Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Pedda Ramappa Nayanivaru v. *Bangari Seshamma Nayanivaru, from the High Court of Justice at Madras; delivered November 11th*, 1880.

Present:

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

THIS Appeal arises in an action brought by Bangari Seshamma against his half-brother, Pedda Ramappa, to recover possession of the important polliam of Bangari. Several points, which resulted in issues in the Courts below, have been disposed of in a manner which does not render them the subjects of appeal. The facts which relate to the question which alone has been argued before their Lordships are few. It appears that Ramadasappa was the poligar of this polliam. It had been for several centuries in his family, had been resumed by the Government, and had been restored to him, but nothing turns on that resumption and restoration. Ramadasappa married four wives; the first two wives died, without issue, before his marriage with his third and fourth wives. The marriage with Subbama, his third wife, and with Venkatamma, his fourth wife, took place on the same day. There is now no dispute that the marriage with Subbama was prior in point of time. The Appellant, Pedda Ramappa, is the son of the third wife; the Respondent, Seshamma, is the son of the fourth wife, Venkatamma, but was born before his half-brother, Ramappa. Ramappa had an elder

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brother of the whole blood, Chandrasekhara, also junior to Seshamma, who, upon his father's death in 1866, was put by the Government into possession of the polliam. He died in the year 1876, having retained possession during his lifetime. Upon his death, Ramappa, the Appellant, was put into possession, and thereupon the present action was brought by Seshamma. It is only necessary to mention Chandrasekhara in order to account for the possession between the death of Ramadasappa, the father, and the bringing of the action. It is conceded that this possession is not material to the question which arises in this case, that question being whether the Respondent, who was the first-born son of Ramadasappa, though by the fourth wife, is entitled to succeed to the father's estate, in preference to the Appellant, who was born afterwards, his mother being the third and senior wife, and being, it was contended, in the same position as a first-married wife, by reason of the two former wives having died before her marriage.

The general question as to the right of succession in the case of sons born of different wives was decided by this Committee in the case of Ramalakshmi Ammal *v.* Swanantha Perumal Sethurayar, reported in 14th Moore, I.A., page 570. It was there held that the elder-born son, though of the junior wife, was entitled to succeed in preference to the younger son born of the elder wife. In that case, however, the question as to the right of a son born of a first-married wife did not arise, for there the mothers were both junior wives, and the first-married wife was living at the time of the marriages of the two wives whose sons were disputing the inheritance. In the present case, the first two wives having died before the marriage of the third and fourth wives, it is contended that the third wife is in the position of a first or royal

wife, and that her son is entitled to succeed in preference to elder-born sons of junior wives. Undoubtedly that question was left open by the decision of their Lordships in the case of Ramalakshmi Ammal. In that case it had been admitted, or was supposed to have been admitted, that in the case of a royal wife the rule might be different from what it would be in the case of wives who were all junior to her. Their Lordships had not to consider that question, and did not think it right to prejudice the decision of it by any premature determination; in fact, the point was not argued. The High Court of Madras, from which the Appeal came, and in which the admission had been made, had also declined to decide the point.

Their Lordships have felt some doubt whether they are now called upon to decide this question, for in the Court below the claim of the Defendant was rested, not upon the general Hindoo law but upon a special family custom. The fact that his case was so rested implies an admission that he and his advisers did not consider that by the general Hindoo law he was entitled to succeed. The custom was found against him, and he did not, on his appeal to the High Court, insist, as one of his grounds of appeal, that by the general law he was entitled, his grounds of appeal being directed only to the other points which had arisen in the case, and to an allegation that the custom ought to have been found in his favour. Their Lordships, however, have allowed the point to be argued, and are prepared to determine it.

The preference which has been given to the first-born son over his brothers, irrespective of the priority of the marriages of their mothers, mainly depends upon the religious rules which guide the Hindoo community. It is said in the judgment in the case of Ramalakshmi Ammal,

" One great rule of religion binding upon every " Hindoo is the duty of having a son, not only " for the sake of the spiritual benefits he obtains " for himself by his birth, but because he thereby " discharges the pious debt he owes to his ances- " tors, and as a consequence naturally flowing " from this law the first-born son is throughout " the books of authority treated as pre-eminent " amongst his brothers, and held to be entitled " to many special privileges." The principle deduced from the rule above mentioned, and the reasons upon which their Lordships' judgment in the former Appeal are founded, apply with equal force to the first-born son of his father, whether born of a first-married wife or of a junior wife; and it certainly lies upon the Appellant to show some explicit authority to establish the distinction for which he contends.

