Privy Council Appeal No. 56 of 1912.

Ma Nhin Bwin - - - - - *Appellant,*

v.

U Shwe Gone - - - *Respondent.*

FROM

THE CHIEF COURT OF LOWER BURMA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 25th FEBRUARY 1914.

Present at the Hearing.

LORD SHAW.
LORD MOULTON.
MR. AMEER ALI.

[*Delivered by* LORD SHAW.]

This is an Appeal from a Judgment and Decree of the Chief Court of Lower Burma. The Judgment is dated the 14th June 1910, and it reverses a Decree of the same Court in its Original Civil Jurisdiction dated the 16th February 1909. The Appeal is also from an Order dated the 2nd September 1910 which rejected the Appellant's application for a review of the Decree first mentioned.

The question to be afterwards dealt with is one of wide-spread importance, affecting the rights of succession in Burma. It is, however, necessary to state the circumstances, which are few and plain, in such a way as to show the limits of the decision which is about to be pronounced. These will appear as the narrative proceeds.

z [10] J 297 140 3/1914 E & S A

The Respondent, U Shwe Gone, had three daughters by his first marriage. These were Mah Nhin Bwin, the eldest, Mah Nhin Boo, about two years younger, and Mah Nhin Ghine, about six years her junior. The eldest, Mah Nhin Bwin, is the Appellant in this case. She was born about the year 1865.

These three sisters lived together apart from their father. They traded in cocoanuts in the Municipal Bazaar at Rangoon. This state of matters lasted for many years, and one of the outstanding facts in the case is the complete separation of these ladies from their father, who had married again. They were, in fact, independent traders. In later years their business appears to have been of considerable importance. One part of it, for instance, mentioned in the proceedings, is three cargoes of Nicobar nuts, of which one of the ladies was consignee, and the combined value of which amounted to a large sum. In the year 1899, the three sisters bought a house in Rangoon with money derived from the profits of their trading, and they thereafter always lived there together. What were the exact relations in the eye of the law as between these three ladies need not be determined in this case. Whether they were all, or any two of them, in full partnership or in joint adventure with each other does not require to be decided in view of the events of death which happened, and of the opinion on the legal point of succession which is afterwards to be announced.

In May 1905 Mah Nhin Ghine died. Her sister, Mah Nhin Boo, took out Letters of Administration and took possession of her property. Their father, the Respondent, however, made a claim thereto, and threatened proceedings, but nothing further was done. In June 1906 Mah

Nhin Boo died of plague. Of the three sisters, the Appellant was thus the sole survivor.

Should it accordingly be determined, as the Respondent contends, that he, being the father of these two deceasing ladies, is entitled by the law of Burma to succeed to their property as their heir in preference to their surviving sister, then the corpus of the estate, whether it originally belonged to the one sister or the other, or to both, will go to him. If, on the other hand, as the Appellant, the surviving sister, contends, it be the case that she is entitled as such to succeed as heir to her sisters, then again the entire corpus of the estate of both will pass to her in preference to her father. The point to be determined in this case is which of those two contentions is correct according to Burmese Buddhist law.

A subsidiary question was raised in the Appeal. It was founded upon allegations of commercial partnership existing between the Appellant and her sister, Mah Nhin Boo. Separate issues, which in appropriate circumstances might come to be of great importance under the law of Burma, were raised as to the rights of a surviving partner, on the one hand in a full partnership, and on the other in a limited partnership or co-adventure. These questions have not been lost sight of, but they are superseded by the conclusion to which their Lordships have come as to the right of succession in law by the father on the one hand, or by the sister on the other. The right of succession being determined in favour of the surviving sister carries with it and covers subsidiary rights of partnership as among the sisters *inter se*. No pronouncement accordingly is necessary in regard to the separate case under this head.

A still further question has been argued, and it is well illustrated by the course which the case took in the Courts below. The learned Judge in the Court of First Instance held that by Burmese Buddhist law the Respondent, the father, was entitled to succeed to the estate of his two deceased daughters in preference to the Appellant, their sister. But he also held, however, that the father by his conduct, which in the opinion of the Court amounted to " desertion " and intentional and deliberate neglect of the " ordinary duties of affection and kindred," had forfeited the right of succession which would otherwise have opened to him, and that for this reason the Suit, which was to declare such a right of succession, must fail. On this latter point the Appellate Court came to a different conclusion, holding that the Respondent's conduct had not been so grave and reprehensible as to justify forfeiture. Accordingly agreeing as it did with the Court of First Instance, that the father fell to be preferred as the heir entitled to the succession to his daughter's estate, they affirmed that right and gave Decree in his favour. But the Appellate Court, in reaching their conclusion as to the import of the Appellant's conduct, showed very clearly by their Judgment that, so far as actual separation in life of the daughters from their father was concerned, this had been established beyond doubt; and in short it may be taken as a salient fact in the present case that the life lived for years by these ladies was lived as a life separate from and independent of their father.

