of Zwaardecroon, who was the Commander of Jaffnapatnam, and afterwards the Governor of the Council of Netherlands of India, the Tesawalamai was collected by Claas Isaaksz, the Dutch officer in Jaffna. The collection was originally in Dutch and later translated by Jan Pirus into Tamil. The Tamil translation was thereafter sent to the leading citizens—the twelve sensible Mudaliyars, who found the collection to be in accordance with the main usages and

customs of the Tamils of the "Province of Jaffna". It was however not a comprehensive collection of all the customary laws of the Tamils. Sir Alexander Johnstone, on his visit to Jaffna found, that the people were governed by the Tesawalamai which was supplemented by certain works of Dharmasastras, such as "Viguyan Ishuar and Videnuggers Commentary on the text of Parasara". The works on the Dharmasastras referred to by Sir Alexander Johnstone were probably the Smirti of Yagna Valka and Madahava's great commentary on Parasara Code, respectively. Sir Alexander Johnstone translated the Dutch collection and sent it to the headmen of Tamils who lived in the various parts of Ceylon in order to find out whether the customary usages have been correctly collected. The replies to the despatches throw some light on the customary laws of the Tamils who were living in the various parts of Ceylon during this period (vide C. O. 54/123 pp. 143 et seq).

After the British occupation, our courts followed the principle of *stare decisis*. A body of case law has grown up interpreting the provisions of the Tesawalamai Ordinance. This body of case law sheds light on many obscure passages in the Tesawalamai Ordinance. Some of the provisions found in the Tesawalamai Ordinance are obsolete. The Tesawalamai Commission did nothing to expunge the obsolete parts from the Statute Book. Mr. Brito Mutunayagam, who was then the Legal Draftsman, said that it would be impolitic to tamper with the customary laws which had been collected during the Dutch period by piece meal alterations and by expunging parts which were obsolete. Therefore one should be very careful in dealing with the provisions of the Tesawalamai Code, some of which are clearly obsolete. The source of Tesawalamai is therefore found not only in the Tesawalamai Ordinance (some parts of which are still in operation), but in the subsequent enactments dealing with it and in the body of case law.

I prefer to follow the principles laid down in *Murugesar v. Ramalingam* (supra) and *T'ambipillai v. Chinnatamby* (supra) and hold that by deed P3, Valliammai was given a dowry. Therefore Valliammai was excluded from inheriting her father's property and could not have transferred any interests in the property, which is the subject matter of this suit, to the second defendant.

For these reasons I affirm the judgment of the learned District Judge and dismiss the appeal with costs in both courts.

SIRIMANE, J.—

I am in agreement with my brother Tambiah that this appeal must be dismissed with costs.

The Plaintiff respondent was one of the three children of one Thamboo, the admitted original owner of the land in dispute. The other two children Ponnammah and Valliamma were daughters. The parties are

governed by the Tesawalamai, and according to the plaintiff the two daughters forfeited their right to inherit from their father, because he had already gifted certain properties to them by way of dowry.

In the case of Ponnammah this fact was admitted by the defendants appellants.

In the case of Valliamma the plaintiff respondent produced the dowry deed P3 of 1923.

It was contended for the defendants (who are the husband and daughter of Valliamma) in appeal, that though on the face of it P3 is a dowry deed, and in fact was accepted and acted upon as such, yet, as Valliamma's marriage to the 1st defendant was admittedly not in contemplation at the time P3 was executed, it should therefore be looked upon as a simple deed of gift, and Valliamma therefore did not forfeit her rights of inheritance. The Tesawalamai (chapter 63) is "A regulation for giving full force to the ..... customs of the Malabar inhabitants of the Province of Jaffna.....". According to these customs it is the duty of a father to provide dowries for his unmarried daughters.

In practice a father having regard to the interest of all his children would know exactly what he should give as dowry to each of his daughters, and I can see nothing in the sections of the Tesawalamai relied on by counsel for the defendants appellants (sections 2 to 11 of chapter 63) that is obnoxious to the very practical and sensible method of giving the dowry in advance.

As Sampayo J. with his deep judicial knowledge and practical wisdom said in *Thambapillai v. Chinnatamby* [1] "It is undoubtedly the duty of the father or the mother as the case may be to settle the daughters in marriage and to give a dowry in that connection. But I do not know that the customary law prevents the parents from determining before hand what they shall give to the daughters as dowry and from gifting to them the destined properties, even though a marriage may not be actually in view. There is nothing in Tesawalamai to show that such previous apportionment is wrong; ....."

My brother Tambiah has examined the various other authorities on this point and there is one, *Kandappu v. Veeragathy* [2], where the learned judges took a different view. But the hypothetical problem posed in that case as to the exact legal position if a marriage does *not* take place after a dowry deed is executed, does not arise here.

With great respect I am of opinion that the words of Sampayo J. quoted above set out the better view.

Appeal dismissed.

[1] *(1915) 18 N. L. R. 348.* [2] *(1951) 53 N. L. R. 119.*