

(1940) 08 BOM CK 0013

In the Bombay High Court

Case No : Second Appeal No. 26 of 1939

Apya Shettya Talawar

APPELLANT

Vs

Rammakka Apya Talawar

RESPONDENT

Date of Decision : 30-08-1940

Acts Referred:

Citation : AIR 1941 Bom 222 : (1941) 43 BOMLR 314

Hon'ble Judges : Wassoodew, J; John Beaumont, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Wassoodew, J.—This is a second appeal from a decree of the Assistant Judge of Belgaum. The dispute relates to the validity of the adoption of the defendant to the action. The suit was instituted by one Ramakka, a Holer or Shudra by caste, for a declaration that the defendant was not legally adopted on November 15, 1928, to her deceased son Shettya by the latter's widow Mallawa; and for confirmation of the plaintiff's possession of her son's estate owing to the remarriage of Mallawa. The validity of the adoption was questioned on two principal grounds: (1) that the defendant was born of an adulterous intercourse, his conception and birth having taken place long after his mother's husband's death, and (2) that the mother, although a Holer or Shudra, had given him in adoption after her remarriage. Both the Courts below have found, and the finding is not challenged before us, that the defendant was an offspring of adulterous intercourse and that he was given in adoption before his mother's remarriage. On account of the former defect the Courts; below have held that the adoption is invalid in law and accordingly the plaintiff's claim was allowed. The defendant has appealed against that decree and he maintains that that view of the law is erroneous.

2. The question of the validity of the defendant's adoption has to be considered from different stand-points: first, the capacity of the adoptive parent to take in adoption; secondly, the capacity of the natural parent to give in adoption; and,

thirdly, the capacity to be given or taken in adoption. As to the capacity of the adoptive parent there is no dispute. The controversy centres round the last two points.

3. The capacity of the mother to give the defendant in adoption has been challenged on the ground that the mother's capacity is restricted to her legitimate son and does not extend to a son of an adulterous or incestuous intercourse. The argument is that an illegitimate son does not fall in any of the recognized classes of sons under the Hindu law, and that not being specially referred to in the texts as a fit object for being given in adoption it must be assumed that the Rishis discouraged the adoption of such a son. The capacity to be given and taken in adoption is also similarly challenged, for, it is said that the defendant not being a son of the recognized description will be unable to fulfil the spiritual object of adoption by giving the pinda. It is also contended that as an adopted son must be of the same caste as the adopter even among Shudras, the defendant could not be adopted as an offspring of an adulterous intercourse belongs to no caste.

4. Now, ordinarily a mother is capable of giving her son in adoption according, to the Hindu law. The basis for that authority is the following text of Manu (c. IX, 168):

That (boy) equal (by caste) whom his father or his mother affectionately give, (confirming the gift) with (a libation of) water, in times of distress (to a man) as his son, must be considered as an adopted son Dattima.

(See F. Max Muller's Sacred Books of the East, Vol. XXV, p. 361). Yajnavalkya (II, Section XI, v. 130) says the same thing:

He, whom his mother or father may give (in adoption) shall be considered as the adopted son".

Baudhayana (c. II, 2, 3 and 20) declares thus:

He is called a Dattaka son who being given by his father and his mother or by either of the two, is received in the place of a child.

(Dattaka Mimansa, Section IV, 14):

Both parents alone have the power, for the connection to them; is equal.

5. According to the texts, if both the parents are alive, their concurrence seems to be necessary. Mitakshara, while explaining Yajnavalkya's definition of a Dattaka son (c. I, Section XI, 9), says:

He, who is given by his mother under her husband's direction, when her husband is absent on a journey or is dead (after her husband's decease), or who is given by the father, or by both, to a person of the same class, becomes the adopted son Dattaka of him to whom he is given.

6. The author of the Viramitrodaya (see Golapchandra Sarkar's translation, p.

115) observes thus:

He, whom the mother with her husband's assent, or the father gives to another, becomes his adopted son.

In his Vyavahara-Mayukha referring to the above description by Manu of a Dattaka son, Nilakantha observes (Vyavahara-Mayukha, p. 50, Mandlik's Edition):

From the particle "or" (in the passage "the mother or the father give") it appears that in default of the mother, the father alone may give; and in default of the father, the mother alone; but if both are in existence, then even both; this, Madana (says).

7. The relative rights of the father and the mother to make the gift of a son in adoption do not seem to have been discussed in detail in Dattaka-Chandrika; but the following observations of Devanda-Bhatta are important (Dat. Chand. 1. 31-32):-

But, by a woman, the gift may be made with her husband's sanction if he be alive or even without it, if he be dead, or remotely absent, or retired from the world.

Accordingly Vasistha ordains,-

Let not a woman, either give or receive a son, except with the assent of her husband. (Sutherland's translation.)