The need for this fact being pointedly alluded to is that their Lordships are desirous that the present case should not be held as dealing with or affecting parental rights in cases where the family continues to live

together. The rights of a parent in Burma in such circumstances appear, according to their traditions and text-books, and to Eastern patriarchal ideas, to be of a high order; and they indeed recall to the mind various drastic rules of the earlier Roman Law with regard to the scope of the *patria protestas*. Many illustrations arise in the books, but one may suffice. It is mentioned in even the Manu-Kye, the authority of which is the subject of separate treatment hereafter, that an impoverished parent could sell his children into slavery. These observations are, of course, not made to give any colour to the view that rights to such an extent still remain in modern Burmese Law or Practice, but to indicate that the idea of the powers of a parent in his patriarchal capacity over an undivided household may lead to conclusions which hold no place in rules of succession to the estate of children who have left the father's establishment and become separately settled in life.

On the broad, distinct, and simple issue now to be determined, it might have been thought that the recorded traditions and legal institutes of the country would have been clear. Unfortunately, it is very far from being so. This may no doubt be accounted for to some some extent by the fact alluded to by Burge ("Colonial and Foreign Law," I. 60), that litigation was appealed to "when the parties "refuse such compromises as may be suggested "by relations and village elders." This salutary practice of compromise has the disadvantage, however, that its results do not enter the records or procure the stamp of authority for a guide in future cases. So far as these results or the decisions of local native tribunals are concerned, they appear to have failed to find a place in the chronicles of the people.

There were, however, as there are still, documents that could be appealed to, all of them authoritative, but varying in the weight of their authority. These are the Dhammathats, usually reckoned as thirty-six in number. They form the expositions of *inter alia* customs and juridical rules, their dates of issue varying sometimes by many hundreds of years. It is no doubt true that with regard to them a certain evolution can be traced, and it seems by those who have written on the subject also to be admitted that they differ from the ordinary legal institutes in this sense, that a change of dynasty was sometimes accompanied by a fresh composition in the shape of a new, and, it might be, a comprehensive Dhammathat, which, while not removing or extinguishing its predecessors, appeared upon the scene clothed with the authority of the fresh Government and containing the latest revisal of accepted juridical doctrine.

It appears to be acknowledged that the laws, or rules, contained in the earlier Dhammathats were in their remotest origin derived from the laws of Manu, which reached Burma by way of Southern India. But with the establishment of Buddhism and the spread of Buddhist doctrine came, in the course of time, the not unnatural desire to strengthen the sanctions of juridical rule by associating its foundations, the Dhammathats themselves, with the religious sentiments of the people, and in the later Dhammathats the commands, precepts, and principles are represented as truly being emanations from the spirit of Buddha himself.

This state of matters must have made the administration of justice still dependent on a comparison of Dhammathat with Dhammathat and a balancing of the weight of their authority. It cannot be said that at the present moment

such difficulties have disappeared. Traces of them, indeed, are plain enough in the present case, and one cannot peruse the judgments under review without noting the care with which the learned Judges of Burma address themselves to this task.

There are two views which may be taken. Either the subject is dealt with sufficiently by a single clear or governing authority, or the Dhammathats as a whole must be collated, and judgment determined by the best balance which can be framed as the result of their dicta. The Judges of the Court below have adopted the latter course, and with regard to it their Lordships are not satisfied that even on such a collation the balance has been correctly struck. But the importance of the subject induces their Lordships to put on record how this matter stands according to all the Dhammathats, if the version contained in the Digest of the Burmese Buddhist Law concerning inheritance and marriage, prepared by Mr. U Gaung, be taken. Mr. Gaung was a member of the Legislative Council of the Lieutenant-Governor, and the Digest was prepared under the authority of the late Judicial Commissioner and is published with the sanction of the Government of Burma.

