Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Collector of Madura v. *Muttu Ramalinga Sathupathy, Anundai* alias *Ranee Kunjara Nachear and another* v. *Ranee Purvata Vurdany Nachear and another, and Ranee Purvata Vurdany Nachear and another* v. *Anundai and another, from the High Court of Judicature at Madras; delivered 21st May*, 1868.

Present:

LORD WESTBURY.
THE MASTER OF THE ROLLS.
SIR JAMES W. COLVILE.
SIR EDWARD VAUGHAN WILLIAMS.

SIR LAWRENCE PEEL.

THE principal question raised by these Appeals is the validity of an adoption made by the widow of the last male Zemindar of Ramnad.

His title to that Zemindary, which is of great extent, and, like many of the large Zemindaries in the south of India, in the nature of a Raj or Principality descendible to a single heir, was thus derived. In 1795 the then Zemindar, Muttu Ramalinga Sathupathy, having rebelled against the Government of the East India Company, was deprived of his Zemindary, which in the month of July in that year was granted to his sister Ranee Mangalaswari. His title was confirmed by a formal sunnod, executed on the 22nd of April, 1803, by Lord Clive, the then Governor of Madras, which granted the Zemindary to her, her heirs, successors, and assigns. She was married to Ramasami Taver,

who died some time between 1797 and 1804; and in the latter year Mangalaswari, then a widow, and professing to act under a written agreement between her and her late husband, adopted one Annasami, his nephew, whose title she afterwards confirmed by a will executed on the 11th of April, 1807. She died in that year, and was succeeded by Annasami. He had seven wives, of whom only his chief wife, Mootoo Verayee, and the Appellant, Kunjara, need be mentioned, but had no male issue by any of them. And on the 26th of January, 1820, he adopted a son, Ramasami, who was the natural brother of Mootoo Verayee, and, by a testamentary instrument of that date (App., p. 55, No. 36), confirmed that adoption, stating it to have been made "by himself and his chief wife, Mootoo Verayee, unanimously." He died in February 1820, and was succeeded by Ramasami, who died in 1830, without male issue, but leaving a widow, the Respondent Purvata, and two infant daughters, Mangalaswari and Doraraja, surviving him. It is unnecessary to notice the unsuccessful suits by which the titles of Annasami and Ramasami were impeached during their lives, though some of the proceedings in them help to swell the voluminous record before their Lordships. The title of Ramasami to the Zemindary, as stated above, is the common ground of all the parties to this litigation, and, on the consideration of these Appeals, must be taken to be incontestable.

On the death of Ramasami, without male issue, his successor in the Zemindary, according to the course of succession *ab intestato*, was his widow. He had, however, two days before his death addressed to the Collector, as the representative of Government, the arzi of the 19th of April, 1830, which is set forth at page 84 of the record. In that document, after stating that he was suffering from small-pox, and that the issue of his illness was uncertain, he expressed himself as follows: "I have made an arrangement that my mother, Ranee Mootoo Verayee, who is my guardian in every respect, and who holds chief right to this Zemindary, should enjoy this Zemindary and all other things; pay peishkist to the Sirkar; maintain my royal wife, my daughter Mangalaswari, of five years old, and her younger sister, a small child; and, when these

children shall attain their proper age, to make an arrangement with regard to their right to the Zemindary, and continue the same; that my natural brother Muttuchella Tevar should manage the affairs of the Zemindary until my children shall attain their proper age; and I have issued necessary orders for the strict observance of the above arrangement."

The affairs of the Zemindary seem to have been managed under this arrangement between 1830 and 1840. The Respondent Purvata is said to have been herself very young at the date of her husband's death; her children were infants; and the mother-in-law was probably the only member of the family with any capacity for business. In 1840 Mangalaswari, the elder daughter of Ramasami, who had previously been married, died after giving birth to a male child, who did not survive her. About that time differences arose between Purvata and her mother-in-law, who appears to have set up some claim to the Zemindary in her own right. The Board of Revenue, acting as Court of Wards, intervened; appointed, in April 1840, Purvata guardian of Dorarajah, her infant daughter, in the place of Mootoo Verayee; and assumed the management of the estate, treating apparently Dorarajah as *de facto* Zemindar, either by virtue of the arzi executed by Ramasami, or by reason of Purvata's waiver of her rights in favour of her infant daughter.

