do not constitute Registering officers "Courts" generally, and, on the other hand, they would be unnecessary if the legislature regarded such officers as "Courts." The Joint Magistrate's order is set aside and he is directed to proceed with the inquiry.

APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Kernan, Mr. Justice Muttusámi Ayyar, Mr. Justice Brandt and Mr. Justice Parker.

GOVINDAYYAR (PLAINTIFF No. 2), APPELLANT,

and

DORASÁMI AND OTHERS (DEFENDANTS), RESPONDENTS.*

1884. October 9. 1887. April 29.

Hindú Law—Adoption among Brahmans—Datta Homam, when it may be dispensed with.

The ceremony of Datta Homam is not essential to a valid adoption among Brahmans in Southern India, when the adoptive father and son belong to the same gotra. *Singamma* v. *Ramanuja Charlu*(1) approved and followed. *Shoshinath Ghose* v. *Krishnasunderi Dasi*(2) considered.

SECOND appeal from the decree of H. Wigram, District Judge of Coimbatore, in Appeal Suit No. 279 of 1883, affirming the decree of T. Ramasámi Ayyangár, District Múnsif of Coimbatore, in Original Suit No. 579 of 1882.

This was a suit by the plaintiffs for the recovery of certain lands conveyed to them by defendant No. 4, the widow of one Súlúr Subba Ayyar, deceased. Defendant No. 1 contended that he was the heir of the deceased Súlúr Subba Ayyar, being his son by adoption. The parties were Brahmans; and defendant No. 1 belonged previously to his adoption to the same gotra as the late Súlúr Subba Ayyar.

The Lower Courts found that the adoption of defendant No. 1 was valid, although the ceremony of Datta Homam had not been performed.

The plaintiffs preferred this second appeal.

This second appeal came on for hearing before Collins, C.J., and Kernan, J., who referred to the Full Bench the question of the validity of the adoption of defendant No. 1.

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* Second Appeal No. 465 of 1884. (1) 4 M.H.C.R., 165. (2) I.L.R., 6 Cal., 381.

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Bháshyam Ayyangár and *Désika Cháryar* for appellant.

The Acting Advocate-General (Hon. Mr. *J. H. Spring Branson*) and *Rámá Ráu* for respondents.

The arguments adduced on the second appeal appear sufficiently for the purposes of this report from the judgment of the Court.

The Full Bench (Collins, C.J., Kernan, Muttúsámi Ayyar, Brandt and Parker, JJ.) delivered the following

JUDGMENT:—The question which is referred to the Full Bench in this second appeal is whether Datta Homam is an imperative part of a valid adoption in Southern India. That ceremonial adoption is not indispensable among Sudras may now be taken to be concluded by authority. So it was held by the Privy Council in 1879 in regard to Bengal, in *Indromoni Chowdhrani* v. *Behari Lal Mullick*(1) and by the late Supreme Court of Madras in the case of *Veeraperumall Pillay* v. *Narrain Pillay*(2); *Singamma* v. *Ramanuja Charlu*(3), decided by the High Court of Madras in 1868, is also an authority, and in *Chandramala* v. *Muktamala*(4), the only doubt appeared to be if it was correct law in regard to the three higher classes only. In support of the course of decisions, there is also the fact that Sudras are incompetent to recite Vedic texts and that such texts are prescribed for the performance of Datta Homam.

Thus, giving and taking, evidenced by an overt act, are the only elements of a legal adoption among Sudras, but it must be observed that any overt act is not sufficient. In *Shoshinath Ghose* v. *Krishnasunderi Dasi*(5), the Judicial Committee observed as follows:—"All that has been decided is that among "Sudras no ceremonies are necessary in addition to the giving "and taking a child in adoption. The mode of giving and taking "a child in adoption continues to stand on Hindú law and on "Hindú usage, and it is perfectly clear that amongst the twice-"born classes, there could be no such adoption by deed, because "certain religious ceremonies, the Datta Homam in particular, are "in their case requisite. The system of adoption seems to have "been borrowed by the Sudras from these twice-born classes, "whom in practice, as appears by several of the cases, they "imitate as much as they can, adopting those purely ceremonial

(1) L.R., 7 I.A., 24. (2) Strange's Notes of Cases, 117.
(3) 4 M.H.C.R., 165. (4) I.L.R., 6 Mad., 20. (5) I.L.R., 6 Cal., 388-389.

