PRIVY COUNCIL.

P. C.* 1893 *Nov.* 9, 10, & 11.

ABDUL RAZAK (PLAINTIFF) *v.* AGA MAHOMED JAFFER BINDANIM (DEFENDANT.)

[On appeal from the Court of the Recorder of Rangoon.]

Mahomedan law—Acknowledgment—Illegitimacy of birth—Insufficiency of father's acknowledgment without intention to legitimate.

On the question of the legitimacy of a son born to a Mahomedan by a Burmese woman, the question did not arise on this appeal whether the father could have entered into a valid marriage with the mother without her having relinquished Buddhism. The Court below found against her alleged conversion to the Mahomedan religion: and also found upon the facts that no marriage of the parents as distinguished from concubinage has taken place. The latter finding was affirmed.

As to the question whether the son born to them had been legitimated by the father's acknowledgment of him, it was *held*, that, under the Mahomedan law, the legitimation of a son, born out of legal wedlock, may be effected by the force of his father's acknowledgment of his being of legitimate birth; but that a mere recognition of sonship is insufficient to effect it. Acknowledgment in the sense meant by that law is required, *viz.*, of antecedent right, and not a mere recognition of paternity.

Ashruff-ood-dowla Ahmed Hossein v. *Hyder Hossein Khan* (1) referred to and followed.

APPEAL from a decree (5th February 1892) of the Recorder of Rangoon.

This suit was brought on the 30th March 1891 by the appellant against the executor of the will of a Shia Mahomedan, Hadji Husain Bindanim, formerly a merchant in Rangoon, who died on the 28th February 1890, leaving only a widow, Kulsam Bibi. The plaintiff claimed as a sharer to inherit his part of so much of the testator's estate as must devolve upon his family under the Imamia law. The title alleged was that the plaintiff was the legitimate son of a brother of the deceased Hadji Husain, named Abdul Hadi, who lived for some years in Burma, from 1854 onwards, and afterwards in Calcutta, where he died in 1886. Abdul Hadi, when in Burma, cohabited with a Burmese woman,

* *Present*: LORDS HOBHOUSE, MACNAGHTEN, and MORRIS, and SIR R. COUCH.

(1) 11 Moo., I. A., 94.

Mah Thai, by whom he had a son, the plaintiff, called at one time Moung Hpay, and at another time, and in these proceedings, Abdul Razak. This son, suing his uncle's executor, alleged that his father married his mother in 1854, and joining Kulsam as a co-defendant made title to all the estate that was not subject to his uncle's bequests, and to Kulsam's right to share as widow. On her own application on the 18th August 1891, she was made a co-plaintiff instead of a co-defendant. The executor, now respondent, claiming to be entitled (along with his brothers and sisters) to succeed to Hadji Husain's estate, asserted, in his written statement, as to his information and belief that Abdul Hadi died childless; and he put the plaintiff to proof of his being the legitimate son of his alleged father. Two principal questions were raised in the suit. First, whether Abdul Razak was born of a legal marriage; secondly, whether, if the marriage was doubtful, in fact, or in law, Abdul Hadi had, expressly or impliedly, acknowledged him to be his son, and what was the legal effect of such an acknowledgment by a father.

On this appeal, what might have been the legal result of an actual marriage ceremony in due form, followed by co-habitation, between Abdul Hadi and a Buddhist wife, was a question that was not raised. At the hearing the marriage was not proved; and the main question, on this appeal, was whether there had, or had not been, an acknowledgment by the father of his originally illegitimate son, sufficient and effectual to establish him in the status of a legitimate one.

The Recorder gave his reasons for dismissing the suit as follows. Part of his judgment, which is quoted by their Lordships, is here omitted; as also the evidence which they have set forth:—

"The issue I have now to decide is whether the plaintiff Abdul Razak is the legitimate son of Abdul Hadi. Assuming that Mah Thai did live with Abdul Hadi for about two years, that she became pregnant and returned to her parent's house at Mangi where the plaintiff was born, the evidence shows that the plaintiff was never circumcised, that he received a Burmese name and was brought up as a Burman.

