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versy as to what the lateral divisions were which divided up the building. Whether they were of brick, as this witness stated, right through from back to front, in two cases, and made of corrugated iron in respect of the other two, it still leaves the description of the building inaccurate, and it is, as appears to their Lordships, inaccurately described in a matter which was material for insurance purposes.

In those circumstances, it appears to their Lordships that the decision come to by the appellate Court was correct, and their Lordships will humbly advise His Majesty that the appeal should be dismissed. The respondents must have the costs of the appeal.

Solicitor for appellants : *J. E. Lambert.*

Solicitors for respondents : *T. L. Wilson & Co.*

PRIVY COUNCIL.

MAUNG SEIN SHWE
v.
MAUNG SEIN GYI AND OTHERS.

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Nov. 20.

[On Appeal from the High Court at Rangoon.]

Burmese Buddhist Law—Inheritance—Kittima *sons—Adoption after death of wife—Out-of-time grandchild*—Manukye *X, 15, 66.*

A Burmese Buddhist was survived by two *kittima* sons whom he had adopted after the death of his wife, also by a grandson, the son of a daughter who died before her parents. No other child or grandchild of the marriage survived. It was contended for the grandson (1) that he was entitled to his grandmother's half share in the common property of the marriage ; (2) that in the half share of the deceased he was entitled under *Manukye* X, 66, to double the share taken by each *kittima* son, and that the same applied to his grandmother's half share if his first contention failed ; (3) that although he was an

* *Present* : LORD THANKERTON, SIR LANCELOT SANDERSON, and SIR SHADI LAL

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"out-of-time grandchild" *Manukye* X, 15, did not reduce his share to a quarter of that which his deceased mother would have taken, as the text applied only between relations of the whole blood.

Held, rejecting each of the above contentions, that the grandson took a one-twelfth, that is a quarter of a third, share of the deceased's estate, and each *kittima* son an eleven-twenty-fourth share.

Appeal dismissed.

Appeal (No. 95 of 1932) by special leave from a decree of the High Court (June 13, 1928) affirming a preliminary decree of the District Court of Myaungmya (April 3, 1928).

The decrees were made in a suit for the administration of the estate of a Burmese Buddhist named U Po Thet, who died in 1934. The plaintiff, respondent No. 1, was one of two *kittima* sons (the other being respondent No. 3) adopted by the deceased by registered deed after the death, in 1922, of his wife Ma Kyi Nyo. The first defendant was Maung Htin Gyaw ; he was the father of the appellant, a minor. The appellant's mother was Ma Saw Hla, a daughter of U Po Thet and Ma Kyi Nyo ; she died in 1914. The deceased left a considerable amount of property ; there was no evidence to show the source of any particular part of it.

The District Judge tried the administration suit together with a suit previously brought by Maung Htin Gyaw, the appellant's father, in which he contended that he was the *kittima* son of the deceased and that the adoption of respondents Nos. 1 and 3 was invalid.

The District Judge rejected the above contentions, and in the administration suit held that respondents Nos. 1 and 3, the *kittima* sons, were each entitled to an 11/24th share, and the appellant to a 1/12th share in the estate.

Appeals in both suits were heard together by Rutledge C.J. and Brown J., and were dismissed.

Maung Htin Gyaw failed to obtain special leave to appeal to the Privy Council in the suit brought by him, and he was not a party to the present appeal in the administration suit.

The facts appear more fully from the judgment of the Judicial Committee.

