Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Vellanki Venkata Krishna Row v. *Venkata Rama Lakshmi Narsayya and others, from the High Court of Judicature at Madras, delivered 3rd November* 1876.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.

THE case out of which this appeal arises is a suit in which the Appellant, claiming to be the adopted son of Rajah Vellanki Venkata Ramanayya Row, who was the penultimate zemindar of Gampalagudem, is seeking to recover that zemindary against the parties in possession. Those parties, the Respondents, are the daughters of the above-named, whom it will be convenient to call the original, zemindar; and it seems now to be admitted that, although put in possession by the Collector after the death of his widow, they have, in fact, no title; that they must have been so put in, either under the notion which the Government at one time entertained, that as to certain zemindaries in the Presidency of Madras they had a right to settle the succession, or under an erroneous impression that these ladies were the next heirs of the last zemindar. The impression would be erroneous, because it is clear that, the original zemindar having left a son, the whole inheritance vested in the latter, although he died afterwards an infant, and unmarried; that the widow took as heiress to her son; and that, failing her, his sisters, if they had a remote right to succeed

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as bundhoos (a question upon which their Lordships express no opinion whatever), could only so succeed after the sapindas, of whom there are several, had been exhausted. These ladies, however, being in possession, have, of course, a right to set up a *jus tertii*, or on any other sufficient ground to question the title of the party who is seeking to oust them from possession.

Of the issues settled in the cause, the first is the only one on which any question now turns. It is in these terms: "Whether the Plaintiff "was adopted by the first and second Defen- "dants' mother, and whether such adoption is "in consonance with law?" It embraces the two points which have been argued before their Lordships. As to the facts, there is little or no dispute. The original zemindar died in 1849. He was succeeded by his only son, the last zemindar, who lived for five years after his father's death, and died in 1854, a minor, unmarried. According to the Hindoo law his mother was his heiress, and was admitted as such, and took possession of the zemindary. It is also found by both Courts, and is not now contested, that some years after the death of the last zemindar, his mother adopted the present Plaintiff; that all the ceremonies required for such a purpose were complied with; and that the consent was obtained of all the surviving sapindas of the family of the original zemindar, who concurred in and sanctioned that adoption.

The two questions that have arisen upon the first issue are, first, whether the descent having been thus cast upon the natural-born son of the original zemindar, there remained in his mother any power to adopt a son to her husband; and secondly, whether the adoption is bad upon the particular ground upon which the High Court, reversing the decision of the

Lower Court, has proceeded in this case. It seems to their Lordships to be desirable to deal in the first instance with the first of these questions, since it goes to the general power of adoption.

In order to determine that question it is desirable to see what would, in such a case, be the power of a mother who had from her deceased husband an express power to adopt a son in the event of his natural son dying under age and unmarried. It has been fairly conceded that such a power would exist, and the authorities seem to be express upon the point. It is sufficient to read the following passage from Mr. Macnaghten's Principles and Practice at page 80, Vol. 1.: "It is written in the "Dattaca Mimansa 'A man destitute of a "'son (aputra) is one to whom no son has been "'born, or whose son has died,' for a text of "Sounaka expresses 'one to whom no son has "'been born or whose son has died, having "'fasted for a son, &c.;' but it seems to be "admitted that a man having a legitimate son "may not only authorise his wife to adopt a "son after his death failing such legitimate "son, but also, failing the son so adopted, to "adopt another in his stead; and it has also "been ruled that authority to a wife to adopt "in the event of a disagreement between her "and a son of the husband then living will not "avail, though authority to adopt in the event "of that son's death would be valid." If then there had been a written authority to the widow to adopt, the fact of the descent being cast would have made no difference unless the case fell within the authority of that Chundrabullee, reported in the 10th Moore; in which it was decided that, the son having died leaving a widow in whom the inheritance had vested, the mother could not defeat the

estate which had so become vested by making an adoption, though in pursuance of a written authority from her husband. That authority does not govern the present case in which the adoption is made in derogation of the adoptive mother's estate; and indeed expressly recognizes the distinction.

Such then being the law supposing the husband had given a written authority to adopt, we have to consider what, with reference to this particular property, was the law, there being no such authority.