"The first point to consider is whether there was a marriage between Mah Thai and Abdul Hadi. It is not disputed that before there can be a valid marriage between a Mahomedan and a woman who is not a

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Kitabi, the woman must be converted to Mahomedanism. (See Tagore Lect., 1873, p. 305.)

Mah Thai's evidence as to the marriage was given in the judgment, which afterwards proceeded thus :—

"I think then that the plaintiff Abdul Razak has not succeeded in proving that his mother Mah Thai was converted to the Mahomedan religion at the time of the alleged marriage, and that as she was not a *Kitabi*, no valid marriage could have taken place between her and Abdul Hadi ; not only this but Mah Thai, admittedly, had before going to live with Abdul Hadi been married according to Burmese law, and the evidence that she was ever divorced rests only on her unsupported statement. However, I do not lay much stress upon this, but go on this ground that, assuming for the sake of argument that Mah Thai did live with Abdul Hadi at the time she says she did, and that the plaintiff is her son by Abdul Hadi, yet, not having been converted to Mahomedanism, she could not have been legally married to Abdul Hadi. If I am right in this view, then it follows according to the decision of the Allahabad High Court in *Muhammad Allahdad Khan* v. *Muhammad Ismail Khan* (1) that no acknowledgment on the part of the father could legitimatize the offspring of such an union. Mahmood, J., points out that, according to Mahomedan law, so far as inheritance from males, or through males, is concerned, the existence of legitimacy of descent, or consanguinity, is a condition precedent to the right of inheritance, and that such legitimacy depends upon a valid marriage, or connection, between the parents of the inheritor. Further that in no case can an illegitimate child inherit ; and that where a marriage is not possible between the parents, acknowledgment cannot make the offspring of the union legitimate. He also points out that the Mahomedan law of acknowledgment of parentage with its legitimating effect has no reference whatever to cases in which the illegitimacy of the child is proved and established, either by reason of a lawful union between the parents of the child being impossible, as in my opinion is the case here, or, by reason of marriage necessary to render the child legitimate being disproved. Further, that the doctrine relates only to cases where either the fact of the marriage itself, or the exact time of its occurrence with reference to the legitimacy of the acknowledged child is not proved, in the sense of the law, as distinguished from disproved ; in other words, that the doctrine only applies to cases of uncertainty as to legitimacy, when acknowledgment has its effect, but that that effect always proceeds upon the assumption of a lawful union between the parents of the acknowledged child.

"This view, if I may say so, appears to me to be clearly right. Otherwise, if the proposition that acknowledgment alone is sufficient to establish legitimacy is correct, these results must necessarily follow, that a Mahomedan may legitimatize the offspring of adulterous or incestuous intercourse, or even a person of whom he could not possibly have been the father, for example to put an extreme case, a person older than himself. And this result would

(1) I. L. R., 10 All., 289.

also follow in the present case. The parents of the plaintiff Abdul Razak could not, according to Mahomedan law, contract a legal marriage; the offspring of their intercourse must therefore be illegitimate: but Abdul Hadi acknowledged the child; therefore he is legitimate.

"In the view, then, that I take of the case, it is unnecessary to consider the evidence as to the acknowledgment and as to the will, for assuming the whole of it to be true, the plaintiff, Abdul Razak, cannot be the legitimate son of Abdul Hadi. So far as he is concerned, the suit must be dismissed with costs, including the costs of the Commission."