As showing the variety and conflict of the Dhammathats, reference may be made in particular to Sections 310 and 311 of Volume 1 of the Digest of Burmese Buddhist Law on the subject of inheritance. Section 310 refers to "relatives of previous generations who are "not entitled to inherit," and the rule of the Manukye is thus cited.

"The Rule whereby elder relatives are debarred from inheritance is as follows:—The co-heirs live apart from one another; one of them dies without leaving a wife or a husband or a child; his or her estate shall be partitioned

among his or her younger brothers and sisters, but not among the elder co-heirs."

The point of the citation is as to the significance of the word "co-heirs" in this passage, and that is illustrated by Section 311, where Mr. Gaung quotes from the Dhammara :—

"The five kinds of co-heirs are the following, namely, one's elder and younger brothers, elder and younger sisters, and their children."

It would thus appear that it was not within the conception of the Manukye on this particular Section 310 to reckon the parent as having a preferred right to the co-heirs. The co-heirs came first, namely, the brothers and sisters of the deceased; and the point of the section is that as among these it was the younger brothers and sisters that were preferred to the elder co-heirs. As stated, the introduction of the parent as to be preferred to brothers and sisters as a class and as a whole is completely negatived.

But their Lordships recognise that the real difficulties of the case—and that the difficulties are real is established not only by the consideration given to the matter by the learned Judges in the present case, but by the course of Burmese decisions to which they refer—arise from the construction of Section 311. That section deals with "relatives of previous "generations who are entitled to inherit."

The conflict had better be exhaustively set forth, and the forces on either side stand in this way :—

On the side of preferring the parents and ignoring the brothers and sisters, the Dhammathats stand as follows :—

Manu.—"On the death of a person leaving "not even a casually adopted son, his or her "parents may inherit."

Various other Dhammathats are cited by Mr. Gaung to the same effect as this extract from Manu.

Vilasa.—"In the absence of descendants "the parents are entitled to inherit."

This is repeated—almost literally—in *Dhammathat Kyaw*, in *Nandaw*, and in *Vannana*.

Razathat.—"If the deceased person leaves "no wife, children, grandchildren, or other "descendants, his parents, grandparents, or "other relatives of previous generations are "entitled to succeed to the estate."

To the same effect is the extract from *Varulinga*, namely, "In the absence of sons, "including those publicly or casually adopted, "the parents are entitled to inherit."

Finally comes *Kyannet.*—"In the absence "of wife and children, the parents are entitled "to inherit the estate of their son."

It is plain that these extracts do not proceed upon the principle of express exclusion of a right of succession by brothers and sisters. The brothers and sisters are omitted or ignored in the statement of the succession.

On the other side, the same section (Section 311) cites later Dhammathats which give very ample warrant not for ignoring, but for recognising, and for placing in priority to parents, the rights of succession on the part of brothers and sisters. The historical light in which these later Dhammathats should be viewed will be remarked upon later. But meantime this observation may be made. The opinion appears to be entertained that the Burmese Empire was in the 18th Century of the Christian Era one of the greatest Empires of the Eastern world. But it is at least certain that in the middle of that century a strong attempt was made to put the jurisprudence of Burma into a settled and more

easily referable form. In the Reign of Alompra, one of his Ministers, a Judge, completed a prose Dhammathat, known as the Dhamma, and the citation from the Dhammathats affirmatory of the right of succession on the part of brothers and sisters as in preference to parents becomes thereafter fairly clear.

These citations are as follows :—

The Dhamma.—"If a deceased person has "neither co-heirs nor descendants, his or her "parents shall inherit the estate."

It has been already made clear that co-heirs include brothers and sisters, and the exclusion of a right of succession by the parents if such brothers or sisters are alive is thus plain.

The Manukye.—"The general rule is that "relatives of previous generations shall not "inherit the property of their descendants. "But if a person dies leaving neither wife, "children, brothers nor sisters, his parents "become his sole heirs."

The Vannana has been already cited as ignoring the rights of brothers and sisters in one passage, but in another the situation is expressed thus :—"Failing children, the parents "or brothers and sisters of the deceased are "entitled to inherit."

The Rajabala.—"In the absence of husband "or wife, children, and brothers or sisters, the "parents are entitled to inherit."

The Manu. —"If children living apart "from their parents die leaving neither heirs "nor co-heirs, their parents inherit the estate."

Cittra.—"In the absence of heirs, parents, "grandparents, or other relatives are entitled "to inherit."

Kyetyo.—"In the absence of other relatives, "the parents are entitled to inherit."

