FULL BENCH (CIVIL).

Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice, Mr. Justice Mya Bu, and Mr. Justice Mosely.

MAUNG THEIN *v.* U THA BYAW.*

1939

Feb. 2.

Burmese customary law—Keittima *adoption—Adoption creates relationship of parent and child—Right of inheritance from adoptive parents and their collaterals and ascendants—Death of adoptive father before his parent*—Keittima *child's share in grandparent's estate—Adoptive father an* orasa—Keittima *child not an* orasa—*Nature of* keittima *child's claim—Share with brothers and sisters of adoptive father—Preferential share of* orasa—Keittima *child the sole heir of his father.*

Keittima adoption creates not only heirship of the adoptee to the adoptor but also the relationship of a parent and child and by virtue of such relationship the adoptee acquires the rights of an ordinary natural child of the adoptor in the estates of the adoptor's collaterals or ascendants.

Ma Thaw v. *Ma Sein*, 5 L.B.R. 89 ; *Po Hman* v. *Maung Tin*, 8 L.B.R. 113, affirmed.

A *keittima* child can claim a share of the estate of the father of his adoptive father where the latter has died before the death of the former ; but the *keittima* child cannot become *auratha* of his adoptive parent. His share is claimed by virtue not of personal representation of his adoptive father but of an independent right of inheritance given by Burmese customary law. As an out of time grandchild he shares equally with the younger brothers (and sisters) of his adoptive father, the latter being *auratha*, but he has no claim, by virtue of his adoptive father having been an *auratha* child, to be considered an *auratha* child himself.

Ma Gyan v. *Maung Kywin*, (1892-96) U.B.R. 176 ; *Maung Po An* v. *Ma Dwe*, I.L.R. 4 Ran. 184 ; *Maung Sein Shwe* v. *Maung Sein Gyi*, I.L.R. 13 Ran. 69 (P.C.), referred to.

Per MOSELY, J.—The children of the *orasa* son get their preferential share as the children of the eldest son. Where an *orasa* dies during the life-time of his parent, leaving a *keittima* child as well as natural-born children, on the death of the parent the *keittima* child is entitled to an equal share with the natural-born children in the preferential share of the children of the *orasa* son and if, as in the present case, he is the sole child he can obtain the whole of that preferential share.

Ma Su v. *Ma Tin*, 6 L.B.R. 77 ; *Maung Po An* v. *Ma Dwe*, I.L.R. 4 Ran. 184 ; *Maung Thein Maung* v. *Ma Kywe*, I.L.R. 13 Ran. 412 ; *Po Thu Daw* v. *Po Than*, I.L.R. 1 Ran. 316 ; *Po Zan* v. *Maung Nya*, 7 L.B.R. 27 ; *U Sein* v. *Ma Bok*, I.L.R. 11 Ran. 158, referred to.

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* Civil Reference No. 4 of 1938 arising out of Civil First Appeal No. 23 of 1938 of this Court from the judgment of the Assistant District Court of Tharrawaddy in Civ. Reg. No. 16 of 1937.

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Civil First Appeal No. 23 of 1938 came on for hearing before Mya Bu and Mackney JJ. The question of Burmese Customary law that arose before their Lordships was of such importance that their Lordships thought it fit to refer the question for the decision of a Full Bench in the following terms :

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Aug. 12.

MACKNEY, J.—The plaintiff-appellant, Maung Thein, is a *keittima* son of U Mu, the *orasa* child of U Tha Aung and Daw Dun Byu, who pre-deceased them. The defendants-respondent are the children of U Tha Aung and Daw Dun Byu. Maung Thein has brought a suit for administration of the estate of Daw Dun Byu who died in 1935-36. U Tha Aung died some seven years previously.

The defendants pleaded that in 1929 by a registered deed Maung Thein took his share in the estate of U Tha Aung from Daw Dun Byu and agreed to make no further claim. They further alleged that as a *keittima* son of U Mu he had no right of inheritance in the estate of U Mu's parents.