According to Dattaka-Mimansa there is no express recognition of the right of a woman to adopt, but in reference to Vasistha he admits that a woman is also competent to give a son with the husband's assent. In relation to the texts of Manu and Yajnavalkya Nanda Pandita says that "what is said of the mother in these passages must be taken to be subject to the assent of her husband." (See Dattaka-Mimansa, Section IV, 11).

8. Upon the parental proprietorship of a child the above texts are in my opinion easily explainable. The limitation on the mother's sole power to give must necessarily operate during the lifetime of the husband. Therefore as the child belongs to both the parents, when one dies, the survivor has the right to give. The instances given in the texts indicated above whereunder the mother is permitted to give her son during the lifetime of her husband are in my opinion merely illustrative of the circumstances under which that power can be exercised.

9. In Putlabai v. Mahadu ILR (1908) 33 Bom. 107 the question of the right of a mother to give her son in adoption was considered, and it was held that that right was not derived by delegation from her husband and that it was the result of the maternal relation. The Court there was considering whether the mother retained the right to give her son in adoption upon her remarriage, and it was held that the Hindu Widow Remarriage Act (XV of 1856) did not afford any indication that the Legislature intended to deprive her of it. The question was again considered by the full bench of this Court in Fakirappa v. Savitreya (1920)

23 Bom. L.R. 482, F.B. where it was held that a Hindu widow on her remarriage loses all power of giving her son by her first husband in adoption, because her connection with the family of her husband, which is necessary for the act of giving in adoption, ceases on remarriage. It was pointed out that the Smriti-writers did not contemplate a remarriage of a Hindu widow, and that as they prohibited widow remarriage it could not be assumed that the right to give the son in adoption was retained upon remarriage. The full bench does not expressly overrule the view adopted in *Putlabai v. Mahadu* that the right of a female parent to give the son in adoption results from the maternal relationship and is not derived by delegation from her husband. All that it says is that the maternal relationship ceases on remarriage. A step-mother is unable to give her step-son in adoption because there is absence of parental relationship (see *Papamma v. V. Appa Rau* ILR (1893) Mad. 384. Where there is such relationship, it has been held that the right to give is not affected by the conversion of the parents [see *Shamsing v. Santabai* ILR (1901) 25 Bom. 551. There is no doubt that parental relationship does exist between a mother and her adulterous offspring-there is indeed hereditary blood between the mother and her illegitimate child [see *Mayna Bai v. Uttaram* (1864) 2 M.H.C.R. 196 -and the mother of an illegitimate son may on that account claim domain over him. The right of a mother to give her son in adoption independently of the father is however founded upon the existence of special circumstances such as those enumerated in the texts. The conditions governing that right are that the child to be given is the son of her husband and that the latter is incapable of giving his assent. Prima facie these two conditions are impossible of fulfilment in the case of a bastard child.

10. As I shall presently show, an illegitimate son is not the son contemplated by the Rishis and the Codes who can be a fit object of a gift within the capacity of the mother. It appears that there is no clear text dealing with the gift of a son of an adulterous intercourse born to a Hindu widow, for the Rishis did not consider such a contingency. At least, we have not been referred to any textual authority suggesting that such a son could be given in adoption. Whilst it is said for the plaintiff that the Hindu law treats with disfavour and attaches stigma on an adulterous intercourse, it is contended to the contrary for the defendant, namely, that there is no disabling stigma about adultery amongst Hindus, particularly among Shudras, to which class the parties belong, as illegitimate children have been allowed to inherit and claim maintenance among Shudras. Reliance was placed on the observations of Cowell in his *Treatise on Hindu Law* (Part I, vide pp. 170-171) where he says as follows:-

There is no disabling stigma about adultery amongst Hindus, and it follows that illegitimacy does not confer disgrace. Sonship confers so great advantages upon fathers, that the question of legitimacy is one which originally had no effect, even in excluding from inheritance. The son whether of concealed birth, or born before marriage, belonged to the husband.

We were also referred to *Hargovind Kuari v. Dharam Singh* ILR (1884) All. 329,

Ram Kali v. Jamma ILR (1908) All. 508 and Mayna Bai v. Uttaram for the view that an illegitimate son is not regarded by the Hindu law quasi *ftlius nullius* and that an illegitimate son could claim, among the regenerate classes, maintenance and among Shudras, a share in the inheritance out of the estate of his putative father [see *Inderun Valungypooly Taver v. Ramaswamy Pandia Talaver* (1869) 13 M.I.A. 141, But those cases are clearly distinguishable on the facts. In the first Allahabad case the Court was considering the question of maintenance claimed by a *dasi-putra* and the observations were made with regard to the social status of an illegitimate son of a "dasi" or a female slave living in continuous concubinage with the father. In Ram Kali's case the Court was considering the question of the claim of an illegitimate son of a Shudra to inheritance out of the estate of his putative father. These are particular instances where the Courts have allowed the custom among Shudras to prevail. But it cannot be said on that account that Hindu law tolerated or even encouraged loose morals. On the other hand, it is noticeable that it set a high moral standard both for men and women. Adultery was regarded as *uppatak* (sin) on the part of both men and women. Manu says (c. VIII, vv. 371 and 372):

The king shall cause her (the wife who violates the duty to her lord) to be devoured by dogs in a place frequented by many.