The *Solicitor General* (Sir *J. Rigby, Q. C.*) and Mr. *R. V. Doyne*, for the appellant.—The judgment below was that the parents could not have contracted a legal marriage, without the conversion of the woman, which had not taken place, and that consequently there could be no legitimation of the child by the father's acknowledgment. This rested on the finding that there had been no conversion; and on the impossibility of there being legal intermarriage between a Mahomedan and a Buddhist. The question, however, whether the plaintiff had been legitimated by his father's acknowledgment should not have been held to be concluded by the supposed impossibility of the marriage. The latter ground of decision was erroneous, for, assuming that the woman, Mah Thai, was considered, in regard to the Mahomedan Law of Marriage, an idolator, the effect of the prohibition to marry an idolator had been removed by her sufficient conversion. If her conversion had taken place, or if her marriage without it would have been possible, then it followed that the legitimacy of the appellant should have been held to be established by the acknowledgment of paternity on the part of Abdul Hadi. The Recorder had not rejected as altogether false the evidence of the proceedings that preceded the co-habitation, but he found the genuine conversion of Mah Thai not to have been proved. It was submitted that he erred on the latter point. If her conversion was essential, then there was sufficient evidence of it, when it was proved that she had professed to conform to the religion of her husband. Also it was open to contention that there was no distinct authority against the legality of a Mahomedan's marriage with a Buddhist. His marrying a polytheist, or idolator, was prohibited, but with regard to the Buddhist system it was not certain that the prohibition would have included a Burmese woman. The exception of the

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Kitabi, and the permission of marriages with Jewish, or Christian women, were referred to. The argument was that there might have been a legal marriage, and that the possibility of there having been one in 1854, favoured by the presumptions directed to the support of the fact of marriage, formed a ground upon which the father's declaration of his paternity and treatment of the appellant as his son would have effected his legitimation. Such a legitimation had taken place by and through presumption of marriage, antecedent to birth, that presumption following open recognition of sonship. As to the prohibition of the marriage of Mahomedans with polytheists, Baillie's Digest of Mahomedan Law, Hanifia, Part I, Book I, Chap. III, p. 40, second edition, and Imamia, Part II, Book I, Chap. I, section 3, p. 29; Macnaghten's Mahomedan Law, Chap. VII, section 12; Hamilton's Hedaya, Vol. II, Book VII, Chap. III, were referred to.

As to legitimation by a parent's declaration, reference was made to Baillie's Digest of Mahomedan Law, Hanifia, Book V, "of parentage;" Chaps. I and II, "of acknowledgement;" Imamia, Book VII, Chap. III; Macnaghten's Mahomedan Law, Chap. VII, section 33; Precedents, Chap. VI, case 46; Hamilton's Hedaya, Vol. III, p. 168. It was contended that acknowledgment of sonship, assisted by a presumption in favor of the marriage of the parents having taken place on the part of the father, had effected the legitimation of the appellant enabling him to inherit. The legitimation was considered as effected through the presumption of marriage strong in the Mahomedan law, and the legitimation was not dependent on the father's adding, or not adding, a declaration of *legitimate birth*. The acknowledgment involved the son's legitimacy in consequence of the presumption of marriage where a marriage would have been legal, and where the circumstances did not negative its having taken place. The son might possibly have been born in wedlock. That was enough for the operation of the father's acknowledgment. Reference was made to *Mirza Qaim Ali Beg* v. *Hingun* (1). In *Hidayut-oolah* v. *Rai Jan Khanum* (2), continued cohabitation and acknowledgment of parentage were held to be presumptive evidence of marriage and legitimacy. In *Mahomed Bauker Hossein* v. *Shurfoonissa*

(1) 3 Sel. Rep., 152, 154. (2) 3 Moo., I. A., 295.

Begum (1), it was held that the legitimacy of the child might be inferred, or presumed, from circumstances without any direct proof either of a marriage between the parents, or of any formal act of legitimation. In the judgment in *Ashruff-ood-dowla Ahmed Hossein* v. *Hyder Hossein Khan* (2), it was said that a child born out of wedlock was illegitimate, but, if acknowledged by the father, he acquired the status of legitimacy; and that such acknowledgment might be express or implied, directly proved, or presumed; and that these presumptions were inferences of fact. In *Khajooroonissa* v. *Roushan Jehan* (3) the statement of the law in *Hidayutoolah* v. *Rai Jan Khanum* (4) was referred to and applied. Reference was made to *In the Matter of the Petition of Najibunnissa* (5); *Mahammad Azmat Ali Khan* v. *Lalli Begum* (6); *Sadakat Hossein* v. *Mahomed Yusuf* (7); *Muhammad Allah-dad Khan* v. *Muhammad Ismail Khan* (8).