It will be subsequently shown that by the use of the phrase, "in the absence of other relatives," is meant simply "in the absence of brothers and sisters." This would necessarily appear to be so. And it is from this body of authority quite manifest that the right of parents is not only not preferred, but is on the contrary very plainly postponed to the rights of succession on the part of brothers and sisters.

With regard to the Dhammathats as a whole it has to be admitted that the figurative language so frequently employed becomes little helpful in expiscating the idea of inheritance. "It is natural," says *Razathat*, "for sea-water "to flow back into the ocean after entering "rivers and streams"; and in another passage, "When lakes are full, the overflow is "returned to rivers and streams, and tidal "water always flows back to the ocean." In later centuries the mind of the commentators was still struggling with these figurative expressions; as, for instance, in the *Manu Vannana:* "In the absence of wife and children, "the parents inherit. Why so? Because of "the water which flows into the sea a portion "returns up the river." The figure which earlier appears is the simple one of water which cannot find an outlet being borne back to its source; but as the Dhammathats develop it is found that the source of the returning water cannot be reached until the intervening inlets and creeks have all been filled up, and there appears to be the conception accordingly, not of at once reaching to the source, namely, the parent, without having exhausted the collaterals, namely, the brothers and sisters. These struggles with figurative language appear even in the decisions in recent times in the Courts in Burma, and, as is not obscurely indicated in

some of these Judgments, they rather perplex than help the mind.

In their Lordships' opinion the balance of the authority of the Dhammathats is upon the side of the sisters and brothers of the deceased being preferred to the parent. It has been already noted that there is nowhere throughout any of the Dhammathats a specific exclusion of brothers and sisters, and it may further be added that the language of the earliest Dhammathats, where collaterals are, as has been stated, either omitted or ignored, seems not to be analysed or explained or the omission accounted for in the later Dhammathats holding the same view, and the concurrence is a mere repetition. Their Lordships incline to the opinion—and a special reason therefor will be immediately given—that a clearer note is struck by the Dhammathats from the time of the 12th Century of the Burmese, or from about the middle of the 18th Century of the Christian, Era. Brothers and sisters as such, co-heirs as such, and relatives as such, are all dealt with and find a place in the discussion, and wherever they appear as a class they appear in the first rank, that is to say, in the rank preferred to parents.

But these views of their Lordships are fortunately confirmed by another and an historical consideration. There can be little doubt that in the middle of the 18th Century of the Christian Era the conquest and subjugation of the country by Alompra was accompanied by a serious attempt by him and his high functionaries of State to place the jurisprudence of the country in a position of fresh and settled authority. One of his Ministers, supposed to be a Judge, issued under the Royal authority one Dhammathat in prose, known briefly as

the Dhamma. Another, "in charge of the "Moat of the City of Shwebal," and taken by Dr. Forchhammer to have been Alompra's Minister of War, compiled in prose the Manugye or Manu Kyay Dhammathat, and it is this document last mentioned which was issued by Royal authority in 1756, and which obtained the commanding position which it seems to have occupied for a succeeding period of nearly 170 years.

What was the attitude of the British Government in respect to these particulars constituting the foundations of Burmese law? A period of about a century in the case of Lower Burmah and a period of about 130 years in the case of Upper Burmah intervened between the Alompraic code and the British occupation. During this intervening period the Burmese jurisprudence had existed on the footing just described.

It would have been, of course, open to the British Government to adopt the ancient practice of issuing a fresh and authoritative Code. But it was more in accord with the genius and practice of the extension of British rule and of the incorporation of various races and populations within the British Empire to accept the native laws in their main elements in so far as they contained a working system of jurisprudence which was in accord with the traditions and habits of the people. This latter course was adopted. An instance to hand may be cited: In 1892, after the overthrow of King Theebaw and the establishment of settled order in Upper Burma under the British rule, a Circular was issued "for the assistance of the Courts "in dealing with questions of Buddhist Law." The Circular issued a translation of the Letters Patent in use under the Burmese Government

for the appointment of Judges. A list of Dhammathats was appended to it, but, as showing the complexity of the subject, the Judicial Commissioner adds that he "will be glad of "information regarding any copies that may "be extant of any of these Dhammathats other "than the more commonly known ones." After a recital of many resounding titles of the Sovereign, including that of "Mighty Fountain of Justice," the Circular proceeds thus:—

"Now with respect to the office of Judge, it is on this wise: In the Kingdom of which We are the Sovereign Ruler our numerous subjects must not be permitted one to oppress another, and the Judges must admonish and chastise, repress, and judge. In case of dispute they must, in accordance with the Dhammathats, enquire into the causes of the people and decide between them. And for this purpose they are appointed to the Courts as Judges."