Dorarajah died on the 24th September, 1845. She had previously been married, and having no children attempted on the day before her death to adopt as a son a child named Anundai. By the document called her will (No. 53, p. 81), she declared however that this person would only be entitled to the Zemindary in succession to her mother Purvata, whom she calls "the chief heiress to the Zemindary." This adoption was communicated to the Collector by a letter of the 23rd of September, 1845 (No. 63, p. 84), but was treated by him as invalid under the 25th section of Regulation V of 1804, because made by a disqualified landholder without the consent of the Court of Wards. The right of Purvata to the Zemindary as heiress either to her husband or to her daughter was therefore recognized by the revenue authorities, who, in April 1840, put her in possession of it as a

qualified proprietor, and relinquished the management of it to her.

In the meantime, and ever since 1840, Mootoo Verayee had been engaged in active litigation with Purvata and others for her enforcement of her alleged rights to the Zemindary. The proceedings in her last suit are set forth in the record from p. 16 to p. 48. For the most part they have no bearing upon any of the questions which their Lordships have now to determine; and it is unnecessary to notice any of them except the supplemental rejoinder at p. 41, which was filed by Purvata on the 6th of March, 1846; and the Razeenamah or agreement of compromise (at p. 48) by which this litigation was terminated on the 26th of February, 1847. In the former Purvata asserted, apparently for the first time, a right to adopt a son to her husband either under an alleged authority from him, in the event, which had happened, of both his daughters dying without issue, or under the more general power of adoption which is disputed on these appeals. By the latter Mootoo Verayee, in consideration of the provision made for her and her foster son Sevasami, declared that Purvata might thenceforward enjoy the Zemindary for ever; and, besides, might adopt a son at her pleasure as specified in the supplemental rejoinder.

It is clear, therefore, that whatever obscurity and confusion there may be in the history of the Zemindary and its management between the death of Ramasami in 1830, and the month of May 1847, Purvata was at the last mentioned date in undisputed possession as Zemindar of Ramnad.

In that state of things she made the adoption which is the subject of the present dispute. On the 19th of May, 1847, she gave notice to the Collector of her intention to adopt her sister's younger son, and invited him to be present at the ceremony (p. 79). On the 24th of the same month she formally adopted the Respondent Ramalinga. It is admitted that all the requisite ceremonies were duly performed, and that the adoption cannot be impeached, except on the ground of the insufficiency of her power to make one. The Board of Revenue, by an order dated the 10th of March, 1849, declared that the adoption was invalid, and that on the death

of Purvata the Zemindary would escheat to Government. On the 23rd of July, 1855, the Madras Government set aside this order, and determined to recognize the adoption until it should be declared invalid by a Decree of a Civil Court. But on the 29th of October, 1855, the same Government cancelled its former order, and confirmed the order of the Board of Revenue of the 10th of June, 1849; and caused this its final determination to be intimated to Purvata through the Collector, by a letter dated the 15th of November, 1855.

The first of the suits out of which these Appeals arise (No. 3 of 1856) was instituted in that year by Kunjara, claiming as the last surviving wife of Annasami, and her daughter, Mangalaswari, against Purvata alone. They impeached the validity of the adoption, insisted that on Purvata's death Kunjara, as the next in succession, would be entitled to the Zemindary, and claimed maintenance in the meantime. Purvata, by her answer, alleged that Kunjara was not the wife but the concubine of Annasami, and could have no title to the Zemindary. Various persons afterwards intervened under different titles, and were all, by supplemental Plaint, made parties defendant to this suit. But none of them, except the Respondent Ramalinga, and the Collector, are parties to these Appeals, or have any interest therein.

The second of the two suits (No. 1 of 1860) was brought in February of that year by the Respondent Ramalinga, who had then attained his majority, against Purvata and the Collector. Against the latter it sought to have the before-mentioned order of intimation of the 15th of November, 1855, set aside as illegal; and against the former it prayed that immediate possession of the Zemindary might be adjudged to the Respondent Ramalinga.