Mr. *J. D. Mayne* and Mr. *J. H. A. Branson* for the respondent.—There was no sufficient evidence of the marriage, or of acknowledgment of the appellant as his legitimate son. If the parents had gone through the ceremony of marriage, the wife being a Buddhist, it would not have been a legal marriage; and if the acknowledgment had been made by the father, as it was alleged to have been, it would not have been effectual to legitimate the appellant. The acknowledgment, in order to have that operation, must be made by the father with intent to confer the status of a legitimate son upon his son. Here it was not alleged that this had taken place with this intent. The acknowledgment of a father, where there was a doubt whether there had been a marriage or not, might operate to legitimate a son where there had been no such ceremony, but it must have been made with the above intent. So also of treatment of a son as legitimate. Again, there was a restriction upon the father's power of legitimating a son, which would have effectually prevented its exercise in this case; and that was that the marriage to be

(1) 8 Moo., I. A., 136. (2) 11 Moo., I. A., 94.
(3) I. L. R., 2 Calc., 184; L. R., 3 I. A., 201.
(4) 3 Moo., I. A., 295. (5) 4 B. L. R. A. C., 55.
(6) I. L. R., 8 Calc., 422; L. R., 9 I. A., 8.
(7) I. L. R., 10 Calc., 663; L. R., 11 I. A., 31.
(8) I. L. R., 10 All., 289.

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presumed must have been one that could have taken place between the parents. Here, the marriage would have been illegal and void by Mahomedan law. The Recorder's opinion on this was right, as also was his finding against the conversion. However, the evidence not having gone further than to allege a recognition of the appellant's being an illegitimate son of his father, without any intimation that he was to be regarded as legitimate, the case failed in that way. This would have been insufficient to render the appellant capable of inheriting as if he had been of legitimate birth, and the suit was rightly dismissed.

Reference was made to Baillie's Digest of Mahomedan Law, Hanifia, Book V, "of parentage," Chapters I and II, "of acknowledgment;" Hamilton's Hedaya, Vol III, 549; Wilson's Glossary, "ikrar," 215; Macnaghten's Mahomedan Law, Chap. VII., Section 33, and Precedents, Chap. VI, and all the cases cited in the argument for the appellant were examined to show that intention in the acknowledgment was necessary to legitimation. An example of the insufficiency of random statements was in the case of *Mahomed Bauker Hossein* v. *Shurfoonissa* (1).

The *Solicitor General* in reply cited *Saiyad Wali Ulla* v. *Miran Saheb* (2) showing that the acknowledgment of a son as legitimate need not be a formal acknowledgment. If it could not be made out from the father's acts and conduct, that acknowledgment, however informal, would be sufficient to cause the presumption to take effect; that presumption being in favour of legitimate birth.

The judgment of their Lordships was delivered by—

LORD MACNAGHTEN.—Hadji Husain, who was a member of a Mahomedan family belonging to the Shia sect and settled in Calcutta, traded as a merchant in Rangoon, made a fortune, and died there, married but without issue, in February 1890. He left a will by which he purported to dispose of all his property. Hadji Husain had an only brother of the full blood called Abdul Hadi, who died before him in March 1886. He too was engaged in business in Rangoon for many years, but his career was less prosperous, and he returned to Calcutta a poor

(1) 8 Moo. I. A., 136. (2) 2 Bom., 285.

man some time before his death. The appellant claims to be the lawful son of Abdul Hadi by a Burmese woman, and as such to be the heir or one of the heirs of Hadji Husain and entitled therefore to a share, in so much of his estate as he could not dispose of by will according to Mahomedan law. For the purpose of the present case it is conceded that the appellant's claim is well founded, provided he can make out that he either is or is entitled to be treated as the lawful son of Abdul Hadi. And the only questions on this appeal are these: (1) Has it been established that a valid marriage took place between Abdul Hadi and the appellant's mother, Mah Thai, who was undoubtedly a Buddhist when she met her alleged husband? (2) If proof of legitimacy is wanting, is there sufficient evidence of the legitimation of the appellant by acknowledgment?