1934. Oct. 22, 23, 25. *Upjohn K.C.* and *Pennell* for the appellant. Upon the adoption of respondents Nos. 1 and 3 the appellant, as the only living issue of the marriage of the deceased, became entitled to a vested right in his grandmother's half share in the common property of the marriage so far as it remained. Under well settled law if U Po Thet had remarried the appellant would have been so entitled: *Maung Po Kin* v. *Maung Tun Yin* (1), *Maung Shwe Yu* v. *Ma Kin Nyun* (2), *Maung Sein Ba* v. *Maung Kywe* (3). Under Burmese Buddhist law an adoption is made to the spouses jointly: *Aung Ma Khaing* v. *Mi Ah Bon* (4); *Manukye* X, 26 and 27, throughout speaks of "the adoptive parents." There was therefore a putative remarriage, and the rule with regard to the children's right on a remarriage applies. The judgment of the Board in *U Pe* v. *U Maung Maung Kha* (5), referred only to death and remarriage as the events upon which there was a right of partition, but the present question was not being considered and the passage is *obiter*, as no question arose there as to the rights of natural or adopted children. Further, the adoption did not make the *kittima* sons children of the marriage; they should be treated like children of a later marriage and accordingly the appellant, under *Manukye* X, 66 (see also X, 7), got a double

(1) (1926) I.L.R. 4 Ran. 207.
(2) (1929) I.L.R. 7 Ran. 240, 242.
(3) (1933) I.L.R. 12 Ran. 55.
(4) (1917) 9 L.B.R. 163.
(5) (1932) I.L.R. 10 Ran. 261, 268; L.R. 59 I.A. 216, 221.

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share of that taken by each of them; *Ma Min E* v. *Ma Kyaw Tahi* (1), *Ma Nan Shwe* v. *Ma Sein* (2), *Nga Lu Daw* v. *Mi Mo Yi* (3). The appellant claims on that basis in respect of the share of the deceased in the property of the marriage, also as to his grandmother's share, if he is not entitled to the whole. *Ma Thein* v. *Ma Mya* (4), was not dealing with a son adopted after the death of a spouse competing with children of the marriage. Lastly, the rule in *Manukye* X, 15, by which an "out-of-time grandchild" takes only a quarter of the share which the deceased parent would have taken, does not apply; the rule applies only as between claimants all of the whole blood: *Ma Gun Bon* v. *Maung Po Kywe* (5). Reference was made also to *Mah Nhin Bwin* v. *U Shwe Gone* (6), as to the high authority of *Manukye*; and to May Oung's Leading Cases in Burmese Buddhist Law, 2nd edn., pp. 121, 127, 221, 257.

Dunne K.C. and *Parikh* for the respondents Nos. 4, 5, 6 and 8. It is not disputed that the High Court at Rangoon by decisions following *Maung Po Kin* v. *Maung Tun Yin* (7), have laid down that upon the remarriage of a surviving spouse the children of the first marriage acquire a vested right in half the common property of the marriage. That rule was not founded upon the *dhammathats*, but was an arbitrary extension to the younger children of the rights of the eldest son and daughter laid down by the Full Bench in *Ma Sein Ton* v. *Ma Son* (8). In any case the rule cannot be extended by analogy to the case of an adoption by the fiction of a putative remarriage. The High Court in *Ma Shwe Yu*

(1) (1897) P.J.L.B. 1893-1900, 361.
(2) (1924) I.L.R. 2 Ran. 514.
(3) (1915) 2 U.B.R. (1914-1916) 66.
(4) (1929) I.L.R. 7 Ran. 193, 199.
(5) (1897) U.B.R. 1897-1901, 66, 74.
(6) (1914) I.L.R. 41 Cal. 887 · L.R. 41 I.A. 121.
(7) (1926) I.L.R. 4 Ran. 207.
(8) (1915) 8 L.B.R. 501.

v. *Ma Kin Nyun* (1), based the rule upon the disturbance of the family by a remarriage; that is inapplicable to an adoption. A Burmese Buddhist husband upon his wife's death has a complete power to dispose of the whole estate during his lifetime, subject to limited rights of the eldest son and daughter; it becomes his property subject to those rights: *Ma Sein Ton* v. *Ma Son* (2), *Ma Thaung* v. *Ma Than* (3). The interest of the deceased wife in the common property is not a separate estate. The claim under *Manukye* X, 66, also is based upon the impossible theory of a putative remarriage. It is inconsistent with the now settled principle that a *kittima* son has all the rights of inheritance of a natural child. That principle was laid down in *Maung Po An* v. *Ma Dwe* (4), and was recognized in terms by the judgment of the Board in *Maung Thwe* v. *Maung Tun Pe* (5), which also states that a *kittima* adoption "takes the place of a testamentary disposition." The rule in *Manukye* X, 15, that an "out-of-time grandchild" takes a quarter of the share which the deceased parent would have taken cannot be limited to exclude *kittima* sons. Apart from that text the appellant was entitled to no share.