The second suit was the first heard, and by his Decree, dated the 18th March, 1861 (1st Record, page 8), the Civil Judge ordered that the order of the Collector of the 15th of November, 1855, and his orders to certain subordinate officers therein referred to, should be cancelled; and that as he had failed to establish any right to the estate, or to invalidate the acts of Purvata in respect to it, he should abstain from all further interference; and that Purvata, subject to the provisions of Hindoo law, and

Section 8 of Regulations XXV of 1802, might, without the previous consent of the Collector, or of any other authority, assign and transfer to the Plaintiff (the Respondent Ramalinga), or whomsoever she might think proper, by sale, gift, or otherwise, her proprietary right in the Ramnad Zemindary. The Decree further declared that it was to be without prejudice to the Collector's right to bring a regular action for the estate if he conceived that the Government had a superior title to the party in possession, but it prohibited him from summarily seizing it as an escheat whilst there were heirs.

The Decree made by the same Judge in the first suit bore date the 12th of April, 1861. It found that Kunjara was one of the wives of Annasami, but that as such she had no right to succeed to the estate after Purvata, being only her step-mother, and therefore excluded from inheriting; it further decreed that the Zemindar of Ramnad for the time being should pay to the Plaintiffs (the Appellants Kunjara and her daughter) maintenance at the rate of 400 rupees per mensem, with the arrears of such maintenance from the date of the institution of the suit (2nd Record, p. 35).

Against the first of these Decrees the Collector, against the second Kunjara and her daughter, appealed to the High Court of Madras; and on the 26th of March, 1863, that Court made an Order on both Appeals, whereby it directed the Civil Judge to try the following issue: "Was the adoption made with the authority of Mootoo Verayee, widow of Annasami, or with that of any others of the kindred of the late Zemindar Ramasami, in whose behalf the said adoption was made?" It further gave certain directions as to the evidence to be produced on the trial of the issue (1st Record, page 110).

This issue was accordingly tried on the 1st of September, 1863; and the findings of the Civil Judge are at page 93 of the 1st Record. They are in effect that the consent of Mootoo Verayee, and of all the then surviving kindred of Ramasami, had been obtained to the adoption. Against this finding the Collector, as well as Kunjara and her daughter, again appealed to the High Court, which on the 17th of November, 1864, after two hearings, pronounced an elaborate Judgment in favour of Purvata's right to adopt, and her exercise of it in

the particular case, and in doing so the Court came to the following conclusions :—

1. That the widow of the late Zemindar had made a valid adoption; that there was no doubt that it was made with the assent of the majority of her husband's sapindas; and that though it might be doubtful whether the Civil Judge was right, there were not sufficient grounds for saying that he was wrong in thinking that all the sapindas then living had been proved to have assented.

2. That considering the extent of the property, and the fact that she was the last surviving widow of the Zemindar Annasami, Kunjara was entitled to a more liberal maintenance than that awarded by the Civil Judge; and that such maintenance should be at the rate of 10,000 rupees per annum. Subject to that modification the Decrees below were affirmed, and the Appeals dismissed without costs.

From the Decrees drawn up in conformity with the Judgment, the following Appeals have been presented, viz. :—

1st. An Appeal by the Collector impeaching the validity of the adoption, and also objecting to so much of the Decree of the 18th of March, 1861, as declared or implied that Purvata had power to alienate or affect the Zemindary beyond her life interest.

2ndly. An Appeal by Kunjara and her daughter, also impeaching the adoption; and further objecting to the Decree of the 12th of April, 1861, in so far as it declared that Kunjara had no right of succession to the Zemindary.

3rdly. A cross Appeal by Purvata and Ramalinga, objecting to the maintenance awarded by the High Court as exorbitant; and insisting that the Decree of the Civil Judge ought not to have been varied in that respect.

All these Appeals have been heard together; and their Lordships have now to dispose of them.