The learned Recorder found that there was no marriage, holding upon the evidence that Mah Thai was not a convert to Mahomedanism. "It would, it seems to me," he observed, "be a mere mockery of the Mahomedan religion to say that there was a conversion, when there was not even a semblance of discussion on the subject, when no priest intervened, and when the utmost the alleged convert can say is, that she repeated prayers in a language she did not understand." Taking this view he thought it unnecessary to consider the evidence as to acknowledgment. No acknowledgment in his opinion could confer the status of legitimacy upon the offspring of a Mahomedan and an unconverted Buddhist.

The learned Counsel for the appellant took exception to the proposition upon which the Recorder's ruling seems to be based. It was a mistake, they said, to talk of conversion. No Court can test or gauge the sincerity of religious belief. In all cases where, according to Mahomedan law, unbelief or difference of creed is a bar to marriage with a true believer, it is enough if the alien in religion embraces the Mahomedan faith. Profession with or without conversion is necessary and sufficient to remove the disability.

This criticism seems to be well founded. But the correction does not mend the appellant's case. There is nothing in the evidence tending to show that Mah Thai made any profession

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of the Mahomedan faith before or at the time of the ceremony which is said to have constituted marriage. Mah Thai was a witness for the appellant. She said that she knew nothing about the Mahomedan religion; all her life she lived and worshipped as a Burmese. While cohabiting with Abdul Hadi she worshipped as he did; she repeated his prayers. But she added that she did not understand the meaning of a single word. In re-examination she said that she ceased to be a Buddhist during her cohabitation with Abdul Hadi from the time of her marriage.

The learned Counsel for the appellant then invited their Lordships to embark on a wider inquiry. They proposed to examine and discuss the tenets of Buddhism with the view of showing that Buddhists come under the same category as Jews and Christians, with whom undoubtedly Mahomedans may intermarry. But it was obviously impossible for their Lordships to entertain the question in the present case. In the Court below it was common ground that such a marriage would be invalid, and there was therefore no evidence before the Court directed to the point.

In the next place it was urged that every presumption ought to be made in favour of marriage when there had been a lengthened cohabitation, especially in a case where the alleged marriage took place so long ago that it must be difficult, if not impossible, to obtain a trustworthy account of what really occurred. There would be much force in this argument—indeed it would be almost irresistible—if the conduct of the parties were shown to be compatible with the existence of the relation of husband and wife. In cases like the present conduct is a very good test, and a safer guide perhaps than the recollection or imagination of interested or biased witnesses. Mah Thai's own account of the way in which she was treated may be accepted as a fairly truthful story, considering her relationship to the claimant, and the fact that she is speaking of what occurred many years ago. The alleged marriage took place somewhere about the year 1854. If that date is correct the connection between her and her alleged husband ceased in 1856, though Abdul Hadi did not leave Rangoon for good until more than twenty years afterwards. The marriage was proposed to her,

she says, by a married sister of hers who was living in Rangoon, and who sent for her from her native village—a place called Mangi about half a day's journey off. She had already been married once, but that marriage was dissolved by mutual consent. Abdul Hadi was brought for her to see. She asked him if he would look after her and cohabit with her for a long time and he said he would. He came four or five times before the marriage. He said he would invite his male relatives, but he was not going to invite his female relatives. At the marriage some money and a ring were put into her hands as dower; with that part of the ceremony she seems to have been previously acquainted and to have been careful to insist upon it; and her consent to the union appears to have been given in due form. Then we have a picture of her married life. After the marriage she was not allowed to go out. She never saw any of her husband's female relatives. She did not know why they did not come to see her. She was not allowed to go to the mosque. She knew that wives of Mahomedans go to the mosque. She did not go because Abdul Hadi would not allow her. None of the female members of the Mahomedan community visited her, nor did she visit them. She never saw Hadji Husain or any of Abdul Hadi's male relatives. At the end of about a year and a half, when she was far gone in pregnancy, she went back to her mother's home in Mangi. She was confined there of a boy, whom she identifies as the present appellant. When the child was born she sent a message to Abdul Hadi to tell him of the birth. His answer was that he was busy and could not come. He sent however money for expenses, and he sent a message to her parents to look after her. On two occasions afterwards he went to Mangi to visit her, returning to Rangoon in the evening. The first visit was about six months, the second about twelve months after the birth of the child. On the first occasion Mah Thai says she saw Abdul Hadi alone, but nothing in particular was said. He wrote on a piece of paper a Mahomedan name for the child. Afterwards for fear it would be lost it was copied on a palm leaf. The name was never used. The paper and the palm leaf have disappeared. But Mah Thai says the name was "Abdul Razak," and that name has been reproduced or adopted in connection with this claim. On the second occasion, accord-

