

and there can be no doubt that they took his part against her.

It is unnecessary for us to deal more in detail with the evidence, for I agree with the conclusion arrived at by the learned District Judge. From the whole of the evidence it is plain that the respondent has treated the appellant extremely badly and he is not a man whom the Court will assist by ordering his wife to return.

The appeal and the cross-objection thereto must, therefore, be dismissed. Neither party is successful, and we, therefore, order that each party will bear their own costs of this appeal and the order of the lower Court as to costs will stand.

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APPELLATE CIVIL.

Before Mr. Justice Heald and Mr. Justice Otter.

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Buddhist Law—Inheritance—Step-children, rights of in step-parent's estate—Partition on parent's death, whether a bar—Difference between partition on death of parents and remarriage of step-parents.

Held, that stepchildren or step-grandchildren who have made a partition with the step-parent or grandparent on the death of their parent or grandparent are not by such partition debarred from being heirs of the step-parent or the step-grandparent.

Held, further, that whilst the partition on remarriage of the parent may bar the child from subsequent claim against the step-parent to a share of inheritance in the deceased parent's estate, it does not necessarily operate as a bar to a claim as heir of the step-parent on the step-parent's subsequent death.

Ma Gun Bon v. Maung Po Kywe, (1897-1901) U.B.R. Vol. 2, 66; *Maung Dwe v. Khoo Hany Shein*, 3 Ran. 29 (P.C.)—*referred to*.

Po Saw v. Ma Gyi, C. 1st A. 106 of 1925, H.C. Ran.—*followed*.

Ma Thuang v. Ma Than, 5 Ran. 175 (P.C.)—*distinguished*.

* Civil Miscellaneous Appeal 113 of 1928 from the judgment of the District Court of Yamethin in Civil Regular No. 1A of 1923.

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Ba Thaug for the appellant.

Ganguli for the respondent.

HEALD, J.—Respondent who was a nephew of Ma Ngwe Bwin, deceased, and claims to be one of her heirs, applied for Letters of Administration in respect of her estate. He mentioned in his application that Ma Ngwe Bwin had left an elder sister and a younger brother still surviving as well as a niece and another nephew.

Appellant, a grandson of Ma Ngwe Bwin's husband Chit Tun who predeceased her, opposed respondent's application for Letters on the ground that he was Ma Ngwe Bwin's sole heir, but he did not himself apply for Letters.

The lower Court said that respondent was the nearest relative of Ma Ngwe Bwin and that appellant had no right or title to the estate, and granted Letters to respondent.

Appellant appeals on the ground that in Burmese Buddhist law a step-grandchild excludes a nephew from inheritance in respect of the estate of the step-grandmother and that therefore respondent, not being an heir, was not entitled to Letters.

Since *Ma Gun Bon's* case (1) was decided over thirty years ago, it has been regarded as settled law that stepchildren or step-grandchildren exclude collateral relatives as heirs of the step-grandparent and this view of the law was affirmed by their Lordships of the Privy Council in *Maung Dwe v. Khoo Haung Shein* (2).

But it is contended in the present case that the fact that appellant made a claim against Ma Hnin Bwin when his grandfather Chit Tun died debars him from being recognised as an heir of Ma Hnin

(1) 2 U.B.R. (1897-01) 66.

(2) (1924) 3 Ran. 29.

Bwin. It is sought to found this contention on the decision of the Privy Council in the case of *Ma Thaung v. Ma Than* (1), but that was a case in which children who by reason of the death of their mother and in view of their father's remarriage had a right as against their father to claim a share of the property of the marriage of their parents and had exercised that right and received their share of the property, claimed again as against their stepmother on their father's death, and the decision in that case was based on an express provision of Buddhist law which says that children who have claimed and taken their shares of inheritance from the surviving parent on that parent's remarriage cannot on the death of that parent claim from the step-parent a share in the property of the second marriage. It is contended that this decision establishes a general rule that acceptance of a share of inheritance is in every case a bar to a subsequent claim to inherit, but it seems to me clear that it does not establish any such rule because what is a bar to a claim as against the step-parent to a share of inheritance as heir of the deceased parent is not necessarily a bar to a claim to inherit as heir of the step-parent herself.

A similar question to that which arises in the present case was considered by a Bench of this Court in the case of *Po Saw v. Ma Gyi* (2), where the question was whether stepchildren who have received from their stepmother the share of inheritance to which they became entitled as against her by reason of the death of their father are entitled, as against the stepmother's nephews, to inherit their stepmother's estate, in a case where there are no children or descendants of children of the marriage of their father with the stepmother. That case is exactly

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similar to the present case except that in this case the claimant is a step-grandchild instead of a step-child or stepchildren, a difference which in view of the decision of *Ma Gun Bon's* case is immaterial. The contention in that case was the same as that in the present case, namely that the fact that the claimants had already received a share of inheritance barred any subsequent claim to inheritance on their part, and it was supported by the same reference to the Privy Council case of *Ma Thaung v. Ma Than*, but the Bench decided that the stepchildren excluded the nephews. I know of no subsequent ruling which throws any doubt on the decision of that case and on further consideration of the question in this case I see no reason to believe that that decision was mistaken.