Upjohn K.C. replied.

Nov. 20. The judgment of their Lordships was delivered by

SIR LANCELOT SANDERSON. This is an appeal by Maung Sein Shwe by special leave from a decree of the High Court of Judicature at Rangoon, dated the

(1) (1929) I.L.R. 7 Ran. 240.
(2) (1915) 8 L.B.R. 501.
(3) (1923) I.L.R. 51 Cal. 374; L.R. 51 I.A. 1.
(4) (1926) I.L.R. 4 Ran. 184, 200.
(5) (1917) I.L.R. 45 Cal. 1; L.R. 44 I.A. 251.

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13th of June, 1929, which affirmed the decree of the District Court of Myaungmya, dated the 3rd of April, 1928.

The suit was brought by Maung Sein Gyi (hereinafter called the plaintiff) against the first defendant, Maung Htin Gyaw, the father of Maung Sein Shwe, who was the second defendant and is hereinafter called the appellant, Maung Po Chein, hereinafter called the third defendant, and the fourth and fifth defendants, who were assignees of the plaintiff and the third defendant of some of the property in dispute. At the time of the suit the appellant was a minor and was represented by his guardian and father Maung Htin Gyaw.

The suit was brought by the plaintiff for the administration of the estate of U Po Thet, a Burmese Buddhist, who died in the Myaungmya district on the 4th January, 1924, leaving a considerable fortune, and the question in this appeal relates to the succession to the said estate.

The following are the material facts :—U Po Thet was married to Ma Kyi Nyo. They had four children : the three eldest children died young and without issue. The fourth, a daughter, born in 1894, was called Ma Saw Hla. In 1912, the daughter married Maung Htin Gyaw, the first defendant in the suit. On the 1st May, 1914, the appellant, son of the said daughter and the first defendant, was born.

Five months later Ma Saw Hla died : both her parents were alive at the time of her death. In 1922, Ma Kyi Nyo, the wife of U Po Thet and the mother of Ma Saw Hla, died. On the 31st December, 1922, U Po Thet made a gift (called a *shinbyu* gift) to the appellant by a registered deed of about 511 acres of paddy land, a pucca house and diamond and gold ornaments. An issue was raised at the

trial as to the execution and the validity of this deed, but there is now no question as to this deed except that it is alleged by the appellant that by a slip the pucca house was omitted from that part of the decree which related to the *shinbyu* gift. Reference to that matter will be made later.

On the 11th October, 1923, U Po Thet executed a deed of adoption which was duly registered. By this deed U Po Thet adopted the plaintiff and the third defendant as his *kittima* sons "with a view to inherit good and bad inheritance."

This phrase was said to mean that the adopted sons would inherit not only the assets but also the debts of U Po Thet.

The deed provided that:

"The two adoptees, namely Mg. Sein Gyi and Mg. Chein also undertake according to the duties of sons towards the parent to perform the duties important and unimportant towards, look after and feed the *Kyaungtaga* U Po Thet when he is in sound health, to treat him with medicine and by the help of physician during his illness and to look after and take care of, according to law as the natural sons of *Kyaungtaga* U Po Thet, his own moveable properties, such as diamonds, gold, rice, paddy, household furnitures, etc., and immoveable properties, such as paddy lands, pucca house, granary, garden lands, etc., with the exception of the pucca house, paddy lands and diamond and gold jewelleries which had been given previously to his grandson Mg. Sein Shwe by a deed. Accordingly, after this deed of adoption of Mg. Sein Gyi and Mg. Chein who are the sons of his own younger brother Mg. Tha Dun (deceased) as *Kittima* sons with a view to inherit, is drawn up, he, the adopter *Kyaungtaga* U Po Thet, signs it with consent."