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ing to Mah Thai's statement, Abdul Hadi wanted to take the child to Rangoon, and wanted her to go with him. She said she was *not* well yet and that the child was not old enough. That was the last occasion on which Mah Thai saw Abdul Hadi. So far as appears she never even heard from him or of him afterwards. He was at that time apparently in prosperous circumstances, but he made no provision for her or for the child, and he left the child to be brought up as an unbeliever without so much as performing the primary rite of his religion. Mah Thai was very badly off, but she never applied to her alleged husband for assistance, nor did she make any attempt to see him, though she knew where he lived, and he had, she said, been kind to her while they cohabited together, and she liked her life with him. At the end of two years, or four years as she says in one place, she married a Burman by whom she had seven children. Then she was divorced and at the time of the trial she appeared as the wife or partner of a fourth consort.

Abdul Hadi continued to reside in Rangoon for a good many years, paying occasional visits to Calcutta. After a time he met with reverses and left Rangoon altogether. The last years of his life he spent at Calcutta, living as a pensioner on the bounty of his brother, Hadji Husain.

The child was brought up by Mah Thai's parents who were in humble circumstances. As "Moung Hpay," which was the name they gave him, he lived till he was about thirty-five, with no higher aims or aspiration than those of an ordinary Burmese peasant. When the heirs of Hadji Husain were wanted, he was discovered in the jungle at Mangi by some enterprising gentlemen at Calcutta who took the matter up as a speculation. They put him forward as the missing heir, and "Moung Hpay" has become an *alias* for "Abdul Razak." Their interest in the success of the claim is at least a guarantee that no stone has been left unturned to enable the case to be presented in as favourable an aspect as possible.

In the course of the argument Mr. Wheeler, the Judicial Clerk of the Privy Council, referred their Lordships to a case decided by the Special Court of British Burmah in 1875. It is to be found at page 75 of Mr. Christopher's Collection of

Circular Orders and Judgments, published under the authority of the Judicial Commissioner in 1881. The opinion delivered by the Court throws so much light on the practice relating to mixed marriages in Burma, and the position held by the wife and children when there is a lawful marriage, that it will not be out of place to quote a passage from it. After stating as a matter apparently not open to controversy that in order to constitute a valid marriage between a Mussulman and a Burmese woman, the woman must first apostatize and embrace Islam, the judgment proceeds as follows:—

"In a country like this, where a large number of Mahomedans from other countries have taken up their residence, and in very many cases their permanent abode, and when the natives have no race prejudices against alliances with foreigners, and whose religion offers no impediment to such, we find these mixed marriages everywhere existing among them, which have been duly celebrated according to Mahomedan rites; the wife having previously renounced her own religion and embraced that of her husband. Such an alliance is not regarded by either party as one of a temporary character, or in any way partaking of concubinage such as the *liaisons* which at one time prevailed here between Europeans and the women of the country, but as a formal and a binding marriage. It only requires a short experience of this country to know that these marriages are regarded amongst the Mahomedan community as being of as binding a character, and as conferring on the wife as honourable a position in the family as if she had been of Mahomedan descent, for she holds the same position as the husband's other wife does, if he happens to have another. The offspring likewise of these marriages are brought up in the Mahomedan faith, and are acknowledged by their father as his legitimate children, and at his death share his property as such. The Burmese wife also takes the wife's share, if she is the only one, or divides it with the other or others as the case may be; and these rights, both as regards the children and the wife, are recognized by our Courts."