As regards the deed in question, the Assistant District Court held that in 1929, after the death of U Tha Aung, Maung Thein was entitled, under certain *Dhammathats* quoted in section 256 of the Kinwun Mingyi's Digest, to get one-fourth of what his adoptive father, U Mu, might have obtained. The Court held that the property which was transferred to him in 1929 was transferred to him in settlement of this claim. For this reason and further, because, having taken the benefits of the deed of the 6th April 1929 he would be estopped from making any further claim, the Assistant District Court dismissed the plaintiff's suit. Against this decision Maung Thein now appeals.

It is urged that in 1929 Maung Thein had no claim to partition of the estate of U Tha Aung and that, as a "grandchild" by an *orasa* child, he was entitled to share equally with his "uncles and aunts." On behalf of the respondents it is contended that, if Maung Thein be not debarred from making any further claim by virtue of the deed of 1929, he has, in fact, no right of inheritance in the estate of his adoptive father's parents.

The deed itself is worded in such a manner as to suggest that the participants therein were under the impression that Maung Thein was at that time entitled to take his adoptive father U Mu's share in U Tha Aung's estate. Had U Mu been alive at

the time of U Tha Aung's death doubtless, as *orasa* son, he would have been entitled to claim one-quarter share of the estate. The participants in the deed appear to have thought that, in spite of the fact that U Mu had died before U Tha Aung, yet on the death of U Tha Aung U Mu's share became payable to his adoptive son. The deed very clearly states that Maung Thein is claiming on behalf of his father who was *orasa* child. The claim is made in respect of his father's share : it is made in final settlement of his father's claim. Of course, such an idea was entirely erroneous. The only claim that Maung Thein could have was a claim as a "grandchild", he could not claim his father's share to which his father, as he predeceased U Tha Aung, never became entitled.

It is true that in section 256 of the Kinwun Mingyi's Digest certain *Dhammathats* are quoted which would seem to show that on the death of one grandparent the children, or it may be the eldest child, of the deceased *orasa* son may claim a share. The point was referred to but not decided in *Tun Myaing* v. *Ba Tun* (1). However that may be, it is clear that what Maung Thein renounced in the deed was not his own rights to the estate of U Tha Aung and Daw Dun Byu when she should die, but his father's rights. That being so, I am unable to see how the existence of this deed could in any way bar his present claim.

The case for the appellant has been argued on two grounds. First, it is contended that, as *keiltima* child of U Mu, he is to be treated in all respects as a natural child of U Mu and, therefore, as a natural grandchild of U Tha Aung and Daw Dun Byu. Secondly, it is contended that, in any case, he represents his father, U Mu, and as the grandchildren share in their grandparents' estate by representation of their own parents he is clearly entitled to a share.

As regards the first contention, the position of the *keiltima* child was discussed by a Full Bench of this Court in *Maung Po An* v. *Ma Dwe* (2). The learned Judges observed :

> "We are satisfied that according to the *Dhammathats* the position of the *keiltima* 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 *keiltima* child to share equally with the own children we are of opinion that that right should not now be questioned."

(1) 2 L.B.R. 292. (2) (1926) I.L.R. 4 Ran. 184.

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They decided, however, that a *keittima* adopted son was not entitled to claim from an adoptive mother on the death of the adoptive father the *auratha* son's quarter share of the estate of the adoptive parents, the ground being that the special rights of an *auratha* could accrue only to the natural child. It would appear, therefore, that the proposition that *keittima* children are to be regarded as having practically the position of natural children is stated too broadly. The case of *Maung Po An* v. *Ma Dwe* (1) does not go further than to lay down that, as regards the natural children of their adoptive parents, they are on the same footing, but even so they cannot claim the special rights of an *auratha* child.

