Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Annapurni Nachiar v. *Forbes and Menakshi Sundra Nachiar, from the High Court of Judicature at Madras ; delivered 22nd July* 1899.

Present at the hearing :

LORD WATSON.
LORD HOBHOUSE.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

This suit is in form instituted by the Court of Wards ; in substance it is one between the two widows of Irudalaya late owner of the impartible estate of Athumalai, who have interpleaded one another. They were both married on the same day ; but it has been found that the Appellant is the senior wife of the two. On the 12th July 1891 Irudalaya adopted a boy called Navaneetha : on the 12th August 1891 he died ; and on the 16th November 1891 the boy died being then about two years old. The Court of Wards was then in possession of the estate as his guardian, and their only interest is to ascertain his heir.

The Appellant's claim is rested on the fact that she was the senior wife ; the Respondent Menakshi's on the fact, which has been found by both Courts, that the boy was adopted by Irudalaya in conjunction with her and not in conjunction with the Appellant. The District Judge held that the Respondent was entitled to the estate as adoptive mother and nearest heir

of the last holder Navaneetha, and his judgment was affirmed by the High Court. That opinion is challenged in the present Appeal. There has been a great deal of dispute in the Courts below upon matters of fact, but none are in dispute now. The disputed question of law is thus stated by the District Judge: "Whether, when "a man having more than one wife, adopts a "son in conjunction with one of them only, the "other wives acquire the same legal status with "respect to the adopted son as the wife who "joins her husband in making the adoption?"

There is only one reported decision directly involving the proposition in question. It is to be found at p. 71 of the supplementary volume of the "Calcutta Weekly Reporter" for the year 1864. The Plaintiff Kasheeshuree was the first wife of Kali Kant. His second wife was called Mohinee. Kali Kant adopted a boy in conjunction with Mohinee and without the concurrence of the Plaintiff. After the deaths of Kali Kant and of Mohinee and of the boy, the question arose whether the heir of the boy was the Plaintiff, or the Defendant who was Kali Kant's nephew and nearest collateral. It was argued for the Plaintiff that both wives were equally adoptive mothers, and both entitled to inherit in preference to a collateral. The Court (consisting of Bayley and Louis Jackson, J.J.) stated their opinion that this position was not borne out by Hindoo Law and precedent; and after subjecting the cited authorities to examination, they decided in favour of the Defendant. So that according to those experienced Judges, when a man has selected one of his wives to adopt a boy in conjunction with him, other wives who do not participate in the act are so completely excluded from inheritance to the boy, that a collateral member of the family shall be preferred to them. That the other wives should be postponed to the one who joined in

making the adoption is a less sweeping conclusion, but clearly involved in the wider one reached by the BengalHigh Court.

Mr. Mayne has contended for the Appellant that this Bengal decision is not warranted by law. He referred to sacred texts of Rishis, Manu and Bhaudayana, for some fundamental principles of adoption, and to show that the good effects produced by the son of one wife enure to the benefit of other wives of the same man. But these texts are very far from showing that a wife who receives in adoption, and another who does not, stand on an equal footing as regards inheritance to the adopted boy. If applied to inheritance in the way contended for by the Appellant such texts would prove too much; they would be equally good to prove that a natural mother and her co-wife stand on an equal footing, which is clearly not the case. There is no advantage to be got from more minute criticism of these texts, nor indeed of the texts cited from the later books, Dattaka Chandrika and Dattaka Mimansa, which are addressed to the question whether a wife's assent is necessary to an adoption, and not to this question of inheritance.

5. A passage is quoted from Colebrooke's translation of Jagannadha (Digest vol. III. pp. 252–3) in which the author considers the difficulty (seeming difficulty he calls it) occurring in oblations of funeral cakes to a maternal grandfather, either when the offerer has none from having been adopted by an unmarried man, or when he has more than one from having been adopted by a man with more than one wife. Both the difficulty and the plan suggested for meeting it are very abstruse, and so far as their Lordships can see, of a very formal nature; but

the whole discussion clearly has reference to the religious aspect of the situation.

The authority most relied on for the Appellant is a passage in the Preliminary Remarks of Sir William Macnaghten in his work on Hindoo Law. It is rather curious that he approaches the question by way of illustrating his opinion that the Hindoo Law is generally simple and free from difficulty. He supposes a case. A man dies childless leaving three widows. He gives permission to one to adopt a son. The adopted son dies without issue leaving the three widows surviving. To whom will the property go, to the widow adopting, or equally to the three? The law, he says, is silent. He then supposes an advocate of the adopting widow to admit that, if the husband had adopted, he could not have selected one of his wives as adopting mother and excluded the others from all maternal relation, but to contend that in the case stated the non-adopting widows were only stepmothers. He continues "The reason is "plausible but such is not the law. The three "widows are one and the same individual. The "adopter has the privilege of selecting the boy; "but adoption once made, he necessarily holds "the same relation to all of them." This passage certainly gives the Appellant a right to argue not only that the admission which Sir William puts into the mouth of the adopting widow's supposed advocate was deemed by him to be good law but that he goes further and applies to the subject of inheritance the doctrine of Manu that all wives have male issue when one has it. This passage in Sir William Macnaghten's preface is apparently the only authority in favour of the Appellant. It must be taken with the respect due to his great reputation, but also