"and religious services which, it is now decided, are not essential "for them in addition to the giving and taking in adoption." "It "would seem, therefore, that according to Hindú usage which the "Courts should accept as governing the law, the giving and taking "in adoption ought to take place by the father handing over the "child to the adoptive mother and the adoptive mother declaring "that she accepts the child in adoption." The contest in that case was whether a mere execution of deeds was an overt act sufficient to constitute an adoption, and the decision is an authority for the proposition that any overt act is not sufficient, but that there must be corporeal delivery of the child by a person competent to give, to a person competent to take, accompanied by the declaration on the one side, I give the child in adoption, and on the other, I take the child in adoption.

Although the parties to the case before the Privy Council were Sudras, whilst the parties to the case before us are Brahmans, the rule as laid down by the Privy Council in 1880 clears a good deal of the way to a correct decision, and so far as it goes, it is equally applicable to Brahmans. It shows further that in laying down the rules, the Judicial Committee had before them what actually takes place when a formal adoption is made with ceremonies, and that they rejected as superfluous the merely ceremonial observances as contra-distinguished from the specific secular act and declaration which constitute the form in which the intention to give and to take is manifested during the ceremonial. The matter in contest then with special reference to Brahmans is this, viz., whether the omission to perform Datta Homam invalidates an adoption which is good in other respects.

The first question for consideration is whether we should now depart from the decision in *Singamma* v. *Ramanuja Charlu* which was passed in 1868. Adoption, it is conceded, is a religious act at least among Brahmans, and the object with which it is made is in part to secure a son in order to prevent the extinction of the spiritual benefit which is believed to arise from the performance by a son of funeral and annual obsequies. It is desirable in a matter like this that there should be no divergence between the custom obtaining in the country and the law laid down by Courts of Justice. Again, some doubt has been thrown upon the case cited, by the observation of the Judicial Committee in their latest decision, that Datta Homam is requisite in the case of Brahmans.

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Further, in *Venkata* v. *Subhadra*(1) decided by a Division Bench of this Court in 1883, it was considered that among Brahmans Datta Homam was essential and that the decision of the High Court at Calcutta(2) on the point was probably right. It should be remembered that in *Singamma* v. *Ramanuja Cherlu* the point was not argued on both sides, and that Jagannada who was cited in that case is no authority in Southern India. Adverting to his opinion as to whether an adoption by purchase is valid, Colebrooke observed as follows :—"The Pundits in Southern "India, I perceive, make great use of the authority of Jagannada, "the compiler of the digest which was translated by me. We "have not here the same veneration when he speaks in his own "name or steps beyond the strict limits of the compiler's duty, and "as his doctrines which are commonly taken from the Bengal "School or sometimes originate with himself differ very frequently "from the authorities which heretofore prevailed in the South of "India, I am sorry that the Pundits should have been furnished "with means of adopting in their answers whatever doctrines may "happen to be best accommodated to the bias they may have "contracted; and I should regret that Jagannada's authority "should supersede that of the much abler authors of the Mitak-"shárá, Smriti Chandrika and Madhavya." (See Strange's Hindú Law of the edition of 1830, page 178.) As to early English writers on Sanskrit law they were guarded in the expression of an opinion as to whether Datta Homam was necessary among Brahmans. Sir Thomas Strange said that, even with regard to the sacrifice by fire, important as it may be deemed in a spiritual point of view, it is so with regard to the Brahmans only. (Strange's Hindú Law, Vol. I, page 95.) As to Colebrooke, he thought that an inadvertent omission of some of the ceremonies ought not to invalidate an adoption, but a wilful disregard of them all might. (Vol. II, Strange's Hindú Law, page 155.) As to Ellis, he thought that Datta Homam, though proper in all cases, was not indispensable if the person adopting and the boy adopted, were of the same gotra, and "if of different gotra, it was necessary." (Vol. II, Strange's Hindú Law, page 104.) In these circumstances and in the face of so much conflict of opinion, it might

(1) I.L.R., 7 Mad., 548.