Nor do the *Dhammathats* suggest that a *keittima* child has any rights of inheritance in the estates of any persons belonging to the family to which his adoptive parents belong other than the estates of his adoptive parents. As the *keittima* child is now regarded as practically in the position of a natural child with reference to his adoptive parents and their natural children, it may well be that a *keittima* child could succeed to the estate of his adoptive brother or sister; but it may well appear that it would be going too far to contend that the analogy could be further stretched and that such a person could even inherit the estate of his adoptive father's or adoptive mother's relatives.

It appears to me that if indeed the *keittima* child had any such right of inheritance we should not have failed to find some reference in the *Dhammathats* thereto. The *Dhammathats* deal in the greatest detail with all sorts of rules for partition among various sets of heirs and in particular they deal with the rights of partition between the *keittima* child and the natural children, or the *keittima* child and the relatives of his adoptive parents in regard to the estate of the adoptive parents. It is surely of some significance that they make no reference whatsoever to the case where a *keittima* child could claim in the estate of any of the relatives of his adoptive parents.

Against this argument it is urged that the *Dhammathats* deal with conditions and ideas which have become obsolete, that the modern rule is that no difference should be made between the *keittima* child and the natural children. As I have sought to show above, this proposition is an extension of the original proposition in regard to the *keittima* child; to me it seems doubtful if it be a

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

warrantable extension. The law now allows a man to adopt a child and it has conceded to that child practically the same rights in its adoptive father's estate as a natural child would have ; but from this fact does it logically follow that upon adoption he steps into the position of a natural child in respect to the relatives of his adoptive parents? The relationship between a grandchild and grandparents or between a nephew and an uncle and an aunt is a blood relationship, and there is no legal means of creating that relationship artificially in the same way as the relationship of father and child can be created artificially by the device of *keittima* adoption. It seems to me difficult to hold that all these other natural relationships are automatically created as soon as a person chooses to adopt a *keittima* child. Possibly if each of the relatives of the adoptive parents expressly declared their intention of regarding the adopted child as their own niece or nephew or grandchild as the case might be, he would assume the rights of such : but I know of no such instance where this has been done.

In *Ma Gun* v. *Ma Gun* (1) it was observed that the publicly adopted child stands in the same position as the real child ; but this had reference to his claims to share in the estate of his adoptive father with the second wife.

In *Mi San Hla Me* v. *Kya Tun and two others* (2) the adoptive mother was allowed to succeed to the estate of the adopted son to the exclusion of his adoptive brothers and sisters. This decision, however, would be no authority for holding that the adopted son could inherit from persons outside his own immediate adoptive family.

These two cases were referred to in *Ma Thaw* v. *Ma Sein* (3). This was a case where one Ma Sein laid claim to the estate of one Ma Thein Yin deceased, by whose mother, Ma Nyo Nyo, Ma Sein had been adopted, having on a former occasion been adopted by Ma Dun the sister of Ma Nyo Nyo. The second adoption took place on the death of Ma Dun. The appeal was from a judgment on the Original Side. In the course of that judgment it was observed :

> " It is admitted that if either adoption gives Ma Sein the same right of inheritance from Ma Thein Yin as a natural child of either Ma Dun or Ma Nyo Nyo would have had, she would be entitled to obtain letters of administration."

(1) S.J. 33. (2) P J. 116.

(3) 5 L.B.R. 89.

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In consequence of this admission neither in the judgment on the Original Side nor in the appellate judgment was any distinction made between the possible claim of Ma Sein as an adoptive sister of Ma Thein Yin and her claim as the adopted child of Ma Thein Yin's aunt. But this is a most important distinction. I do not doubt that as the adoptive sister of Ma Thein Yin she would have had the same claim as would a natural sister: It is quite a different matter to suggest that as the adopted child of Ma Thein Yin's aunt she would have had a claim. The distinction between the two claims cannot be slurred over in this manner. The arguments adopted might well be applicable to Ma Sein's claim as an adoptive sister, but it is, in my opinion, with great respect, not established that they apply so successfully to her claim as the adopted child of Ma Thein Yin's aunt. In the judgment on the Original Side it is observed:

> "An adopted child loses all rights of inheritance in its natural family, and it seems inequitable that it should obtain in return only a limited right of inheritance in the family into which it is adopted."