In January, 1924, U Po Thet died.

In 1924 a suit was brought by the appellant's father in which he claimed to be an adopted son of U Po Thet; in this he failed, and it is not necessary to refer further to that suit beyond

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stating that the District Judge disposed of that suit and the present suit, which was instituted in January, 1925, in one judgment.

In the present suit, *viz.*, No. 9 of 1925, the plaintiff, one of the adopted sons, prayed for a decree :

"(1) Declaring that he is a *Keiltima* adopted son of the deceased U Po Thet and as such is entitled to 11/48th share in the Estate of U Po Thet deceased.

(2) That the Estate of the said U Po Thet deceased be administered by and under the direction of this Honourable Court.

That accounts of both moveable and immoveable properties together with mesne profits accruing therefrom may be taken."

An issue was stated at the trial as to the validity of the adoption deed, but no question was raised in respect thereof in this appeal, and the adoption must be taken as a valid adoption. The question remains as to what was the effect thereof.

It appears that it was not until the end of the trial, in fact, during the final argument, that the point was taken on behalf of the appellant that he must be considered as the son of the only surviving child of the first marriage, and that the adopted sons must be considered the children of a putative second marriage.

The theory on which this allegation was based was that inasmuch as the adoption of the plaintiff and the third defendant was made by U Po Thet alone, after the death of his wife, Ma Kyi Nyo, the plaintiff and the third defendant must be considered as the children of a putative second marriage. It was therefore argued that the plaintiff and the third defendant must be considered as the step uncles of the appellant, whose share was alleged to be two-thirds.

The learned District Judge said that he believed the said theory was new to Buddhist law, and rejected the above-mentioned contention. He stated that there is no authority for the proposition that there must be a fictitious second wife presumed to be the mother of the children adopted by a widower.

He therefore made a decree that the plaintiff's share in the estate was 11/24ths and that the share of the third defendant was 11/24ths.

The learned Judge stated that he understood it was admitted that if Htin Gyaw (the first defendant) did not prove his adoption and the plaintiff and the third defendant proved theirs, the share of the appellant as an "out-of-time grandchild" would be one-twelfth.

The learned Judge therefore, after giving certain directions as to the interest of the assignees, made a decree according to the above-mentioned judgment.

The appellant and his father appealed to the High Court, which heard both appeals together.

In dealing with the above-mentioned contention, the learned Judges of the High Court said that no authority in support thereof had been cited and that the point was not pressed in argument before them. Both appeals were dismissed.

It is against the decree made by the High Court in the 1925 suit that the appeal to His Majesty in Council is brought.

The only question argued was to what shares the appellant and the adopted sons, *viz.*, the plaintiff and the third defendant, are entitled.

The case for the appellant at the hearing of this appeal was not based on the contention which was urged in the Courts in Burma, and the point, which was presented on behalf of the appellant, was taken for the first time at the hearing of the appeal before their Lordships.

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Stated shortly, the contention was that on the death of U Po Thet the appellant was entitled to the whole of Ma Kyi Nyo's interest in what was called during the argument, for the sake of brevity, the common estate; and that as regards the interest of U Po Thet in such estate, the appellant was entitled to two-thirds thereof, or in the alternative, if he was entitled to no more than an equal share with the adopted sons, he should not be treated as an "out-of-time grandchild."

The above-mentioned contention was based upon the fact that the adoption was made by U Po Thet after the death of his wife, and it was argued that he could only adopt the plaintiff and the third defendant to inherit a share in his share of the common estate, that the effect of the adoption was equivalent to the effect of a second marriage by U Po Thet, and that on such adoption there vested in the appellant a right of inheritance to the whole of Ma Kyi Nyo's share of the common estate of U Po Thet and Ma Kyi Nyo. To put the point in other words, it was contended that the sons adopted by U Po Thet after his wife's death could not have any interest in the wife's share of the common estate.

