

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Mi Me
and others v. Mi Shwe Ma, from the Court
of the Judicial Commissioner, Upper Burma ;
delivered the 25th January 1912.*

PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD ROBSON.

SIR JOHN EDGE.

MR. AMEER ALI.

[DELIVERED BY LORD MACNAGHTEN.]

This is an appeal from a judgment of the Judicial Commissioner of Upper Burma reversing a decree of the District Court of Magwe.

The question on which the Courts differed relates to the status of the Plaintiff Mi Shwe Ma. She claims to have been lawfully married to one Maung Aung Myat, deceased, and as his widow to be entitled to share equally in his estate with her elder sister Mi Me, who had been married to him for many years before his connection with the younger sister.

In Burma polygamy is undoubtedly lawful, and it is not unlawful to marry the sister of a living wife, though such a marriage is not considered quite respectable, while marriage with a deceased wife's sister is looked upon as proper and even laudable.

The law relating to marriage in Burma is extremely lax. No ceremony of any kind is essential. Mutual consent is all that is required.

In the absence of direct proof consent may be inferred from the conduct of the parties or established by reputation. But when proof of marriage depends wholly or mainly on reputation the circumstances of the case must be scrutinised with some caution because the same word which is used to describe a woman lawfully married is applied by the Burmese to a woman living with a man on less honourable terms. The lax notions prevalent among the lower classes on the subject seem to be generally deplored and condemned by their betters, and it may be that the difference of opinion between the two Courts is due in some measure to the fact that the District Judge was a native gentleman, an educated Burman, who naturally regarded with little favour if not with positive repugnance practices tolerated by the law of his country, but not in accordance with the standard of a higher civilisation. On the other hand the Judicial Commissioner was an Englishman of great experience, without any prejudice in favour of Western notions, whose only object seems to have been to administer the law truly and indifferently as he found it laid down in the Dhammathats and the rulings of his predecessors, and in Sir John Jardine's "Notes on Buddhist law" which seems to be the principal authority on the subject.

Both the learned Judges analyse the evidence with great care, though they regard it from different standpoints. The District Judge puts aside the testimony of some witnesses as unworthy of belief while the Judicial Commissioner thinks there was no reason for discrediting them. Whether that particular testimony is accepted or not there is very little contradiction in the evidence. There is abundance of evidence to the effect that Mi Shwe Ma was recognised as the wife of Maung Aung Myat. Mi Me herself says, "Plaintiff was known notoriously as Maung Aung

“Moyat's wife.” No one says that she occupied a dishonourable or an inferior position. Maung Aung Myat was a Twinzayo, that is an hereditary oil well owner, and as such entitled to receive every year a certain number of oil well sites in the oil-bearing district of Yenangyaung in Upper Burma. Twinzayo after Twinzayo comes forward on both sides to say that Twinzayos generally have two wives, and that Mi Shwe Ma was Maung Aung Myat's wife. Some of the witnesses may have used the word translated “wife” in a loose sense, but at least one witness on each side says that Maung Aung Myat and Mi Shwe Ma were “husband and wife,” an expression which seems to convey the meaning that she was his wedded wife. Then it may be observed that one of the witnesses who says that Mi Shwe Ma was Maung Aung Myat's wife was not a Burman but a Mahomedan of some position, being the head clerk in the Burma Oil Company.

The points on which most reliance was placed on behalf of the Appellant seem capable of explanation. One point was that there was no entertainment given on Mi Shwe Ma's alleged marriage. When there is a marriage between persons who have not been married before, it seems to be usual to give an entertainment at which “pickled tea” is the principal feature, or at least the chief delicacy. There was no pickled tea at Mi Shwe Ma's wedding. But then it seems that, in the case of persons who have been married before, it is not usual to have these entertainments. Maung Aung Myat had five or six children grown up living with him, and Mi Shwe Ma was a widow with two children living. Then something was made of the fact that Mi Shwe Ma continued to live with her mother in her own house. But there is authority for saying that such an arrangement is a mere matter of convenience, and probably necessary for the sake

of peace and quietness, when each wife has a family of her own. Great stress was laid on the fact that it was not clearly proved that Maung Aung Myat and Mi Shwe Ma messed together, or used to "eat out of the same pot." "Eating out of the same pot" seems rather to be an outward and visible sign of social equality than a proof of matrimony. A man united to a woman of lower degree raises her to his own social position by "eating out of the same pot." Here there is evidence that Maung Aung Myat took his meals with Mi Shwe Ma and her family when he visited her. It is difficult to see how there can be any question of social inferiority in the present case. Mi Me was Mi Shwe Ma's sister, and on perfectly good terms with her and the mother during Maung Aung Myat's life. As to Maung Aung Myat's business, he seems to have managed it himself. Sometimes one sister and sometimes the other, sometimes both, were seen with him when he visited his oil wells, but apparently he kept the business in his own hands.

On the whole their Lordships are of opinion that the Appellants have not made out a sufficient case for disturbing the judgment of the Judicial Commissioner, and their Lordships will therefore humbly advise His Majesty that the Appeal should be dismissed with costs.

In the Privy Council.

MI ME AND OTHERS

v.

MI SHWE MA.

DELIVERED BY LORD MACNAGHTEN.

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