Here there is an assumption that when a child is adopted as a *keittima* child it loses all claims to inherit from its natural grandparents, aunts or uncles, etc. So far as I know there is no authority whatsoever for this contention.

The two cases from Selected Judgments and Printed Judgments to which I have referred are cited in support of the contention that the adopted child holds the same position as the natural-born child. I have endeavoured to show that they do not justify such a broad statement of the proposition.

On appeal the judgment was upheld mainly on the ground that it appeared more reasonable and equitable to hold that adopted children enjoyed the rights of natural children except where those rights were expressly restricted or taken away; but it must be confessed that the arguments employed do not appear to justify such a conclusion. It would surely be more reasonable to hold that where such a special and artificial relationship is created as that which is created by *keittima* adoption such adopted children would enjoy only such rights as are expressly declared to be theirs.

We are not here dealing with any religious ideas. In some countries the adoption of a child takes on some mystical religious purpose and it may be that, in virtue of this religious mystery, some change is imagined to occur on performance of the

ceremony, by which the adopted child does in very fact receive the blood of his adoptive parents and consequently assumes all the relationships which the natural child would have ; but there is no such mystery to adoption in Burma.

It is interesting to note that the late May Oung J. in his Selection of Leading Cases on Buddhist Law, at page 156 quotes *Ma Thaw* v. *Ma Sein* (1) in connection with the proposition that the *keittima* son succeeds to property left by the parents' relatives but he makes no comment.

In *Ma Gyan and Maung Ya Baw* v. *Maung Kywin and Ma Gyi* (2), although it is said that the *keittima* adopted child generally fills the same position as the natural-born child, the observation has reference entirely to the question which was before the learned Judge, *viz.*, the share of the adopted child in her adoptive father's estate.

In *Po Hman* v. *Maung Tin* (3) the adopted son of one Ma Shwe Ein, who predeceased her parents, was awarded, on partition, a share with Ma Shwe Ein's sister in the estate of Ma Shwe Ein's parents, the share being one-eighth, that is to say, one-fourth of the one-half that his mother would have had. The learned Judges merely decided the point as to whether the son of an elder sister who had predeceased her parents could claim a preferential share on the ground of his mother being *auratha*. The question as to whether he was really entitled to any share at all in the estate of his adoptive mother's parents was not raised, and it seems to have been tacitly assumed that he could inherit.

None of the cases which have been referred to are, in my opinion, satisfactory authority for holding that it is an established maxim of Burmese Buddhist law that the *keittima* child can inherit in the estate of his adoptive parents' parents.

The second contention is that as Maung Thein represents his father, U Mu, and as grandchildren share in their grandparents' estate by representation of their parents, he is clearly entitled to a share. It is true there are cases in which reference is made to the representation or partial representation of parents by grandchildren, but it appears to me that the correct view is authoritatively laid down in the Full Bench decision of this Court in *Maung Po Thu Daw* v. *Maung Po Than* (4). It is there pointed out

(1) 5 L.B.R. 89.
(2) (1892-96) 2 U.B.R. 176.
(3) 8 L.B.R. 11.
(4) (1923) 1 Ran. 316, 333.

