Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Karunabdhi Ganesa Ratnamaiyar and others v. *Gopala Ratnamaiyar and others (two consolidated appeals), from the High Court of Judicature at Madras; delivered February 20th*, 1880.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THE validity of the adoption in question in this Appeal is disputed upon several grounds: first, that the widow of Subbarayar had no authority from her husband to adopt; secondly, that she had not got the assent of the sapindas to the adoption; and, lastly, that Subbarayar, her deceased husband, could not have married the mother of the adopted boy, that is, his half-sister's daughter, and, consequently, that the adoption of that child was invalid.

Both Courts found that the widow had no authority from her husband to adopt, and their Lordships will not disturb that finding. The first Court held that Subbarayar could not legally have married his sister's daughter, but the High Court entertained a different opinion upon that point. It is unnecessary for their Lordships to express any opinion upon it, and they therefore abstain from doing so; but, at the same time, they feel bound to say that they are not satisfied with the reasons which the learned Judges of the High Court have given for holding that Subbarayar could have married the mother of the boy, she being the daughter of his own half-sister.

Q 827. 125.—4/80. Wt. 5634. E. & S.

The case turns upon the question of the assent which was given by Saromi Aiyar to the widow to adopt. Their Lordships do not consider it necessary to give any express opinion as to whether Saromi Aiyar could alone have given a valid assent if it had been given to her as a widow having no authority from her husband to adopt, and had been given without his mind's having been influenced by other and undue considerations, because their Lordships are of opinion that, looking to the circumstances of the case, there is no sufficient evidence to show that the widow applied to Saromi Aiyar to give his assent to an adoption to be made by her without the authority of her husband, but rather that she applied to him to give his son to be adopted by her under an authority which she had from her husband. The Judges of the High Court expressly say: "But if we endeavour to "ascertain whether Rangaumal, as a widow not "having authority from her husband, sought "for and obtained his kinsman's authority to "adopt a son to him, the evidence appears to "give no certain answer. According to several "of the witnesses, the widow spoke and acted "as one already possessed of authority from "her husband which she was about to execute, "and consent was asked to its execution in "favour of Karunabdhi Ganesa Ratnam. There "is little, if any, satisfactory evidence to show "that an authorisation was sought as from a "kinsman having full power to grant or with-"hold permission."

Their Lordships are of opinion that that remark was well founded, and that there is no evidence to show that the widow applied to Saromi Aiyar to give his assent to her adopting because she could not adopt without his consent; but that the evidence shows she applied to him to give her his child in order that she might

adopt him in pursuance of an authority which she had from her husband, which she represented herself to possess.

It is said that, although it is alleged in the widow's part of the agreement that she wished to adopt a son in pursuance of a permission given to her by her husband, there is no such statement as that in the agreement executed by Saromi Aiyar; but when the agreement of Saromi Aiyar is looked at, he expressly refers to the agreement which had been signed by the widow; he says, "I, as guardian, shall, "according to the agreement executed by you, "&c." Therefore he refers to the agreement which is said to have been executed by the widow, and adopts the statements made in it; namely, that she was proposing to adopt a son in pursuance of a permission given by her husband. The application to Saromi Aiyar was not to give his consent to an adoption which the widow could not make without the assent of the sapindas, but it was an application to give his son to be adopted in conformity with an authority which she had received from her husband.

But, independently of that, it appears that Saromi Aiyar's mind must have been influenced by the arrangement which he made with the widow. Saromi Aiyar does not give his consent to an adoption merely, but he stipulates with the widow that if she adopt he is to become the guardian of the child. He says:—"I, as "guardian, shall, according to the agreement "executed by you, look after all the real and "personal properties due therein to the share "of your child, and deliver them as soon as "your adopted son attains proper age." The widow also says:—"And whereas the said child "is a minor, and you, as the managing member "of the joint family, are looking after all the

" moveable and immoveable properties, &c., you,
" as guardian, shall look after all the real and
" personal properties due therein to the share of
" my said child until he attains proper age, and
" then deliver the same to him with an account
" of incomes and expenses."

In the absence of an adoption, Saromi Aiyar would have been entitled upon partition to only one-fourth of the property—he being a member of a joint family with his brothers,—and his brothers would have been entitled to the other three-fourths; but if a valid adoption should be effected the adopted son of Subbarayar would become entitled to half the property, viz., the half share which belonged to the deceased husband of the widow; and the brothers, instead of each being entitled to one-fourth, would be only entitled to an eighth. Saromi Aiyar himself would, of course, lose a portion of the share, which would pass to the adopted son; but then he stipulated that he should remain guardian of the adopted son, so that until he should attain his full age no partition between himself and the adopted son could have been enforced, because he was the guardian; the widow could not have asked for a partition in the name of her son, because he had stipulated that Saromi Aiyar should be his guardian. The consequence was that by the arrangement made with the widow he really got during the minority the management of, and the interest in as a member of the joint family (which, if a partition with his brothers should take place, would consist of himself and the adopted son), five-eighths of the estate. The brothers might have separated, but still the infant who was adopted could not have separated from Saromi Aiyar without bringing a suit against the latter for a partition; and to such a suit the guardianship for which Saromi Aiyar had stipulated as part of the consideration

for giving his consent to the adoption would have presented exceptional obstacles.

There is another matter by which his mind was probably influenced. It is stipulated in the deed that "my adopted son has nothing "to do with the village of Erikkolam in the "Taluq of Musori obtained by you, the same "being the acquisition of your maternal grand-"father." By reason of this stipulation the adopted son was to take no interest in that portion of the estate which was then claimed by Saromi as his separate property, but is now found to be a portion of the joint family property.

Their Lordships, looking at all the circumstances under which the assent was given, are of opinion that the assent was not one which rendered the adoption valid and binding as against the brothers; and their Lordships will therefore humbly advise Her Majesty that the decision of the High Court be affirmed, and that the Appellants pay the costs of this Appeal.