It follows that if appellant in this case received from Ma Ngwe Bwin a share of inheritance to which he became entitled on the death of his grandfather that fact would not debar him from being his step-grandmother's heir, and therefore it is unnecessary to consider whether or not in fact he did become entitled to a share as against his step-grandmother on the death of his grandfather. He admittedly claimed and received certain property from Ma Ngwe Bwin, and although, if at that time he had in fact no right of inheritance as against her, the transfer of that property would be rather of the nature of a gift than a transfer of property to which he had a right by inheritance, nevertheless even if it was a transfer of inheritance, it would not debar him from being Ma Ngwe Bwin's heir and from claiming inheritance as such heir, and since he is such an heir and as such heir excludes respondent from inheritance respondent cannot be an heir and has no right to Letters of Administration.

I would therefore set aside the order of the lower court granting Letters to respondent and would direct that the Letters issued to him be withdrawn and cancelled.

I would also direct respondent to bear appellant's costs throughout.

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OTTER, J.—The respondent is the nephew of one Ma Ngwe Bwin deceased and the appellant is her stepgrandson. The former obtained Letters of Administration to Ma Ngwe Bwin's estate and the latter appeals against that order.

There is no dispute upon the facts and the question is purely one as to the respective rights of the parties under the Burmese Buddhist law. The law upon the question under review may be regarded as settled, and it is necessary to refer to two decisions where the facts were almost identical with those in the present case, viz., *Ma Gun Bon v. Maung Po Kywe and others* (1); *Maung Dwe and others v. Khoo Haung Shein and others* (2). The latter case is a decision of the Privy Council and this Court is of course bound by it. It may be convenient however to set out the headnote in the first of these two cases; for down to the year 1923 when it was expressly approved by their Lordships of the Privy Council that case was regarded as the leading authority upon the matter. The facts were identical with those in the present case and the material portions of the headnote are as follows:—

“Held,—after an examination of all the available texts of Buddhist law on the subject, that collateral blood relations, or ascendants, can succeed to an inheritance only when there are no possible heirs in the descending line; that stepchildren are treated as entitled to some share of inheritance, like descendants

(1) (1897) U.B.R. Vol. 2, 66.

(2) (1926) 3 Ran. 29.

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by blood ; and that in the absence of natural descendants, step-descendants are classed as heirs entitled to succeed the bond- of blood yielding to the more important consideration of having a descendant heir and representative."

"Held,—further, that where there are no children but only grandchildren surviving, the latter succeed on the same footing as children, although their parents had died without reaching the inheritance or obtaining a vested interest, the principle of Buddhist law on this point apparently being that this rule is requisite only where a distinction has to be made between the claims of different classes of heirs, and its application unnecessary when the nearest heirs all stand in the same degree of relationship to the deceased owner of the estate to be divided."

In approving of this decision the Privy Council say at page 33 of the Report of *Maung Dwe's* case :—

"Once it is determined, that step children are descendants they necessarily oust collaterals, for by Buddhist law the property never ascends as long as it can descend. The learned appeal Judge in this case says :—'The point of view of the Buddhist law is undoubtedly based on the community of interest between husband and wife. So strong is the bond between them that, in the absence of natural children the husband's or wife's children, as the case may be, rank as the children of the step-parent in the matter of inheritance to the exclusion of collateral blood relations. Their Lordships agree with this statement'."

One further point may be briefly referred to. The appellants are the step-grandchildren of the deceased. Their natural grandfather Ko Chit Tun died before his wife Ma Ngwe Bwin. There was evidence that during the last illness of the latter there was a partition of Ko Chit Tun's property and that the deceased made over Rs. 35 and "three baskets of seedling sown land" to the appellant. The latter admits this, but it is not clear whether all Ko Chit Tun's property was partitioned. It is said that as some such partition took place the appellants lost any right he may have had to inherit the property of Ma Ngwe Bwin.

The case of *Ma Thaung and another v. Ma Than and others* (1) is relied on by the respondent. In that case the Privy Council (upon the authority of one *Dhammathat*) held that where after the death of the wife her husband partitions the property and marries again, the children by the former marriage cannot claim to inherit.

The reasoning underlying this decision was that as upon a second marriage, which he was about to contract, all his property would become the joint family property of himself and his proposed wife it was natural that the husband should provide for his then children during his lifetime. It is only necessary to say that, even assuming there was a partition of all Ko Chit Tun's property the facts of the present case are different. Ma Ngwe Bwin did not marry again nor is there any evidence that she ever contemplated doing so. The evidence rather is that she was a sick woman. The fact that there may have been some sort of partition is immaterial. I am satisfied on the other hand that under the Burmese Buddhist law the respondent was not an heir of Ma Ngwe Bwin.

The Letters granted to him must be withdrawn and the order granting Letters to him is set aside with costs both here and below.

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