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by the late May Oung J. that grandchildren are spoken of as a distinct class of heirs. He observed:

> "The balance of probability seems, however, to be in favour of the former view", (*i.e.* if the text-writers had contemplated a division *per stirpes* they would have declared so in clear terms) "since the Burmese system of inheritance is based largely on the personal relations shown to have subsisted between the deceased and the heirs. This fact may be gathered from the rules (now obsolete, under which natural-born children living apart from the parents were penalized and from the somewhat extraordinary provision whereby a total stranger may, in certain circumstances, inherit a deceased person's property by reason of services rendered. Where, therefore, several individuals stand in the same degree of relationship towards the *propositus* and, presumably, their personal connection with the latter was the same, there does not seem to be any *prima facie* reason why an only child should be favoured over and above another who is exactly in the same position except that he is one of several born of the same parents. Both of them 'reached the inheritance' in exactly the same way. Hence, in the absence of any clear rule to the contrary, I would hold that grandchildren succeed to their grandparents' state in their own right."

Robinson C.J. observed:

> "Where the contest is between grandchildren whose parents predeceased the grandparents, there is no clear and explicit rule laid down and it appears to me to be just and logical to apply in their case the same rule that would have been applied in the case of their parents. They do not reach the inheritance by virtue of being the children of their parents, for the parents had not reached the inheritance. They occupy the same position as their parents in respect of the inheritance."

The learned Chief Justice was, of course, speaking of natural grandchildren and the last sentence quoted would not necessarily apply to the adopted child: that is the question which is now before us for consideration. The decision, however, does make it clear that it is not by virtue of any principle of representation that grandchildren succeed to the estate of their grandparents but by reason

of the nearness of the personal relationship between them and their grandparents. I incline, however, to the view that there can be no relationship between the adopted child and his adoptive father's parents.

In *Maung Shwe Ye* v. *Maung Po Mya and others* (1) Carr J. while holding that representation was not a principle of Buddhist law observed that "the partial representation allowed to grandchildren in competition with children is merely an exception to that general rule, and is the only exception to it." With great respect, it seems to me that this phraseology is unfortunate. If representation is not a principle of Buddhist law then there cannot be even partial representation. Further it is very difficult to interpret the meaning of this expression "partial representation." One man may "partially represent" another if that other has several characters in one only of which he is represented. The ghost of a person may be said "partially" to represent that person; but I cannot think of any way in which a grandchild can "partially represent" his father in the matter of inheritance; he must either represent him wholly or not at all. It appears to me that the expression must mean merely that the grandchild is entitled to a share which is calculated to be equal to a part of the share which his parent would have received.

Again in *U Sein* v. *Ma Bok and others* (2)—a decision to which I was a party—it was pointed out by Page C.J. that: "Where an *orasa* dies during the lifetime of the parent the child of the *orasa* does not acquire the interest of an *orasa*, but acquires an independent right to a share in the estate of the grandparent which is equal to that of the parent's brothers and sisters."

Possibly it would be correct to say that in certain cases of inheritance according to Burmese Buddhist law the nearer does not exclude the more remote, and that the case of the grandchild is one of those cases. It is because of the specially direct and natural relationship of the grandchild with the grandparents that this exception to the general rule is allowed. It appears to me that as there is no such "specially direct and natural relationship" —and indeed no relationship of any kind but at most a sentimental bond—between an adopted child and the parents of his adoptive parents the exception cannot be upheld in his case. However, in view of the importance of the point as affecting Burmese family life and of the existence of the decisions of the Chief Court of

(1) (1925) I.L.R. 3 Ran. 464. (2) (1933) I.L.R. 11 Ran. 158.

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Lower Burma [*Ma Thaw* v. *Ma Sein* (1) and *Po Hman* v. *Maung Tin* (2)] where a contrary view is implied as to the position of the *keittima* child in regard to the parents of his adoptive father—decisions which although in my opinion, with respect, of uncertain validity, have remained unquestioned for so long—I feel that it is desirable that this Court should give a pronouncement thereon which will be authoritative.

I therefore would refer the following question for the decision of a Full Bench of the Court :

> What right of inheritance has the child adopted in the *keittima* form according to Burmese Buddhist law in the estate of the father of his adoptive father, where the latter, having acquired the status of *auratha* son, has died before the death of the former?