The estate is admitted to lie in what is known as the Dravada country, and is therefore property to which the law, as settled by the Ramnad case, applies. The general proposition which their Lordships, affirming the decision of the High Court of Madras, established in that case was that, according to the law prevalent in the Dravada country, a Hindu woman, not having her husband's permission, may, if duly authorised by his kindred, adopt a son to him. The judgment of the committee, after declaring this to be the local law, goes on to deal with the foundation on which it rests, treating it as established by positive authority rather than by some supposed analogies to other parts of the Hindu law; and then proceeds to consider what constitutes a sufficient authority on the part of the husband's kindred,—a question to which reference will afterwards be made. Assuming the general proposition to be thus established, their Lordships see no reason why it should not apply to every case in which a widow might make an adoption under a written authority from her husband. They are therefore of opinion there is no ground for saying that because the estate descended to the son natural-born of the original zemindar, and the widow of the latter took it as heiress of her

son and not immediately from her husband, the adoption made by her, if otherwise valid, therefore became invalid. These considerations seem to their Lordships to dispose of the first objection.

It is not necessary to consider in what way successive adoptions operate. It is sufficient to say that the law has established that they may take place.

Their Lordships will now consider the second question, being that which was really the *ratio decidendi* of the High Court of Madras. The judgment under appeal says, "We thought "there was no reason to doubt the evidence "of the fact of the form of adoption having "been gone through, supported, as that evi- "dence was, by written documents. . . . . "But we thought that it was not made out that "there had been such an assent on the part of "the kinsmen as to show, to quote the words "of the judgment of the Privy Council in the "Ramnad case, 'that the act was done by the "'widow in the proper and *bonâ fide* perform- "'ance of a religious duty.'" And then proceeding to examine the evidence of what took place immediately after the death of the son; and to consider the correspondence, it says, "The letters of the widow seem to show "that the object was to adopt the boy for "the purpose of perpetuating the descent of the "property in the same apparent line. The "earliest letter of September 28th, 1854, is not "in evidence, but the letter (Defendant's docu- "ments No. 1) of the 12th October of the same "year, in reply to it, recites it as expressing an "intention on the part of the widow to 'con- "'stitute a boy in the family as heir to' her "rights. There is no appearance of any anxiety "or desire on the part of the widow for the "proper and *bonâ fide* performance of any

" religious duty to her husband. Her object " appears to have been to hold the estate till " her death, and then continue the line in the " person of the Plaintiff, who, as a matter of " fact, did not upon adoption nor until his " adoptive mother's death seek to assume the " position of an adopted son." It appears to their Lordships that the conclusions of fact which the learned judges of the High Court have drawn from the correspondence and the other evidence in the cause are not quite correct; and that they have also given an interpretation and meaning to what was said by this Committee in the Ramnad case, which the particular passage in that judgment does not fairly support.

If we go back to the time of the son's death, we find that almost immediately after that event his mother entertained the notion of adoption; that she was admitted heir on the 24th June 1854; and on the 28th September 1854 wrote the letter referred to by the High Court, which clearly contemplated some kind of adoption. We have not the original of that letter, we have merely what is stated in reply to it by way of recital; and taking that to be correct, the High Court have insisted on her saying that she meant to "constitute a boy in the family as heir to" her rights. Their Lordships think that in dealing with a letter of this kind, written by a Hindu lady, it is desirable not to rest upon a minute criticism of the particular expressions used, but to look to what was the substance of the transaction. If, as was also suggested by Mr. Leith, in an argument founded on some of the subsequent ceremonies that were said to have taken place, she intended merely to adopt an heir to herself, there was really no ground why she should have convoked a family council, or have gone to the sapindas of her husband at all. The authority

of the sapindas was only necessary in order to enable her to adopt an heir in the ordinary sense of the Hindu law,—an heir who should be heir to herself and husband, and capable of performing the religious ceremonies which are supposed to be for the benefit of the souls of both.