If this be a correct description of the position of a Burmese woman lawfully married to a Mahomedan settler in Rangoon, it certainly would require a very violent presumption in favour of marriage to enable the Court to hold that Mah Thai was lawfully wedded to Abdul Hadi. It is tolerably obvious that neither Abdul Hadi nor Mah Thai regarded the ceremony which preceded their cohabitation in the light of a lawful and binding marriage. On this point their Lordships are glad to find themselves entirely in accord with the Court below.

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The only question remaining for consideration is the question of acknowledgment, with which the learned Recorder dealt in rather a summary way. The learned Counsel for the respondent did not deny that Abdul Hadi might have married Mah Thai, as no doubt he might have done if she had embraced Islam, nor did they contend that the intercourse between Abdul Hadi and Mah Thai was of such a character as to prevent the possible legitimation of the offspring. Their contention was that there was no acknowledgment in the legal and proper sense of the word, although there may have been an admission of paternity.

The learned Counsel for the appellant cited various texts, which, taken apart from the context, would seem to show that any admission of paternity, though made casually and not intended to have a serious effect, would be sufficient to confer the status of legitimacy. It is not in their Lordships' opinion necessary to examine these ancient authorities, or to inquire how far they are applicable to a state of society very different from that which existed at the time when they were promulgated. Their Lordships are bound by the decision of this Board which is clear upon the point. The question arose in the case of *Ashruff-ood-dowla Ahmed Hossein* v. *Hyder Hossein Khan* (1). There it was contended that the claimant, who was defendant in the suit and respondent on the appeal, had been acknowledged by his putative father. The fact of acknowledgment was denied by the appellant, and a deed of repudiation was set up, in which the father expressly repudiated the claimant as his son. An issue was framed in these terms: "Has the deed of repudiation the effect of cancelling previous acknowledgment of defendant's legitimacy, if such were made?" In the course of their judgment (p. 104 of the report) their Lordships comment upon that issue. It was, they said, "very correctly framed. It substitutes, for the ambiguous word 'sonship' which might include an illegitimate son, the word 'legitimacy,' and uses the word 'acknowledgment' in its legal sense, under the Mahomedan law, of acknowledgment of antecedent right established by the acknowledgment on the acknowledger, that is, in the sense of a recognition, not simply of sonship, but of "legitimacy as a son." It is clear that it is in

(1) 11 Moo. I. A., 94.

that sense that the term "acknowledgment" is used in a later passage of the judgment which has often been cited, where their Lordships say "a child born out of wedlock is illegitimate; if acknowledged, he acquires the *status* of legitimacy. When, therefore, a child really illegitimate by birth becomes legitimated, it is by force of an acknowledgment, expressed or implied, directly proved or presumed."

It cannot be contended that there was any acknowledgment of legitimacy in the present case. The so-called acknowledgment, even if the evidence on the part of the appellant is accepted as true in every particular, comes to nothing more than an admission of paternity which was not intended to have the serious effect of conferring the status of legitimacy. A witness is produced who says he accompanied Abdul Hadi on his second visit to Mangi, and that Abdul Hadi told him that he was going to see his son. And there is some other evidence to the like effect. Then there is some evidence that Abdul Hadi, though he had no property, left a will, bequeathing everything to his brother Hadji Husain, in which he mentioned that he had offspring in Burma. According to one witness he named the offspring as "Abdul Razak," and expressed a wish that his brother should give him "something." The will it seems was sent to Hadji Husain, but it is not forthcoming, nor was it acted upon. Assuming however every word that is said about it to be perfectly true, the evidence falls very far short of such an acknowledgment as would confer the status of legitimacy upon an illegitimate child.

Their Lordships, therefore, in the result agree with the learned Recorder in thinking that the appellant's claim fails, and they will humbly advise Her Majesty that the appeal must be dismissed with costs.

Appeal dismissed.

Solicitors for the appellant: Messrs. *Lattey & Hart.*

Solicitors for the respondents: Messrs. *Bramall & White.*

C. B.