MYA BU, J.—I am in entire agreement with my learned brother in his conclusions upon the question as to the effect of the deed which Maung Thein executed on the 6th April 1929, and I acknowledge my indebtedness to my learned brother for the lucid survey of the texts and the authorities relevant to the question of a *keittima* child's right of inheritance in the estate of the parents of his adoptive parents as an out of time grandchild. I think, however, that considering the modern notions as to the general incidents of *keittima* adoption it is still open to doubt that the decisions in the cases of *Ma Thaw* v. *Ma Sein* (1) and *Po Hman* v. *Maung Tin* (2) are inconsistent with the prevailing customs of Burman Buddhists. I agree that the question propounded by my learned brother be referred for the decision of a Full Bench.

Ba Han for the appellant. A *keittima* adopted child is put on the same level as a natural born child, except in so far as the rights of an *orasa* child are concerned. The *keittima* child shares equally with the natural born children in the deceased parent's estate. *Maung Po An* v. *Ma Dwe* (3), approved of by the Judicial Committee in *Maung Sein Shwe* v. *Maung Sein Gyi* (4). When a child is adopted he or she is not addressed as an adopted child but is treated in all respects as a child

(1) 5 L.B.R. 89.
(2) 8 L.B.R. 113.
(3) I.L.R. 4 Ran. 184, 197.
(4) I.L.R. 13 Ran. 69, 80.

of the family. On being adopted the adopted child acquires new relationships and loses all connection with his or her natural family. The adopted child succeeds not only to the estate of the adoptive parents but also to property left behind by collaterals in the adoptive family. There is no hardship to the relatives since they are in no respect worse off than if a natural born child had been born. See May Oung's Buddhist Law, pp. 156, 157; *Ma Thaw* v. *Ma Thein* (1); *Po Hman* v. *Maung Tin* (2). The child comes into the new family with the just and reasonable expectation of being placed on the same footing as a natural child. *Ma Gyan* v. *Maung Kywin* (3).

The *keittima* grand-child in this case comes in as the representative of the deceased father who died after acquiring the status of an *orasa* son, and is entitled to inherit from the grandfather. S. 313 of Vol. 1 of Kinwun Mingyi's Digest shows that the rights of grand-children to inherit from their grandfather's estate depend to some extent on the conduct of the parents. It therefore stands to reason that the appellant should be placed in the position which his father would have occupied; he would share the property equally with his uncles and aunts as the representative of his father. See *Maung Shwe Yi* v. *Maung Po Mya* (4); and *Ma Saw Ngwe* v. *Ma Thein Yin* (5) as regards the rule of partial representation by the grandchild of the deceased father in the grandfather's estate.

E Maung for the respondents. There is no direct authority for the proposition that the adopted child loses all rights of inheritance in his natural grandparent's estate.

(1) 5 L.B.R. 89.
(2) 8 L.B.R. 113.
(3) (1892-96) 2 U.B.R. 176, 183.
(4) I.L.R. 3 Ran. 464, 468.
(5) 1 L.B.R. 198, 292.

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[ROBERTS, C.J. The adopted child breaks off all ties with the natural family and therefore loses all rights in the family.]

In Kinwun Mingyi's Digest even a grandchild does not necessarily receive as much as his uncle or aunt. See Vol. 1, ss. 94, 162, 163, 194. The share given to an *orasa* is a privileged one. The child is adopted into the adoptive father's family and not into the grandfather's, and he cannot have any share in the estate of his adoptive parent's father.

ROBERTS, C.J.—The question referred to this Full Bench is as follows :

"What right of inheritance has the child adopted in the *keittima* form according to Burmese Buddhist Law in the estate of the father of his adoptive father, where the latter having acquired the status of *auratha* son has died before the death of the former ?"