The principal contest has been upon the broad and general question, whether by the Hindoo law as current in what is known as the Dravada country (wherein Ramnad is situate), a widow can adopt a son to her husband without his express authority; and if so, by whose assent that defect of authority must be supplied.

Their Lordships think it will be convenient to

consider in the first place how this question really stands upon the authority of Mr. Colebrooke and Sir Thomas Strange.

Mr. Colebrooke's note on the Mitacshára (chap. i, sec. 11, art. 9), which has been much discussed, clearly involves three propositions:—1. That the widow's power to receive a son in adoption, subject to some conditions, is now admitted by all the Schools of Hindoo law except that of Mithila. 2. That the Bengal (or Gaura) School insists that the widow must have the formal permission of her husband in his lifetime. 3. That some at least of the other Schools admit the adoption to be valid, if made by the widow with the assent of her husband's kindred. The two first propositions are admitted; but it has been argued for the Appellants, that on the true construction of this note, Mr. Colebrooke's authority for the last proposition is limited to the Mahratta School, in which the treatise called the Mayu'cha is the predominant authority. Balambhatta, however, whom he cites as an authority for a power of adoption in the widow wider even than that expressed in the third proposition, was a commentator of the Benares School. And the several notes of Mr. Colebrooke, at pp. 92, 96, and 115 of the 2nd volume of Strange's Hindoo Law, seem to their Lordships to show conclusively that he considered the doctrine embodied in the third proposition to be common "to the followers of the Mitacshara in the Benares as well as in the Mahratta School," and as such to be receivable as the law current in the Zilla Vizagapatam, which lies within the northern or Andra division of the Dravada country.

Again, Sir Thomas Strange's statement of the law in his work, vol. i, p. 79, is clear and unambiguous. He says: "Equally loose is the reason alleged against adoption by a widow, since the assent of the husband may be given to take effect, like a will, after his death; and according to the doctrine of the Benares and Mahratta Schools, prevailing in the Peninsula, it may be supplied by that of his kindred, her natural guardians; but it is otherwise by the law that governs the Bengal Provinces."

Their Lordships entertain no doubt that the term "the Peninsula," as used here, and other passages by the same author, denotes that part of India which is south o the line drawn from Ganjam to the

Gulf of Cambay, and includes the whole of the Dravada district. The learned Counsel for the Appellants, however, appeal from Sir Thomas Strange as a text writer, to Sir Thomas Strange as a Judge, and cite his dictum in Pillai *v.* Pillai (2 Strange's Notes of Cases, p. 103), as opposed to this passage. In that case, Sir Thomas Strange, after citing the text of Vasish'ta, says: "Hence it may be inferred what appears confirmed by opinions of living Hindu lawyers, and by every case of the kind we are acquainted with, that the consent of the husband is indispensable to adoption into his family." But this passage does not alter the view which their Lordships have already expressed as to the effect of the matured authority of Sir Thomas Strange. The precise question which is now under consideration was not in issue in that case, where there was a written authority from the husband, and where the real issue was, whether the widow could adopt a boy not designated in that written authority. Again, the case was decided in 1801, at a time when the ancient authorities of Hindoo law were far less accessible to an European Judge than they have since become. And Sir Thomas Strange, in his work composed twenty years later, says of this very case of Pillai *v.* Pillai that it was discussed on comparatively imperfect materials; that the public was not then possessed of the extensive information contained in Mr. Colebrooke's translation on the law of inheritance, and the treatises on adoption since translated by Mr. Sutherland, to say nothing of the MSS. materials that came subsequently to his own hands, and which had contributed largely to every chapter of his work. There can, therefore, be no doubt but that the passage in his book contains the matured opinion of Sir Thomas Strange, and that it must be treated as an authoritative declaration of that opinion controlling his dictum in Pillai *v.* Pillai.

Having thus ascertained what was the opinion of two of the highest European authorities upon this question of the Hindoo law current in the South of India, their Lordships have next to consider whether any sufficient reason has been assigned for treating that opinion as unfounded.

