

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Inderun Vahungypooly Taver v. Ramasawmy Pandia Talaver, and another, from the High Court of Judicature at Madras; delivered 14th July, 1869.

Present:

SIR JAMES W. COLVILLE.

SIR JOSEPH NAPIER.

LORD JUSTICE GIFFARD.

SIR LAWRENCE FRANKL.

THE question on this Appeal is, first, whether there was a marriage, in fact; and, secondly, if there was a marriage in fact, then whether there was a marriage in law?

We have the Judgment of both the Courts below coming to the conclusion, from the evidence, that there was a marriage in fact; there was evidence before them, on the consideration of which they might fairly come to that conclusion. Unless a finding of that sort—where two Courts are unanimous in their opinion—is unsupported by, or contrary to, the evidence, it is not the course of this Board to interfere with that finding.

There were eight witnesses who spoke to the marriage having taken place, then two of the three Urzees, and besides the very material fact of the Appellant having admitted before the Tasildar, or done that which was tantamount to an admission, that such a marriage had taken place.

With reference to the Urzees, the two first Urzees which have been alluded to are very plain, and very explicit. They are at pages 14 and 15 of the Appendix. The first of them is in these terms:—
“Kulalvoy Moli, whom I had married before my
“succession to the zemindary, had, in defiance of
“the prescribed observations of my caste, separated

"from me before giving birth to any issue, and
 "married Vellaiya Tevan, of Nauja Nadu. That
 "Taugammai Nachiyar, whom I married after in-
 "heriting the zemindary, and made my patta-sri
 "(or royal wife) might beget issue, vows were made
 "to Tirumalai Sevamaiyar, of Teukosi, and by the
 "grace of that deity, and by your good wishes, she
 "has borne me a son and a daughter. Before this
 "I had on your order, No. 1, dated the 24th Janu-
 "ary, 1856, proceeded to offer up my prayers to
 "the said Twamiya. To do the same once more,
 "now it is necessary that I should send my royal
 "wife and my children. As for their assistance,
 "about thirty persons, both bearers of palanquins
 "and servants, will be sent to accompany them. I
 "request that an order may be issued providing
 "against any obstruction of them on their way."

The second Urzee is as follows :—“ I had been for
 "a long time suffering from paralysis, and now I
 "have slightly recovered. When first I was mar-
 "ried to the daughter of Govindapera Pandya
 "Tolaivan, I was exceedingly young, and the bride
 "was my senior in age, but perceiving her levity
 "of conduct, I repudiated her. Subsequently in
 "contravention of the prescribed usage of the
 "zemindary, she married Vellaya Tavan, of Nauju
 "Nadu. I then married Taugammai Nachiyar, the
 "daughter of Kumaraswami Tadiya Talaivar, of
 "Kadambur, who has borne me a daughter and son.
 "I now learn that as I am taken ill, it is intended frau-
 "dulently to report to the Government in disparage-
 "ment of my dignity that my first wife, who, on being
 "divorced by me for misconduct, had married an-
 "other, has borne me a male child. I deny that he
 "is my son; I further disclaim any relationship to
 "him. As a report of these matters at the time
 "of her repudiation would have derogated from
 "my respectability, I abstain from notifying the
 "same. These matters have also been brought
 "to the notice of the sub-collector. I therefore
 "pray that your benevolence may afford protection
 "to my children and my younger brother."

These Urzees are plain and explicit enough, and
 probably little doubt would have been entertained
 on the matter, but for the Urzee which is found at
 page 49. With reference to that Urzee, without
 saying whether the signature is or is not genuine,

but assuming that it is, if we take first of all the date of it, the 3rd of July, the Zemindar having died on the night of the 7th in a state of paralysis, and then look to its contents, little effect can be given to it. We cannot read the third Urzee through without seeing that it was obtained with an object, and that it bears internal evidence of not being the voluntary, and scarcely, we should think, the conscious act of the Zemindar. First of all it refers to the preceding Urzees in this way:—

“With reference to the Urzees addressed by me to your Honour and to the sub-collector, in regard to my disease on the 1st June, an order having been issued to the tasildar of the Taluk of Saakara Pania Kovil, he came and saw me, showed to me the Urzee which had been addressed by me, and asked me about it. I saw my signature in the Urzee and admitted it.” And then follow these statements, “I have also reported to the tasildar that the daughter of Pandia Talavau of Chennagottai had been married to me at my infancy; that she, being guilty of misconduct, married Nanjanadu Vellaiya Taven again, and got children by him; that I brought and kept the daughter of Kadambur Kummaramami Talavau, and got two children by her, but that she was of a different caste.” These last expressions certainly do appear to their Lordships to be put into the mouth of the Zemindar with a view to the case which has since been brought forward, especially the alleged difference of caste; and, taking the whole together, their Lordships are of opinion that as against the two other Urzees no effect or weight is due to this Urzee, and that there is no sufficient reason for differing from the finding of the two Courts.

Then, if there was a marriage in fact, was there a marriage in law? When once you get to this, viz. that there was a marriage in fact, there would be a presumption in favour of there being a marriage in law. The Zemindar, according to the usages of his country and nation, on parting with his first wife, would be naturally desirous of marrying again, and having male issue. It would be a most unlikely thing for a person of his race to go through the ceremony of marriage, if it was known that that marriage was a marriage which

was invalid in law. Then upon what is it that the invalidity of the marriage, in law, depends? It depends upon this, and upon nothing else, viz. that all the parties being, as is clear from the evidence, of the Sudra caste, it is said that because it is shown by a Decree that the father of the mother of the present Plaintiff and Respondent was illegitimate, therefore the child of that father could not contract a valid marriage, and was in substance of no caste at all. The only foundation for this is the opinions of the Pundits; those opinions are not satisfactory; no decision or authority is brought forward supporting any such proposition. The opinions are matter of reasoning; and where they refer to authority, it is to authority which applies to persons of two different but higher castes, not to the Sudra caste at all, and still less to what may be called different classes or divisions of one and the same Sudra caste.

Their Lordships are not aware that there is any authority—there has been none quoted, and it does not appear that there is any authority supporting any such proposition as that which is contended for by the Pundits; and, though their Lordships do not agree in everything that has been stated in the Court of Appeal, they are satisfied that in the Sudra caste illegitimate children may inherit, and have a right to maintenance; and that in this very instance the illegitimate father of the mother of the plaintiff, as well as his daughter, were treated as members of the family; and on the whole, seeing that these parties are both of the Sudra caste, and that the utmost that has been alleged really is, that the Zemindar was of one part of the Sudra caste, and the lady to whom he was married was of another part, or of a sub-caste, their Lordships hold the marriage to have been valid; to hold the contrary would in fact be introducing a new rule, and a rule which ought not to be countenanced.

For these reasons, their Lordships will humbly advise her Majesty that this Appeal should be dismissed, and dismissed with costs.