In *Ma Thaw* v. *Ma Thein* (1) it was held by a Bench of the Chief Court of Lower Burma that under Burmese Buddhist Law a *keittima* adopted child possessed rights of inheritance not only from his adoptive parents but from collaterals in the adoptive family, and the principle of this decision was followed in *Po Hman* v. *Maung Tin* (2). In that case the respondent was the adopted son of Ma Shwe Ein who was the *orasa* daughter of U Thet and Ma Bwin. She was however displaced as an *orasa* child when her younger brother Po Hman the appellant reached a competent age, and since there cannot be an *orasa* daughter as well as an *orasa* son in the same family, the respondent could only claim the share of an "out of time" grandchild.

It seems to have been established by these two decisions that a *keittima* adopted child succeeds not

(1) 5 L.B.R. 89. (2) 8 L.B.R. 113.

only to the estate of his adoptive parents but also to property left by the parents' relatives—[See also May Oung's Buddhist Law, Part II (Second edition) at page 156.] In an Upper Burma case—*Ma Gyan* v. *Maung Kywin* (1)—it was stated that it had been the practice both there and in Lower Burma to treat the *keittima* adopted child generally as filling the same position as the natural child, and that equitable principles seemed to be in favour of that view. Although the rights of a *keittima* adopted child were at first held to be of an inferior nature, for many years judicial decisions have recognized the right of the *keittima* child to share equally with the natural born children. [See *Maung Po An* v. *Ma Dwe* (2) where a Full Bench declared that the special right of the *auratha* was an exception to this general rule of equal partition amongst children and that it should not be extended to give to a *keittima* child the rights of an *auratha* child.] This is now settled law and was recognized as such by their Lordships of the Privy Council in *Maung Sein Shwe* v. *Maung Sein Gyi* (3). Sir Lancelot Sanderson there said :

> " It must now be taken that apart from the question relating to any rights of an eldest child, the *keittima* adopted sons are entitled to share equally with the natural sons of the adopter."

It is important to observe that the rights of an eldest child are expressly excepted from this recognition of *keittima* adopted children. The " auratha " or " orasa " child literally means " child of the body " and is used in Burmese Buddhist Law as meaning also " eldest born child."

I see no ground for the extension of the contrast between *keittima* and natural born children and am of

(1) (1892-96) 2 U.B R. 176. (2) (1926) I.L.R. 4 Ran. 184, 200.
(3) (1934) I.L.R. 13 Ran. 69, 81.

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opinion that the decision in *Ma Thaw* v. *Ma Thein* (1) should be followed and affirmed. The exception referred to in *Maung Sein Shwe* v. *Maung Sein Gyi* (2) applies only to the *auratha* child in contrast to the *keittima* child. It is the only instance of any exception in the Burmese Buddhist Law of inheritance which discriminates against the position of a *keittima* child. An adoptive child is for all purposes in the footing of a natural born child except that the special rights of an *auratha* child do not and cannot appertain to him because those rights arise not only from relationship but from the special claims of the natural born eldest child within the family of the parents by whom it has been begotten and conceived.

Accordingly I would answer the question referred by saying that a child adopted in the *keittima* form according to Burmese Buddhist Law can claim a share of the estate of the father of his adoptive father where the latter has died before the death of the former ; but the *keittima* adopted child cannot become *auratha* of his adoptive parent. His share is claimed by virtue not of personal representation of his adoptive father but of an independent right of inheritance given by Burmese Buddhist Customary Law. As an out of time grandchild he shares equally with the younger brothers of his adoptive father the latter being *auratha* according to the rules laid down in the Laws of Menoo, Vol. X, page 277 ; but he has no claim, by virtue of his adoptive father having been an *auratha* child, to be considered as an *auratha* child himself.