The remoter sources of the Hindoo Law are common to all the different Schools. The process by which those Schools have been developed seems to

have been of this kind. Works universally or very generally received became the subject of subsequent commentaries. The commentator put his own gloss on the ancient text; and his authority having been received in one and rejected in another part of India, Schools with conflicting doctrines arose. Thus the Mitacshára, which is universally accepted by all the Schools except that of Bengal as of the highest authority, and which in Bengal is received also as of high authority, yielding only to the Daya Bhága in those points where they differ, was a commentary on the Institutes of Yajnawulcya; and the Daya Bhága, which, wherever it differs from the Mitacshára, prevails in Bengal, and is the foundation of the principal divergencies between that and the other Schools, equally admits and relies on the authority of Yajnawulcya. In like manner there are glosses and commentaries upon the Mitácshara, which are received by some of the Schools that acknowledge the supreme authority of that treatise, but are not received by all. This very point of the widow's right to adopt is an instance of the process in question. All the Schools accept as authoritative the text of Vasishta, which says, "Nor let a woman give or accept a son unless with the assent of her lord." But the Mithila School apparently takes this to mean that the assent of the husband must be given at the time of the adoption, and, therefore, that a widow cannot receive a son in adoption, according to the Dattaca form, at all. The Bengal School interprets the text as requiring an express permission given by the husband in his lifetime, but capable of taking effect after his death; whilst the Mayucha and Koustoobha, treatises which govern the Mahratta School, explain the text away by saying that it applies only to an adoption made in the husband's lifetime, and is not to be taken to restrict the widow's power to do that which the general law prescribes as beneficial to her husband's soul. Thus upon a careful review of all these writers, it appears that the difference relates rather to what shall be taken to constitute, in cases of necessity, evidence of authority from the husband, than to the authority to adopt being independent of the husband.

The duty, therefore, of an European Judge, who is under the obligation to administer Hindoo law, is

not so much to inquire whether a disputed doctrine is fairly deducible from the earliest authorities, as to ascertain whether it has been received by the particular School which governs the district with which he has to deal, and has there been sanctioned by usage. For under the Hindoo system of law, clear proof of usage will outweigh the written text of the law. The Respondent Ramalinga insists that, tried by either test, the proposition for which he contends will be found to be correct.

The industry and research of the Counsel in the Courts below have brought together a *catena* of texts, of which many have been taken from works little known and of doubtful authority. Their Lordships concur with the Judges of the High Court in declining to allow any weight to these. But the highest European authorities, Mr. Colebrooke, Sir Thomas Strange, and Sir William MacNaghten, all concur in treating as works of unquestionable authority in the South of India, the Mitacshara, the Smriti Chandrika, and the Madhavyam, the two latter being, as it were, the peculiar treatises of the Southern or Dravada School. Again, of the Dattaca Mimansa of Nanda Pandita, and the Dattaca Chandrika, two treatises on the particular subject of adoption, Sir William MacNaghten says that they are respected all over India; but that when they differ the doctrine of the latter is adhered to in Bengal and by the Southern Jurists, while the former is held to be the infallible guide in the Provinces of Mithila and Benares. The Dattaca Mimansa, by the author of the Madhavyam, is also recognized as of high authority in the South of India by Mr. Ellis in his note at page 168 of the 2nd volume of Strange.

Of these treatises, the Mitacshara is silent on the point in question. The Dattaca Mimansa of Nanda Pandita (sec. 1, Articles 15 to 18, and Articles 27 and 28) is opposed to the Respondent's view of it; but it seems equally opposed to an adoption by a widow under any circumstances. The Dattaca Chandrika (sec. 1, Articles 31 and 32) allows a widow to give a son in adoption where her husband has not forbidden her to do so, implying his assent from the absence of prohibition. The Smriti Chandrika also permits a mother to give her son if she be authorized to do so by an independent male. And it is argued that what

these two last authorities lay down concerning a widow's right to give, must, by parity of reasoning, be taken to be laid down concerning her right to receive a son in adoption. The Madhavyam (if that term is confined to the Parasara Madhaviya and does not embrace all the works of Vidya Narainsamy) seems also to contain no direct determination of the point in question; but the Dattaca Mimansa of that author clearly and explicitly declares the right of the widow to adopt with the authority of her father-in-law, and whatever other kinsmen of her husband may be comprehended under the *et cætera*. It cannot, therefore, be said that the proposition laid down by Mr. Colebrooke, and adopted by Sir Thomas Strange, is not supported by at least one of the original treatises of undoubted authority in Dravada. The Dattaca Mimansa of Sri Rama Pandita, who is stated by the Judges of the High Court to be an authority very generally cited in the South of India, also confirms the proposition.