This is the general rule, involving as it does that judicial task the difficulty of which has been already mentioned.

To recur to the Manu Kyay—which for so long had been recognised as the leading guide in the administration of justice. Prof. Forchhammer, in his Treatise on the Sources and Development of Burmese Law, thus describes it:—

"This Law Book is written in plain Burmese with very little Pali intermixed. It is not really a Code or a Digest of Law, but rather an encyclopædic record of existing laws and customs and of the rulings preserved in former Dhammathats. Manu Kyay does not attempt to arrange the subject-matter or to explain or reconcile contradictory passages; religious elements are freely introduced; unjust judges shall suffer punishment in Hell with head downwards; a man to whom deposits are made must be a strict performer of his religious duties; a person guilty of perjury will be visited by preternatural punishments."

And having dealt with the development of Burmese jurisprudence and made a division of

it into three periods, Dr. Forchhammer concludes thus :—

"The Manu Kyay incorporates the contents of the Law Books of the first and second periods and records laws and customs existing among the people of his time. It deals with the religious laws and usages of the Brahmins and the monastic rules of the Buddhist clergy. It allows the Buddhist element to predominate and draws largely from the Buddhist Scriptures."

It is not seriously disputed that the authority of this text-book, where it is clear, as among the Dhammathats, is of the highest rank. And accordingly, when British rule was extended over Burmese territory, the recommendation to the judicial officers substantially accepted this situation as it was found. In the words of Dr. Forchhammer :—

"The Manu Kyay is to this day the most widely read and studied law book in Burma, and after the British had taken possession of this province the natives pointed to this Dhammathat as containing the body of laws by which they had been governed."

Much has been done during the last thirty years to extend the knowledge of the various Dhammathats ; and the labours and encouragement of the Judicial Commissioner, Sir John Jardine, have greatly assisted this extension. The Manu Kyay itself has been textually translated by Dr. Richardson, and is in familiar use as a work of reference ; and their Lordships do not understand that the pre-eminent authority of this Dhammathat has been lowered by the labours of other authors or the translation of other Dhammathats.

On the point in issue in the present case, the Digest of Mr. Gaung represents the dicta of the Manu Kyay thus :—

"The general rule is that relatives of previous generations shall not inherit the property of their descendants. But if a person dies leaving neither wife, children, brothers nor sisters, his parents become his sole heirs."

There does not seem to be any room for ambiguity here. Both classes are dealt with. The one class—wife, children, brothers, and sisters—are specifically and exclusively preferred to the other class, namely, parents.

In the 10th book, chapter 19, of Dr. Richardson's translation, the text reads thus:—

"Though this is the law (that property shall not ascend), why is it also said the father and mother of the deceased have a right to his property? Because if the parents be alive and the deceased has no other relations, they shall inherit his property."

In short, the Manu Kyay is clear that the property cannot ascend to parents unless there be no other relations, and "relations," it should be added, are, as appears clearly from chapters 17, 19, 22 and 25 of the same book, synonymous with brothers and sisters.

Their Lordships do not think it necessary accordingly to pursue the enquiry further. In this Dhammathat, which still remains of the highest authority, the succession of brothers and sisters in preference to parents is established beyond doubt. This being so, the other Dhammathats do not require to be appealed to to clear up any ambiguity. Were that appeal to be made, it would, in the opinion of their Lordships, as already stated, lead to the same result.

The doubt, however, thrown upon the subject by the judgments of the Courts below can be explained to some extent by a brief glance at the development of authority on the subject.

The sense of the Manu Kyay and the authority of its rule, as above expounded, seem to have been accepted in Burma until the year 1894. On the 12th November of

that year there occurred the case of Mi San Hla Me, and the narrative is observable :—

"The two lower Courts have held that according to Buddhist law property cannot ascend where there are collateral heirs, and they have awarded plaintiff's claim. The general rule that property shall not ascend is laid down in the Manu Dhammathat, Book 10, Sections 1, 18, 19, but the rule is not without exceptions."

(It may be noted that the "Manu Dhammathat" here referred to is simply the Manu Kyay.)

