Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ma Ywet v. *Ma Me and another, from the Chief Court of Lower Burma; delivered the 9th July,* 1909.

Present at the Hearing:

LORD MACNAGHTEN.
LORD DUNEDIN.
LORD COLLINS.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.

[*Delivered by Lord Dunedin.*]

The only question in this Appeal is whether Ma Ywet, the Appellant, has proved that she was the adopted daughter of the late U Mya, who died in 1905. If she was, then she inherits U Mya's estate. If not, that estate is inherited by the Respondents, Ma Me and Ma Mi, the sisters of the deceased.

Ma Ywet is the daughter of Ma Ka, who was another sister of U Mya.

Ma Ka died in 1900, and up to that time there was no question of adoption, as Ma Ywet took out letters of administration to her mother as her child.

[29] P.C.J. 92.—L. & M.—125—2/7/09. Wt 98.

The story of the Appellant is that, on the death-bed of her mother, her uncle U Mya promised her mother to adopt her, and that after her death he did so. Admittedly there was no specific occasion on which this was done by any quasi-ceremony or in presence of any witnesses or other persons.

It is said, however, that he acknowledged to other persons the fact that he had adopted her, and that his life and conduct in relation to her were consistent with the fact. This is denied by the Respondents.

The learned Judge on the Original Side, before whom the suit depended, found that the Appellant had sufficiently proved the fact of adoption; but this judgment was reversed on appeal, the learned Judges of the Appellate Court holding that the Appellant had failed to make out her case.

It has already been laid down by this Board that, according to the law of Burma, no formal ceremony is necessary to constitute adoption. One may go further and say that, though adoption is a fact, that fact can either be proved as having taken place on a distinct and specified occasion, or may be inferred from a course of conduct which is inconsistent with any other supposition. But in either case publicity must be given to the relationship, and it is evident that the amount of proof of publicity required will be greater in cases of the latter category, when no distinct occasion can be appealed to.

The present case is one of these, and it is on the question of the want of publicity that the learned Judges of the Court of Appeal have differed from the Judge of original jurisdiction.

In many cases the inference of the relationship existing, and the publicity of the relationship

itself, may naturally be taken from the facts of the life of the parties apart from the verbal statements of those concerned. Thus when a child who has natural parents leaves those parents and its own home, and is brought up in the house of another who treats it as a father would a child, the inference is not difficult to draw, and the facts from which that inference is drawn are public facts necessarily known to all the person's friends and acquaintances. Some of the decided cases are instances of this sort. In the present case such considerations are unavailable, because before adoption is alleged to have taken place, Ma Ywet was 30 years old, was an orphan, and, as the niece of a childless uncle, was a natural person to live with him.

Accordingly the evidence of the publicity of the relationship alleged really comes to depend upon the testimony of Ma Ywet herself and the statements of the deceased U Mya spoken to by some of the witnesses. The learned Judges of the Appellate Court have held that the testimony falls short of being satisfactory. Their Lordships are unable to say that, in their opinion, the learned Judges are wrong in this opinion. In the case of an adult, when the inferences to be drawn from "bringing up" are necessarily absent, and where the consequence of adoption is disinherison of those entitled to succeed by law, it is, in their Lordships' view, especially necessary to insist on adequate proof. It would have been easy for the parties, by means of an actual, though not ceremonial, adoption in presence of witnesses, to have precluded the raising of subsequent questions. Where that has not been done, and where the fact of adoption is left to be inferred from past statements and conduct, it is, in their Lordships' opinion, a salutary rule that adequate

proof of publicity or notoriety of the relationship should be insisted on.

Their Lordships will therefore humbly advise His Majesty that the Appeal should be dismissed.

As the Respondents have not appeared in the Appeal, there will be no Order as to costs.

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