Their Lordships have excluded from their consideration of what is the positive law of Dravada the peculiarly Mahratta treatises (the Mayu'cha and Koustubha); and also the Viro Mitrodaya, which is a treatise of especial authority at Benares. It must, however, be admitted, that the fact of the reception of the doctrine in question by Schools so closely allied to that of Dravada is in favour of the hypothesis that it also obtains in the latter, and strengthens the authorities which directly support that hypothesis.

The evidence that the doctrine for which the Respondents contend has been sanctioned by usage in the South of India, consists partly of the opinions of Pundits, partly of decided cases. Their Lordships cannot but think that the former have been too summarily dealt with by the Judges of the High Court. These opinions, at one time enjoined to be followed, and long directed to be taken by the Courts, were official, and could not be shaken without weakening the foundation of much that is now received as the Hindoo law in various parts of British India. Upon such materials the earlier works of European writers on the Hindoo law, and the earlier decisions of our Courts, were mainly founded. The opinion of a Pundit which is found to be in conflict

with the translated works of authority may reasonably be rejected; but those which are consistent with such works should be accepted as evidence that the doctrine which they embody has not become obsolete, but is still received as part of the customary law of the country. A considerable body of these futwahs or opinions is collected in the third part of what has been called throughout the argument in this case the "green book." It is not necessary to consider whether they can all of them be supported to the full extent of what they affirm. But they show a considerable concurrence of opinion to the effect that where the authority of her husband is wanting, a widow may adopt a son with the assent of his kindred in the Dravada country.

The decided cases, exclusive of those in the Bombay Presidency which may be taken to be governed by the Mayucha, are certainly not many. But there is at least the case G, decided by the late Sudder Court of Madras, and there are the French cases, which ought not, their Lordships think, to be wholly disregarded as recognitions of the law prevailing in the South of India. They are to be relied on in this case as affording evidence of a long continued series of opinions officially given, and judicially received, which were adopted as the grounds of decision, showing a continued and recognized existence of a doctrine, which suffices to remove from the opinions of the Pundits in this case every suspicion of being opinions given to support the interests or judgments of others. Against these authorities the Appellants have invoked that of the case in 2 Knapp, p. 203. But what was, in fact, decided by the very guarded Judgment delivered by the late Lord Wensleydale in that case? It was that, according to the native text-writers—including probably Vasishta, certainly including the Dattaca Mimansa of Nanda Pandita—the authority of the husband was a requisite to a valid adoption; that the strictness of the law had been in many districts, and particularly in the Mahratta States, relaxed or modified by local usage, but that it had not been established to their Lordships' satisfaction that that relaxation had extended to the particular district of Etawah, in Upper India. Disclaiming, therefore, the intention to decide what was the law in other parts of India, their Lordships held that

they could not say that the law in that district did not require the direction of the husband in order to the validity of an adoption, which it was necessary for them to do in order to reverse the Judgment of the Court below. It is clear that that decision was not intended to govern, and cannot be taken to govern, a case arising in the South of India.

Upon the whole, then, their Lordships are of opinion that there is enough of positive authority to warrant the proposition that according to the law prevalent in the Dravada country, and particularly in that part of it wherein this Ramnad zemindary is situate, a Hindoo widow, not having her husband's permission, may, if duly authorized by his kindred, adopt a son to him. And they think that that positive authority affords a foundation for the doctrine safer than any built upon speculations touching the natural development of the Hindoo law, or upon analogies, real or supposed, between adoptions according to the Dattaca form, and the obsolete practice, with which that form of adoption co-existed, of raising up issue to the deceased husband by carnal intercourse with the widow. It may be admitted that the arguments founded on this supposed analogy are in some measure confirmed by passages in several of the ancient treatises above referred to, and in particular by the Dattaca Mimansa of Vidya Narainsamy, the author of the Madhavyam; but as a ground for judicial decision these speculations are inadmissible, though as explanatory arguments to account for an actual practice they may be deserving of attention.