The exception referred to in that case had reference to the separation of one from his adoptive brothers and sisters, and to an adopted son living with his adoptive mother. It is manifest that this so-called exception has nothing to do with the present broad and general case. And it is also clear that the law as above laid down was held to be the general law of Burma.

Thereafter, however, a certain mischance arose by way of what is reported as an *obiter dictum* in the case of Maung Chit Kywe in the year 1895. The substantial question in the case is described as "whether the brothers and sisters " of the father of the deceased, Mah Pean, " who was unmarried, have, under the rules of " inheritance in the Dhammathats, a title to " the estate of Mah Pean superior to any title " of the defendant as stepfather living with " deceased." Here it is also quite clear that the broad and simple question now to be determined was not before the Court. The stepfather was held to have no equitable claim, but in the course of the judgment there occurs this sentence :—

"The Buddhist law is opposed to the ascent of inheritance, but when it cannot go by descent the inheritance is allowed to ascend, first to the father and mother, and failing them, to the first line of collaterals,

and in the absence of heirs in that degree, to the grandfather and grandmother and the next line of collaterals.

By "the first line of collaterals" is here meant the line of the father and mother, and it will be observed from this sentence that the true line of collaterals, namely, the sisters and brothers of the deceased themselves, appears to be excluded from the succession, although on each of the higher lines they are included; that is to say, uncles and aunts would be preferred to the grandfather, although brothers and sisters would not be preferred to the father. Whatever may be said of this reasoning, at all events it is probably sufficient to observe that it is not applicable to the question in the present case, and it was not necessary to that decision.

In 1897, however, the case of Mah Gun Bon was tried, determining that the estate of a deceased stepparent or grandparent goes by descent to the stepchildren or grandchildren in preference to collateral relatives by blood. Again it must be observed that the broad and simple question now to be determined was not before the Court. Many citations are made from the Dhammathats and, as generally happens, these texts appear to be somewhat inconsistent with each other, but whether they are so in reality or not is difficult to say. After much examination the learned Judge says :—

"From these various authorities and from the other Dhammathats of which there are printed translations, it is clear that; when the ascending line and the descending line fail, the collateral line succeeds, and probably brothers and sisters would be preferred in certain instances to parents."

No indications are given of what this probability is, and it may be sufficient with regard to this authority to say that it does not cover the simple point now to be determined.

The case of Mah E Dock (18th May 1898) was referred to. It was a case with reference to adoptive parents. Various texts were cited, concluding with section 211 of the Attathanyepa Vannana, which says:—

"Where there is no younger brother or sister, then the property may revert or ascend to the elder members of the family, such as elder brothers, elder sisters, parents, or grandparents."

And the learned Judge says:—

"Although the last-quoted text throws some doubt on the subject, there seems to be good authority to the rule that parents are entitled to inherit in the absence of direct descendants. There has been no argument on the point."

The "good authority" here referred to appears to have been the cases just cited, and in their Lordships' judgment the case of Mah E Dock does not advance the proposition in any respect.

Reference was also made to the case of Maung Shwe Bo (27th February 1899) the head-note of which is this:—

"The Buddhist Law is opposed to the ascent of inheritance, but when it cannot go by descent the inheritance is allowed to ascend, first to the father and mother, and, failing them, to the first line of collaterals, and in the absence of heirs in that degree to the grandfather and grandmother and the next line of collaterals."

It is to be noted that "the Respondents in "this case were not represented by Counsel "and were unable to afford the Court any "assistance in dealing with the difficult point "of law involved." In those circumstances the Judge, perhaps not unnaturally, accepted the Chit Kywe case as a guide, and with that their Lordships have already dealt.

It is manifest that the clear and broad issue now to be determined has never been the subject of judicial decision, and that no series of precedents can be relied upon in justification

of the Judgments of the Courts below. Out of respect to the Judges, and in view of the embarrassments produced by the cases cited and by the conflict among the Dhammathats, as well as of the importance of the general question being authoritatively settled, their Lordships have thought it right to make an independent investigation so as, if possible, to clear up the whole question. In the result they are of opinion that the right of the Respondent, the father of the deceased, cannot be maintained as against the right of the Appellant, her sister.

Their Lordships will accordingly humbly advise His Majesty that the Judgment of the Court below be reversed, and that the Suit stand dismissed, the Plaintiff-Respondent to pay to the Appellant the costs of the proceedings here and in the Courts below.

In the Privy Council.

MA NHIN BWIN

v.

U SHWE GONE.

DELIVERED BY LORD SHAW.

LONDON:
PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1914.