Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Jonnalagadda Venkamma and Jonnalagadda Lakshminarayana v. *Jonnalagadda Subrahmaniam and Jonnalagadda Narasimham, from the High Court of Judicature at Madras; delivered the* 18*th December* 1906.

Present at the Hearing:

LORD DAVEY.
LORD ROBERTSON.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.

[*Delivered by Lord Robertson.*]

The question in this Appeal is of the validity of the adoption of the second Appellant by the first Appellant. That a form of adoption was gone through may be assumed; but the first Respondent has obtained the decree appealed against, which declares the nullity of that adoption, on the ground that the first Appellant, who is the widow, had not the requisite consent of her deceased husband or of his kinsmen.

The suit was brought in the District Court of Kistna; and, in that Court, was dismissed with costs. This decree was reversed with costs by the High Court of Madras, on 18th February 1903.

The deceased Ramayya was a Brahman and was separate in estate from his kinsmen. He died without issue in 1881; and his widow, the first Appellant, succeeded to his property. The Respondents, who are cousins of the deceased, are the nearest reversionary heirs to the estate.

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They are divided brothers, the second Respondent being the elder, and they are the nearest kinsmen of the deceased. The second Respondent, before the alleged adoption, executed a deed purporting to authorise it, and certain remoter kinsmen also signed this deed. The first Respondent was not asked for his consent and never gave it. The alleged adoption took place on 20th April 1900.

One of the most important facts in the case is that the first Appellant, the widow, at the time of the adoption and in her defence to this action, asserted that her husband had before his death given her, orally, permission to take a boy in adoption. Both Courts have held that this has not been established in evidence. It is only as a second and corroborative authority, that the first Appellant obtained the deed of consent which has been mentioned. This failure of the Appellants to prove the husband's authority enters deeply into the question about the kinsmen's consent, for it cannot be disputed that the first Appellant, in obtaining such consents as she did, represented herself to have received her husband's authority. Accordingly the Respondents rely not merely on the absence of the consent of one of the two nearest kinsmen, but on the consents actually obtained having been given, not in the exercise of an independent judgment on the expediency of the proposed adoption, but rather as the ratification of what must now be taken to be the non-existent authority of the deceased husband. This is the view taken in the Judgment appealed against, and in their Lordships' opinion it is sound.

It is unnecessary to re-state the law as to the persons whose authority is required for adoption, for the Appellants' case fails in the quality of the consents actually obtained. But, in their Lordships' judgment, the Appellants have failed

to justify the widow in omitting to ask for the authority of a person holding so important a position in the family as did the first Respondent. She defends herself by saying that she knew he would refuse; but she is not entitled to say so, and to consult him was essential to her obtaining the mind of the kinsmen on this family question. In truth, however, her conduct in this particular goes to prove, along with the other facts, that the mind of the kinsmen was not what she was in search of. The consent which she asked and obtained was ratification of the authority already given by the husband, for this is expressly stated in the written consents on which the Appellants found. It is impossible for the Appellants now to set up this as an independent ground of defence. Even if the first Respondent had been consulted and had consented on the same footing as the others, there is absent from this adoption the independent approval of the natural advisers of the widow. But the failure to consult one of the two nearest kinsmen has not been justified.

Their Lordships will humbly advise His Majesty that this Appeal ought to be dismissed. The Respondents not having appeared, there will be no order as to costs.