It must, however, be admitted that the doctrine is stated in the old treatises, and even by Mr. Colebrooke, with a degree of vagueness that may occasion considerable difficulties and inconveniences in its practical application. The question who are the kinsmen whose assent will supply the want of positive authority from the deceased husband is the first to suggest itself. Where the husband's family is in the normal condition of a Hindoo family—*i. e.*, undivided—that question is of comparatively easy solution. In such a case the widow, under the law of all the Schools which admit this disputed power of adoption, takes no interest in her husband's share of the joint estate, except a right to maintenance. And though the father of the husband, if alive,

might, as the head of the family and the natural guardian of the widow, be competent by his sole assent to authorize an adoption by her, yet, if there be no father, the consent of all the brothers, who, in default of adoption, would take the husband's share, would probably be required, since it would be unjust to allow the widow to defeat their interest by introducing a new co-parcener against their will. Where, however, as in the present case, the widow has taken by inheritance the separate estate of her husband, there is greater difficulty in laying down a rule. The power to adopt when not actually given by the husband can only be exercised when a foundation for it is laid in the otherwise neglected observance of religious duty, as understood by Hindoos. Their Lordships do not think there is any ground for saying that the consent of every kinsman, however remote, is essential. The assent of kinsmen seems to be required by reason of the presumed incapacity of women for independence, rather than the necessity of procuring the consent of all those whose possible and reversionary interest in the estate would be defeated by the adoption. In such a case, therefore, their Lordships think that the consent of the father-in-law, to whom the law points as the natural guardian and "venerable protector" of the widow, would be sufficient. It is not easy to lay down an inflexible rule for the case in which no father-in-law is in existence. Every such case must depend upon the circumstances of the family. All that can be said is, that there should be such evidence of the assent of kinsmen as suffices to show that the act is done by the widow in the proper and *bonâ fide* performance of a religious duty, and neither capriciously nor from a corrupt motive. In this case no issue raises the question that the consents were purchased, and not *bonâ fide* attained. The rights of an adopted son are not prejudiced by any unauthorized alienation by the widow which precedes the adoption which she makes; and though gifts improperly made to procure assent might be powerful evidence to show no adoption needed, they do not in themselves go to the root of the legality of an adoption.

Again, it appears to their Lordships that inasmuch as the authorities in favour of the widow's power to adopt with the assent of her husband's

kinsmen, proceed in a great measure upon the assumption that his assent to this meritorious act is to be implied wherever he has not forbidden it, so the power cannot be inferred when a prohibition by the husband either has been directly expressed by him, or can be reasonably deduced from his disposition of his property, or the existence of a direct line competent to the full performance of religious duties, or from other circumstances of his family which afford no plea for a supercession of heirs on the ground of religious obligation to adopt a son in order to complete or fulfil defective religious rites.

Their Lordships having thus stated the conclusions to which they have come upon the general question of law involved in these Appeals, will now consider whether the High Court of Madras has correctly applied that law to the facts of the present case.

They are of opinion that both the Courts below were right in holding that the collateral kinsmen of Ramasami were to be found in the Taver family, of which the printed pedigree forms part of the record. According to Hindoo law Ramasami was the son, though by adoption, of Annasami; and he again was the son, though by adoption, of the first Ramasami, who was a Taver; and the heirs of Ramasami, in the absence of descendants, were traceable upwards through these two persons, as if they had been his natural father and grandfather. There is no ground for saying that this, the legal consequence of the successive adoptions, was affected by the assumption of the name of Satoopati, the family name of the ancient Zemindars of Ramnad and of Mangalaswari, the grantee of the Zemindary. It is to be observed, however, that this line affords none but very remote kinsmen, if their relationship to Ramasami be calculated on the principle just stated. The nearest of them, Motoosamy, would on that principle stand in a degree of relationship to Ramasami which, according to the rule of the Mitácshára (cap. 2, sec. 5, art. 6), would exclude him from the category of Sapindas, and place him in that of Samánódacas, or those connected only by a libation of water, and a common family name. He was, however, the natural brother of Annasami, and that circumstance might strengthen his title to be