Again, some stress has been laid upon the fact of the delay; but, as has been already said, her first application was made as early as the 28th September 1854, and she was then told by the Collector (who seems at that time to have been considered to possess much larger powers in determining the succession to zemindaries than, as it has since been settled, he really had) that she had no power to adopt, and that she could not adopt. The purpose of adoption, however, remained in her mind, and the adoption actually took place in June 1862, for she gave the Collector notice of it as early as the 27th June 1862. Yet even then the Collector repudiated the adoption, apparently proceeding upon what is the general law of the greater part of India, and not upon what has since been established to be the law in the Dravada district. And assuming that the permission of the Government was necessary to an adoption, he wrote, "The Government passed minutes on the "14th April, 1855, to the effect that your "making an adoption being illegal by reason of "the absence of the consent of your husband, per-"mission for the same would not be accorded;" and again, "Such being the case, the adoption "you say you have now made being without "authority, and at variance with Hindu law and "the orders of the Government, the same is of "no use. This adoption will not therefore be "recognized, and this is written to inform you "of the same." This continued resistance of the Government authorities to the adoption may, it seems to their Lordships, constitute a suffi-

cient answer to any argument founded upon the facts, that there was no mutation of names, and that the adopted son did not, while the adopted mother continued to live, enter ostensibly into the enjoyment of the estate or exercise those functions which, if his adoption had been recognized from the first, he would otherwise have exercised. That the non-mutation of names and the non-enjoyment of the estate by the son were contrary to the intention of the widow is shown by the letter which is set forth at page 21 of the Record, in which she writes to the boy, "By reason of "your not having yet returned from Sauwara-"petta, whither you went to see your natural "father and mother, the course of affairs here does "not progress well. It is not, therefore, becoming "that you should thus neglect, in spite of my "having adopted you as my son and made you "the rightful heir of my estate, real and personal. "You ought to come soon and enter upon the "possession of your Mittah, devote your atten-"tion to largely improving the same, and at "the same time maintain me and your servants, "and take upon yourself all my troubles and "cares. As I am a female, you should manage "all affairs and abide by my instructions until "you come of proper age." Her wish and intention seem to have been throughout to divest herself of her estate and to put the adopted son into the position which, upon the strictest construction of the law of adoption, he would have held. That intention was defeated by the unfortunate view which the Government authorities appear to have taken of her powers.

This being so, is there any ground for the application which the High Court has made of a particular passage in the judgment in the Ramnad case? The passage in question perhaps is not so clear as it might have been made. The committee, however, was dealing with the nature

of the authority of the kinsmen that was required. After dealing with the *vexata quæstio* which does not arise in this case, whether such an adoption can be made with the assent of one or more sapindas in the case of joint family property, they proceeded to consider what assent would be sufficient in the case of separate property; and after stating that the authority of a father-in-law would probably be sufficient, they said:—"It is not easy to lay down an "inflexible rule for the case in which no father-"in-law is in existence. Every such case must "depend upon the circumstances of the family. "All that can be said is, that there should be "such evidence," not, be it observed, of the widow's motives but "of the assent of kinsmen, "as suffices to show that the act is done by "the widow in the proper and *bonâ fide* per-"formance of a religious duty, and neither "capriciously nor from a corrupt motive. In "this case no issue raises the question that the "consents were purchased and not *bonâ fide* "attained."

Their Lordships think it would be very dangerous to introduce into the consideration of these cases of adoption nice questions as to the particular motives operating on the mind of the widow, and that all which this committee in the former case intended to lay down was, that there should be such proof of assent on the part of the sapindas as should be sufficient to support the inference that the adoption was made by the widow, not from capricious or corrupt motives, or in order to defeat the interest of this or that sapinda, but upon a fair consideration by what may be called a family council, of the expediency of substituting an heir by adoption to the deceased husband. If that be so, there seems to be every reason to suppose that in the present case there was such a consideration, both

on the part of the widow and on the part of the sapindas; and their Lordships think that in such a case it must be presumed that she acted from the proper motives which ought to actuate a Hindu female, and that, at all events, such presumption should be made until the contrary is shown.

Therefore it seems to their Lordships that on neither ground can it be said that this adoption was not consonant to law, and they must humbly advise Her Majesty to allow the present appeal, to reverse the decision of the High Court, and to affirm the decision of the Lower Court, with the costs of the appeal in the High Court. They think the Appellant ought also to have the costs of this appeal.