The argument was based mainly upon the *dhammathat* known as *Manukye*, and reference was made by both sides to the translation thereof by Mr. D. Richardson.

The tenth volume relates to the law of inheritance, and reliance was placed chiefly upon Rules 66 and 67 of that volume.

No. 66 is as follows:

"A person takes a wife who dies leaving children; he takes another, she also dies leaving children; he takes a third, she also dies leaving children—the law of inheritance

between these three children at the death of the father is this: if a person have a wife and she die leaving children, and before the property is divided amongst them the father takes another wife, having borne him children she dies, and whilst the property is still undivided, he takes a third and she dies in giving birth to her first child, and the father also dies; the judge having collected the property to be divided between the three families shall thus decide: let the children of each wife take their own mother's separate hereditary property (Thengthee). The hereditary separate property of the father he has had since the time of the first wife, which has not been increased or added to, during the time of the other two wives, shall be called 'ahtet', former property. It is said, when there are two families, that the children of the elder shall have two and of the younger family one share. Now when there are three families, the mothers only differing, because they centre all in one father, let it be divided into four shares, of which, let the children of the first wife have two, and the children of the others one each, and if there be debts, let them pay them in the same proportions. Should the property have come into his possession in the time of the second wife, or of the last, let the division be the same, of property and debts. Why is this?—because after the death of one wife the husband took another, and after her death a third, and the law has laid it down that the husband is the owner of the wife's property. Of the original property, let the children of the mother in whose time it was received have two shares; this is said when the parents were living together at the time the property came into possession."

No. 67 relates to the converse case, *viz.*, the case of a woman having three successive husbands, and children by each, and prescribes the partition between the children on her death. It is not necessary to refer to the terms thereof in detail, as the terms of No. 66 are sufficient to illustrate the argument which was presented.

It is clear, of course, that No. 66 in terms does not apply to the facts of the present case, because

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U Po Thet did not marry anyone after the death of his wife, Ma Kyi Nyo.

It was, however, argued that having regard to the terms of the *dhammathat*, and especially to the provision contained therein, that on the death of the father the children of each wife should take their mother's separate hereditary property, the proper inference to be drawn was that the children of each marriage had on their mother's death a vested interest in her estate which could be enforced on the father's death or by way of partition on the father's remarriage.

No authority precisely covering this point was produced to their Lordships, and it therefore becomes necessary for their Lordships to examine the Burmese-Buddhist law, for the purpose of ascertaining, if possible, whether there is any ground for the above-mentioned contentions.

There is no doubt that U Po Thet, according to Burmese law, had a right to adopt the plaintiff and the third defendant, even though the appellant, the son of his daughter, was alive. This was not disputed : and, further, U Po Thet had a right to adopt the plaintiff and the third defendant with a view to inheritance.

The position and rights of *kittima* adopted sons were stated in the judgment of the Full Court of the High Court at Rangoon, consisting of the Chief Justice and four Judges in *Maung Po An* v. *Ma Dwe* (1) as follows :

" We are satisfied that according to the *dhammathats* the position of the *keiktima* child in respect of inheritance was inferior to that of own children, but in view of the judicial decisions which for many years have recognized the right of the *keiktima* child to share equally with the own children we are of the opinion that that right should not now be questioned."

The learned Judges then proceeded with the question whether a *keiktima* child could be " auratha."

(1) (1926) I.L.R. 4 Ran. 184, 200.

In view of this judgment and the judicial decisions referred to therein, their Lordships are of opinion that it must now be taken that apart from the question relating to any rights of an eldest child, the *kittima* adopted sons are entitled to share equally with the natural sons of the adopter.

The question therefore arises, and in their Lordships' opinion it is the crucial question, what was the property with respect to which U Po Thet was entitled to adopt the plaintiff and the third defendant as *kittima* sons, *i.e.*, sons with a view to inheritance.