with the drawback that he was avowedly giving his opinion on a hypothetical case of the first impression. He has no precise authority; the law, he says, is silent: he does not shew by what process he arrived at his conclusion: and that which seemed to him so clear that it illustrated the perspicuity of the Hindoo law has met with doubt and denial from others.

In fact Sir W. Macnaghten himself goes on (pp. 12, 13, of his Preface) to make statements very difficult to reconcile with those which have just been quoted. He is speaking of a case in which a man leaving three widows has appointed one to make adoption:—"I here merely "allude to the rights and privileges accruing "to the single widow from the simple fact of her "having made the adoption, independently of "any intention expressed or implied by the "deceased that such widow alone should be "considered as the mother of the adopted child. "If he declared this explicitly the case would "be different; or if such may be reasonably "gathered to have been his intention from some "unequivocal indication of his will that his other "wives should have no concern with the adoption. "But the simple fact of his having commissioned "any one of the three to select the boy cannot "be considered as sufficient to deprive the two "others of their maternal rights or to debar "them from taking the shares to which they "would have succeeded had no adoption taken "place." If both these passages are sound law we have as the result that a man may by a posthumous act give a preference to one wife which he cannot do when living.

Sir F. Macnaghten in p. 171 of his treatise speaks of the adoption of a boy to a man who left three widows, with directions for joint adoption about which they could not agree. The Court selected a boy and then the question was

which widow had the right to receive him? "The law is clear and was undisputed. The "boy could not be received by the three widows "jointly. He must be received by one of them "—and would then be considered as the son of "the father and of the widow by whom he had "been received—about this there was not, "because there could not be, any dispute."

In the Appendix of the same work p. x occur the answers of a Pandit examined by the Court in the same case. Among those answers occur the following:—"Only one (widow) can "adopt; the three (widows) may agree upon the "child to be adopted, but only one of the widows "can adopt." "The child becomes the child of "all three. The widow adopting him, if he should "die under age, she will be called the mother "and the others the stepmothers."

The actual decision, which was in favour of the senior wife, throws no further light on the question now before the Board. But here are opinions given on an actual case under judicial decision, and they are to the effect that the adopting widow would become the mother of the boy in a sense in which her co-wives would not be mothers, in effect that she would be in the place of a natural mother, which would lead to the conclusion that she was the boy's heir. Those opinions related to a case in which, so far as any action of their husband was concerned, the widows stood on an equality, and became unequal only by the ceremony of adoption after his death.

More recent text-books referring to the Bengal decision of 1864 have been cited to their Lordships, such as West and Bühler, 3rd edition, pp. 1181, 1182, and Golap Chandra on Adoption, Tagore Law Lectures for 1888, p. 153, and they were referred to by the learned Judges in the Courts below. They do not show that any dissatisfaction with that decision has been felt by

Indian lawyers, but on the contrary state the law in accordance with it.

It seems to their Lordships that the decisions in the Bengal case and in this case accord with principles well recognised as applicable to other points of Hindoo law. Reference has been made to the text of Manu (Book IX., Sloka 183) in which he declares that if of several wives one brings forth a male child, all shall by means of that child be mothers of male issue. In the preceding Sloka he declares that if among several brothers of the whole blood one have a son born they are all made fathers of a male child by means of that son. We must suppose that all take the spiritual benefits of male issue; but the law is clear that for the purposes of inheritance the natural mothers and fathers respectively are preferred. Again it seems not to be doubted that a man may authorise a single one of several wives to adopt after his death, or that she would on adoption stand in the place of the natural mother. If he can do that, it would be very capricious to deny him the power of selecting a single wife to join with him in his lifetime in adopting a boy, with the same effect on her relations with that boy. It is true that some rules of Hindoo law, resting perhaps on religious tenets or ancient customs, appear to be quite arbitrary; but when this Board is asked to affirm a rule of that nature they require some cogent authority for it. It certainly is a reasonable law that the head of a family should be able to take action likely to prevent disputes between his widows relative to adoption and the consequences of it. To unite one wife with himself in adopting is one way; and it is satisfactory to find that besides the one direct judicial decision there is so much reason and opinion in its favour and so little against it. They hold that the High Court of Bengal in 1864 and the

Madras Courts in this case have decided rightly, and they will humbly advise Her Majesty to dismiss this Appeal. The Appellant must pay the costs.