considered, in the absence of nearer connections, the natural male protector of Ramasami's widow. Again, the person who really filled the office of protector, and that by the express appointment of Ramasami, was, up to the time of her quarrel with her daughter-in-law, Mootoo Verayee. Nor is it by any means unusual in a Hindoo family to find the mother-in-law occupying a position of considerable power and importance. Moreover, she was unquestionably the heir to the property next in succession to Purvata, after the failure of Ramasami's descendants. It therefore appears to their Lordships that in this state of the family the assent of Mootoo Verayee, of Mootoosamy, and of the other persons who are proved beyond all question to have assented, was sufficient to legitimate the adoption, even if the evidence has failed to prove the consent of the yet remoter kinsman Ramrajah Taver.

It has been argued, however, that even if this adoption would have been regular had Ramasami died childless and intestate, his arzi relating to the management and descent of the zemindary contains an indication of his intention that his daughters and their descendants should be his successors and representatives, which ought to be taken to imply a virtual prohibition of the act of adoption by his widow. Their Lordships cannot accede to this argument. Ramasami, no doubt, intended to be represented by his daughters' line, should that line continue. But he made no express provision for its failure, and the same reasons which justify a presumption of authority to adopt in the absence of express permission, are powerful to exclude a presumptive prohibition to adopt when on a new and unforeseen occasion the religious duty arises. His widow has not claimed a power to adopt, except on the happening of the contingency for which her husband omitted to provide. And her power so limited, not having been qualified by his disposition, must be determined by the general law.

Another argument for the Appellants was founded on the attempted adoption of a son, Annasami, by Dorarajah. That person is not a party to either of these suits; he has not impeached the adoption of the Respondent Ramalinga; he has, on the contrary, supported it as a witness. Nothing decided by the

Decrees under appeal can prejudice his rights, if he has any, under an adoption which the Revenue authorities at the date of it seem to have treated as illegal. Their Lordships have not before them the necessary materials for determining whether that adoption was, in fact, valid or invalid; or whether, if valid, it would have any, and what, effect on the title of the Respondent Ramalinga. In that state of things neither of the present Appellants can be allowed to insist on this supposed *jus tertii* as an objection to the Decrees which they impeach.

Their Lordships have, therefore, come to the conclusion that these Decrees and the Judgment on which they proceed are substantially right in so far as they affirm, as between the parties to this litigation, the validity of the adoption by Purvata of the Respondent Ramalinga.

They also think that there is no foundation for the other and minor objection taken by the Collector to the Decree of the 18th of March, 1861, on the ground that it asserts a power in Purvata to alienate or affect the Zemindary beyond her life interest. Her power of alienation is expressly stated to be "subject to the provisions of Hindoo law;" and the only object of that part of the Decree was to affirm her right to exercise that power within the limits prescribed by the Hindoo law, free from the control of the Government or its Revenue Officers.

Their Lordships are further of opinion, that there are no grounds for impeaching the Decree of the 12th of April, 1861, in so far as it found that the Appellant Kunjara stood in the relation only of step-mother to Ramasami, and therefore could have no right to inherit his estate. They think that this conclusion is supported by the Document No. 36, at page 55, which expressly states that Ramasami was adopted by Annasami and Mootoo Verayee unanimously.

Upon the cross Appeal their Lordships have only to observe, that the *quantum* of maintenance is a question with which the Courts of India, having local knowledge, and being conversant with the habits of native families, are peculiarly competent to deal; and that strong grounds should be shown to justify any interference by this Committee with their discretion in that matter. And their Lordships see no reason for questioning the soundness of the

discretion exercised by the High Court of Madras in the present case.

Being therefore of opinion that the Decrees under Appeal are correct, and ought to be affirmed, their Lordships will humbly recommend to Her Majesty that the two Appeals and the cross Appeal be each dismissed, with costs.