It could only be to the property of which he was the owner. After his wife's death he was the sole owner of the property which he had brought, on his marriage, to the common estate, and he was entitled to adopt the plaintiff and the third defendant to succeed him to that property in such shares as the Burmese law permits. The question then is, was U Po Thet entitled to adopt the two above-mentioned persons as his sons with a view to their inheriting or sharing in the inheritance of his late wife's share of the common estate.

In their Lordships' opinion, the answer to that question must depend upon what was U Po Thet's right upon the death of his wife in respect of her share of the common estate. On behalf of the respondents for whom Mr. Dunne appeared, *viz.*, the 4th, 5th, 6th and 8th respondents, it was contended that U Po Thet on his wife's death became absolute owner of her share in the common estate, inasmuch as there was no eldest son or daughter entitled to any specified property, and remained such owner inasmuch as he did not marry again.

On the other hand it was contended on behalf of the appellant that on his wife's death U Po Thet did not become absolute owner of her estate, that the rights

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given to children by the above-mentioned *dhammathats* could only rest upon some specific right in the nature of property in the mother's estate, and that therefore U Po Thet on his wife's death had only a limited interest in her estate.

It was admitted that U Po Thet was entitled to take possession of such property and to remain in possession thereof until his death or remarriage, and that he could dispose of it during his lifetime, but not by will.

It appears, however, that by Burmese law when after the death of one parent the surviving parent remarries, the children of the first marriage are entitled to claim partition, unless there has been a previous partition between them and the surviving parent, that such right has been regarded as vesting on the re-marriage, and that the estate, subject to such partition, is the estate held by the surviving parent at the time of the remarriage. See *Ma Shwe Gu* v. *Ma Kin Nyun* (1).

This is relied on by the appellant in support of his contention. On the other hand, the fact that the surviving husband has a right to enter into possession of the deceased wife's share of the common estate and to dispose of it as he likes during his life, seems to be consistent only with his being the absolute owner.

In this state of things it is satisfactory to find that there is authority upon this particular point.

In 1915 it was held by the Full Bench in *Ma Sein Ton* v. *Ma Son* (2), that

"subject to any claim by the eldest son to certain specified property and to a quarter share of the joint property, and to any claim by the eldest daughter to certain specified property,

(1) (1929) I.L.R. 7 Ran. 240. (2) (1915) 8 L.B.R. 501.

a Burmese Buddhist widow has an absolute right of disposal over the whole of the joint property of herself and her late husband as against the children of their marriage."

That was the case of the wife surviving her husband, but on reference to the judgments it appears that the learned Judges were of opinion that the same rule would apply to the case of the husband surviving his wife.

As for instance Parlett J. is reported to have said (1) as follows :

"I think therefore that the following rules may be deduced. On the death of one parent the surviving parent inherits all their joint property ; if however the eldest son or daughter is grown up he or she is entitled to certain specified property of the deceased parent and in the case of the eldest son to a one-fourth share of the bulk of the estate ; unless the surviving parent remarries none of the other children are entitled to claim anything until that parent's death ; nor do the texts indicate that such children have an interest in the property, though their right to partition is postponed till the death of the surviving parent ; such a principle would I think be foreign to Burmese Buddhist law and on the contrary many of the texts make it clear that the children cannot protest if the property is exhausted before the right to claim partition accrues."

In *Ma Thaung* v. *Ma Than* (2) it was held that :

"Under Burmese Buddhist law, where after the death of the wife, the husband partitions the property with their children, and marries again, taking his share with him, on his death the children by the former marriage cannot claim to inherit."

The question in that case was the true construction of a certain document, and it was held that it was a partition made by the father with his children after his first wife's death.

(1) *Ibid*, 516. (2) (1923) I.L.R. 51 Cal. 374 ; L.R. 51 I.A. 1.