MYA BU, J.—I concur in the judgment of my Lord the Chief Justice. The true notion is, in my opinion, that *keittima* adoption creates not only heirship of the adoptee to the adoptor but also the relationship of a

(1) 5 L.B.R. 89. (2) (1925) I.L.R. 13 Ran. 69, 81

parent and child and by virtue of such relationship the adoptee acquires the rights of an ordinary natural child of the adoptor in the estates of the adoptor's collaterals or ascendants. This notion justifies the decisions in *Ma Thaw* v. *Ma Sein* (1) and *Po Hman* v. *Maung Tin* (2), and the fact that the special right of the *orasa* child to claim a quarter share from the surviving parent on the death of the parent of the same sex as the child is not extended to a *keittima* child does not seem to me to support the contention that the right of inheritance enjoyed by a *keittima* child is restricted to the estate of his adopter or adoptors only.

MOSELY, J.—I agree with my Lord the Chief Justice. It is settled law that a *keittima* adopted child can inherit not only from his parents but from collaterals in the adoptive family.

As regards the question which exercised the learned Judge who made this reference whether the *keittima* adopted son of the *orasa* son inherits by representation of his father or directly from his grandparents I do not think that this is of importance or affects the share which he will receive.

In the present case the *keittima* adopted son was the only child of the *orasa* son. In *Ma Saw Ngwe* v. *Ma Thein Yin* (3) it was said that the only child who ranked with the surviving uncles and aunts was the eldest representative of the eldest child. In that case there is a mis-translation of page 200 of section 12 of the *Attathumkhepa* where "eldest born child" is a mistake for "eldest child" (*Thagyi, Thamigyi*). This ruling was, however, dissented from in *Ma Su* v. *Ma Tin* (4) and *Po Zan* v. *Maung Nyo* (5), where it was pointed out that the majority of the *Dhammathats* lay

(1) 1 L.B.R. 198.
(2) 6 L.B.R. 77, 84.
(3) 7 L.B.R. 27, 30.
(4) (1926) I.L.R. 4 Ran. 184, 199.
(5) (1934) I.L.R. 13 Ran. 412, 445.

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down that it is the children of the eldest son who get preferential treatment and get the share of the father and not a quarter of it. Most of the *Dhammathats* quoted at section 162 of the Kinwun Mingyi's Digest say that it is the eldest son of the *eldest son* or the children of the eldest son (not the children of the *orasa*) who are so preferred. For the distinction between *orasa* and eldest son see *Maung Po An* v. *Ma Dwe* (1), and also the judgment of Baguley J. in *Maung Thein Maung* v. *Ma Kywe* (2).

Of course the child or eldest son of the *orasa* could not represent his father in the sense that he could take upon him his duties or his privileges other than those relating to his quarter share, but much less could the younger children of the *orasa* or eldest son do so, and in this connection by representation is, I conceive, merely meant taking the place of the father and therefore his share. This is what was said in *Po Thu Daw* v. *Po Than* (3) by May Oung J. and Robinson C.J. As it was put there grandchildren occupy the same position as their parents in respect of the inheritance. They do not inherit by virtue of nearness of kin exactly, nor do they inherit directly from the grandparents. If they inherited directly from the grandparents they would presumably be in the same position and get the same share as the children of the younger children. All that can be said is that this share is the preferential share of the children of the *orasa* son who has an independent right which has been expressly given by Burmese Buddhist Customary law, as was said in *U Sein* v. *Ma Bok* (4). In that case the head-note says :

"Where an *orasa* dies during the lifetime of the parent the child of the *orasa* does not acquire the interest of an *orasa*, but

(1) (1926) I.L.R. 4 Ran. 184, 199.
(2) (1934) I.L.R. 13 Ran. 412, 445.
(3) (1923) I.L.R. 1 Ran. 316.
(4) (1923) I.L.R. 11 Ran. 158.

acquires an independent right to a share in the estate of the grandparent which is equal to that of the parent's brothers and sisters."

It is clear therefore in my opinion that the *keittima* adopted child if he has brothers and sisters can have an equal share with them in the preferential share of the children of the *orasa* son, and if as in the present case he is the sole child he can obtain the whole of that preferential share.