The argument at the Bar has been rested solely upon some texts in Menu, and those texts their Lordships think not only do not support the view contended for by the learned counsel for the Appellant, but are rather opposed to it. The material ones are few. The first to which it is necessary to refer is in chapter 9, sect. 106: " By the eldest, at the moment of his " birth, the father having begotten a son dis- " charges the debt to his own progenitors; the " eldest son, therefore, ought, before partition, " to manage the whole patrimony." This text simply says " by the eldest " without further description, and it states that the father having begotten him has discharged his debt to his own progenitors. Then the 107th is: " That son " alone by whose birth he discharges his duty, " and through whom he obtains immortality, was " begotten from a sense of duty; all the rest " are considered by the wise as begotten from " love of pleasure." That section certainly does not help the contention on the part of the Defen-

dant, because in the present case when Seshamma was begotten the father had no other son, and his duty was unfulfilled. Two other sections were referred to, which are more immediately applicable to the question under discussion. The 122nd section is, "A younger son being born of "a first-married wife after an elder son had been "born of a wife last married, *but of a lower class*, "it may be a doubt in that case how the division "shall be made." The words printed in italics are found in Sir William Jones' translation. The words "but of a lower class" are no doubt inserted by a commentator and are not in the original text which had come down. If the text were read without those words, undoubtedly that and the following sections, 123 and 124, would give some support to the argument of the Defendant. But their Lordships think that the interpolation of the commentator cannot be disregarded. The early versions of the Laws of Menu are very ancient, and it might be doing great mischief to construe the words of the original text literally, unaided by the gloss which has been put upon them by writers and commentators of authority, whose interpretation has been received as authentic. The authority of the commentator who is responsible for the interpolated words is vouched by Sir William Jones in the preface to his translation. He says: "At length appeared "Culluca Bhatta, who, after a painful course of "study and the collation of numerous manu-"scripts, produced a work of which it may "perhaps be said very truly that it is the "shortest yet the most luminous, the least "ostentatious yet the most learned, the deepest "yet the most agreeable, commentary ever "composed on any author, ancient or modern." Sir William Jones, himself a great Oriental lawyer and scholar, says that he had almost implicitly

followed the text and interpretation of Culluca Bhatta, and had printed his gloss in italics. It is impossible to have higher authority for an explanation of a text. Then the text as interpreted is merely this, that a younger son being born of a first-married wife after an elder son had been born of a wife last married, but of a lower class, in that state of things it might be a doubt how the division should be made. Subsequent sections would seem to show that in that case Menu thought the son of the first-married wife should have the larger share of partible property. If the interpretation is received, then the very expression "but of a lower class" leads to the implication that if the wives were of the same class the distribution would be equal; and section 125 is to that effect:—"As between "sons born of wives equal in their class and "without any other distinction there can be "no seniority in right of the mother, but the "seniority ordained by law is according to the "birth." That is a distinct text, and the effect of it would only be uncertain if section 122 were read without the words added by the commentator. It is not contended that in the present case the wives are not of the same class; and their Lordships do not determine what would be the proper rule of succession where the wives are of a different class or caste. That question does not arise.

The only other authority which has been referred to is one which certainly does not support the Defendant's case, if it does not establish that of the Plaintiff. It is the case of Rajah Rughonath Singh *v.* Rajah Hurrehur Singh, in 7th Sudder Dewaney Adawlut Reports, page 126. The marginal note correctly states what the case decides: "In the case of an estate "in Manbhoom in the jurisdiction of the Gover-"nor-General's agent at Hazareebaugh it was

" held that the succession is vested in the eldest " son of the deceased Rajah born of any of his " wives in preference to the eldest son of " the paht or first Ranee." It would seem that that case was decided not upon the general Hindoo law, but upon the law prevailing in Manbhoom, and that there was no custom to the contrary. The judges who formed the majority of the Court in their judgment say, " The ordi- " nary course of succession is certainly shown by " the evidence to be that stated by the Plaintiff" —that is, the order stated in the marginal note. " To establish a contrary practice so as to as- " sume the force of family custom requires the " strongest evidence." Therefore the ordinary course of succession in the district of Manbhoom was in accordance with what their Lordships find to be the general Hindoo law.

The question really comes to this: although it was not necessary to decide in the former case before this Board what was the right of a son of a first-married wife, yet the principles upon which their Lordships held that the first-born was entitled to succeed apply equally to a son of such wife and sons of other wives; and that being so, it lay upon the Defendant to show some positive rule of Hindoo law, supported either by ancient text or modern decision, to the contrary effect. Their Lordships think that no sufficient authority for such a rule has been produced. They would observe that the reasons on which the precedence and privileges of the first wife over her co-wives are founded are scarcely pertinent to the succession of sons to their father, which is governed by other considerations, as already explained.

The ground on which this Appeal has been decided renders it, of course, immaterial to consider whether the third wife, who was not married until after the deaths of the two former wives, stood in the position of a first-married wife.

On the whole, their Lordships are of opinion that the Courts below, who concurred in their judgments, have come to a correct conclusion, and they will therefore humbly advise Her Majesty to affirm the judgment appealed from and to dismiss this Appeal, with costs.