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Mr. Ameer Ali in delivering the judgment of the Board is reported to have said (1) as follows :

"U Nyein was about to contract a second marriage. Under the Burmese law whatever he possessed at the time of contracting the relationship which he contemplated would become on the marriage the common property of his wife and himself. Nothing was more natural than that, influenced by the effect of such an eventuality on the position of his children by Ma Gale, he should, in order to provide for them during his lifetime, whilst he was absolute owner of the properties he possessed, decide upon a partition which would secure a definite share in his or her own right to each child. He accordingly, with the agreement and consent of his sons and daughters, entered into the arrangement embodied in Exhibit L. None of them was entitled to any share in his lifetime."

There seems to be no doubt on the facts of that case that "the properties he possessed" referred to in the cited passage included the common properties of U Nyein and his first wife Ma Gale, and their Lordships seem to have assumed that after the death of Ma Gale, the surviving husband, U Nyein, became the absolute owner of such property and remained the absolute owner until his second marriage, and that it was whilst he was such absolute owner and before he contracted the second marriage that he entered into the arrangement with his children by the first marriage.

There are other decisions in Burma to which their Lordships' attention was directed. It is not necessary to refer to them beyond saying that they point to the same conclusion.

In their Lordships' opinion these decisions show that the contention of the respondents is correct, and that on the death of his wife U Po Thet became the absolute owner of the property which

(1) *Ibid*, 381 ; *ibid*, 7, 8.

had been the common property of U Po Thet and his wife during his wife's lifetime, and as he did not make a second marriage, he remained the absolute owner until his death.

That being so, U Po Thet was entitled to adopt the plaintiff and the third defendant with a view to share in the inheritance not only of his own share of the common properties of himself and his wife, but also the share of his deceased wife therein.

Their Lordships therefore agree with the conclusion of the High Court as to the adopted sons' right to share in the inheritance, and that the adopted sons would share equally with the appellant subject to the question whether the appellant must be treated as an "out-of-time grandchild."

The only *dhammathat*, to which their Lordships' attention has been drawn, as affecting this question, is *Manukye* X, 15. The last paragraph thereof runs as follows :

"In the case of the death of the younger children occurring before the parents the law for partition of the inheritance between their children and the (co-heirs) relations of their parents in this : The children of the deceased have one-fourth of the share which would have come to their parents."

It was argued for the appellant that the rule should only be applied when the question relates to relations of the whole blood, and not in such a case as this, where two of the parties claiming to share in the inheritance are adopted sons.

Apart from the fact that this does not seem to have been relied on in the Courts in Burma, their Lordships, having regard to the above-mentioned decision in *Maung Po An* v. *Ma Dwe* (1), as to the position of *kittima* adopted sons, can see no reason

(1) (1926) I.L.R. 4 Ran. 184.

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why the above-mentioned rule should not apply to this case. Upon adoption, the plaintiff and the third defendant became sons of U Po Thet, and the appellant is a son of U Po Thet's daughter, and is therefore entitled to one-quarter of the share which would have fallen to his mother, *i.e.*, one-quarter of one-third, which is one-twelfth, or two twenty-fourths, and that is the share which has been awarded to him.

It only remains to refer to the allegation made on behalf of the appellant that the decree made by the District Judge in Suit 9 of 1925 dated the 3rd April, 1928, did not award to him the pucca house included in the *shinbyu* gift to the appellant.

The learned counsel for the respondents was not able to make any admission with respect to this matter in the absence of any instructions thereon.

Their Lordships therefore are of opinion that this case should be remitted to the High Court, but solely in order that such steps, as may be necessary, should be taken to ascertain whether there has been a slip in the decree, as alleged, and if so, in order that the necessary amendment of the decree may be made.

Their Lordships, for the above reasons, are of opinion that the appeal should be dismissed with costs, with a direction to the High Court as hereinbefore indicated, and they will humbly advise His Majesty accordingly. The costs will include those reserved by the two Orders in Council of the 27th October, 1930, which must be paid by the appellant.

Solicitors for appellant: *Holmes, Son & Pott.*

Solicitor for respondents: *J. E. Lambert.*