(2) The case alluded to was probably *Bhairabnath Sye* v. *Mahes Chandra Bhadury*, 4 Beng. L.R.A.J. 162 (Reporter's note).

be desirable to direct an inquiry as to actual usage and deal with the question with reference to the result of such inquiry.

Another question is whether there is enough in the texts current in this Presidency to warrant an inquiry as to usage. The two leading treatises on adoption which are often referred to in this Presidency are the Dattaka Mimamsa and the Dattaka Chandrika, though when there is a conflict between them, the latter is accepted as binding in preference to the former. But on the point now under consideration, both commentaries agree as to the necessity for observing the prescribed form. In section II, sloka 17 of Dattaka Chandriká(1), the commentator says that, in case no form as propounded should be observed, the adopted son is entitled only to assets sufficient for marriage. In section V, sloka 56, Dattaka Mimamsa(2), the commentator observes that "the filial relation is occasioned only by ceremonies, and that, of gift, acceptance, burnt sacrament, and so forth, should either be wanting, the filial relation even fails." Again, in II, Strange's Hindú Law, pages 120–122, Vidiaranayana, the celebrated author of the Madhavya, is referred to as speaking of two kinds of adoption, viz., Nitya Datta (permanent or regular adoption) and Anitya Datta (temporary adoption) and of the former as consisting in the regular adoption made with the prescribed ceremonies, and of the latt as an adoption made without those formalities. This conveys impression that, where a complete change of paternity and f is intended to be brought about by adoption, the adoption be of the kind called Nitya Datta.

The Smritis and Sutras usually cited are those of Vasishta and Baudhayana. Caunakha's is quoted Mimamsa, section V, sloka 1, and a burnt offering form prescribed by him for adoption. The same the procedure enjoined by the others. (See 15, sloka 6; Parisishta Prasna, 7th Adhya Vol. XVII, Sacred Books of the East.) Bot declare that one who is eligible for adoption or have the resemblance of a son, and t thought that as adoption arising from the performance of c was necessary to ensure tc

(1) S

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those obsequies with efficacy. The original texts convey the impression that Datta Homam may probably be an essential part of a valid adoption as a general rule and that in a proper case there is sufficient ground for directing an inquiry as to usage.

Although the general rule may be as indicated above, there is reason to think that there are exceptions to it. There is a text of Manu to the effect that, if among several brothers, one has a son, that son is the son of all. The translation by Ellis of the ritual of Datta Homam which will be found in Vol. II, Strange's Hindú Law, page 218, may also be here referred to; the author of the ritual, it is observed by Ellis, states that regard is had to adoption from a different gotra; and as already remarked, Ellis considers the performance of Datta Homam, though proper in every case, to be not necessary when the adopted child is of the same gotra. Seeing that when the gotra is the same the person adopted belongs before adoption to the same general family and, as being descended from the same original ancestor, is in a sense already a member of the adopter's family, he may be regarded as fit to be affiliated by gift and acceptance without any ceremony, for in his case adoption operates only to transfer him from one to another line of descent from the common original ancestor. Again, it may also
necessary to exact nothing more than a *bonâ fide* observance
he ceremonial in compliance with the prescribed procedure,
avoid complicating the law of adoption with the subtleties
monial law. To this extent we may adhere safely to the
n *Singamma* v. *Ramanuja Charlu*.
case before us the adopted son was, prior to the adop-
di of Súlúr Subba Ayyar and therefore of the same
ars further that defendant No. 4 waived her right
adoption under a special agreement and the
e reversioner but a purchaser from her. On
we dispose of the second appeal, which will