The punishment was death for the adulterous wife and the adulterer (see Manu VIII, v. 359). Such was the severity of the law that it prescribed punishment for visiting a house of ill repute. Mayne has quoted Mitakshara on Yajnavalkya, Part I (Achar) 90, 222, in support of his statement that under the Hindu law the marriage tie was extremely strict and the offspring of adulterous intercourse (*kund* or *golak*) was excluded from social intercourse as well as from invitations to *Shradhas* or obsequial ceremonies (vide Mayne on Hindu Law and Usage, 10th Ed., p. 109). According to Apastamba Sutra,

If a man approaches a woman who had been married before, or was not legally married to him, or belongs to a different caste, they both commit a sin. Through their (sin) their son also becomes sinful.

(See Buhler's Sacred Laws of the Aryas, Part I, Prasna II, Patala 6, Khanda 13, p. 130, 4 and 5).

11. In summarising the view of the texts relating to secondary sons the following observations occur in Mayne on Hindu Law and Usage (c. IV, pp. 122-123, paragraph 81):--

It is beyond doubt that, so far as spiritual benefit was concerned, there was none to the husband from the issue of his wife's adulterous connection. The assumption sometimes made by modern writers on Hindu law, that, as the first duty of a man was to become the possessor of male offspring either the Veda or the Dharmasastras directed him somehow to procure a son, even though such a son was born to his adulterous wife, is wholly baseless. On the contrary, far from declaring these sons, the *Kshetraja*, the *Gudhaja*, the *Sahodhaja* and the *Kanina*,

to be necessary for a man's spiritual benefit, they emphatically condemned, for that very reason, the acceptance of such secondary sons The condemnation from such ancient times shows that it could not have been at any time a widely prevalent usage, but must have been limited to a few tribes or families. The hopeless confusion and contradiction which prevail amongst the writers as to the respective rank of these sons and the shares to which they were entitled and on the question which of them" were kinsmen and heirs and which of them were kinsmen only, make it very probable that they were not dealing with any living institution but were merely discussing for completeness the tradition of a bygone age, the exact scope and meaning of which were not within their own knowledge.

Golapchandra Sarkar's view of the texts on subsidiary son is thus summarised by him in his lectures (Hindu Law of Adoption, 2nd Ed., Tagore Law Lecture Series, p. 66):-

The conclusion to which any one carefully perusing the subject of sonship as dealt with in the Codes, must come, is that the usage of secondary sons was not introduced by them. It had been an existing institution from before the time when the Codes were composed, and was disapproved by all of them. The doctrine of spiritual benefit conferred by sons, was introduced by the Rishis with a view to raise the position of the real legitimate son and to suppress the institution of the secondary sons. The passages in the Codes, extolling the possession of a son for spiritual purposes, do most if not all of them, relate to the real legitimate son; the secondary sons being declared worthless for those purposes. But although disapproving of the institution of the secondary sons the sages did not declare invalid any one of them, though more or less condemned and censured.

The view of Cowell has perhaps been expressed with reference to the primitive state of Hindu society and to the tolerance of loose morals amongst the very lowest strata of society. He was apparently referring to the rules of heritage among secondary sons. But the secondary sons except Dattaka are now obsolete and strictly forbidden-(see Dattaka Mimansa, I, 64, quoting Saunaka - Sutherland's Ed., p. 16). Having regard to the rigorous injunction against adultery, it is difficult to conceive that the Rishis had accepted the possibility of Kunda or Golaka, bom of incestuous connection, procuring salvation and conferring spiritual benefit on the receiver, particularly when according to Yajnavalkya even his presence at a shraddha was inauspicious (see Yajnavalkya, I, 222).

12. Apart from the question of practical expediency as to the disposal of a bastard child in a manner most convenient to both the child and the parent, it will be interesting to ascertain whether an adulterous son would conform to the description of a son which the Rishis recommended for adoption. It is suggested that the twelve classes of sons, which are enumerated in ancient Smritis, might well include an illegitimate son. According to Vishnu-Smriti (XV, 1-30,-Asiatic Society's Sanskrit Edition, pp. 43-44) the twelve sons which the ancients

recognized were:

The real legitimate son, the son of the appointed wife, the son of the appointed daughter, the son of the twice-married woman, the son of an unmarried daughter, the secretly born son of an adulterous wife, the son received with a pregnant bride, and the son given, the son purchased, the son self-given, the deserted son and the son begotten on any woman.

13. He then adds,-

Of these the first in order is the most worthy; he alone is entitled to the heritage, and he shall maintain the rest.

He apparently omits the *kritrima* or the son made and includes *Yatrakvachanotpadita* as one description of son and thus completes the number twelve. *Vasistha* also enumerates the sons in the same order as *Vishnu*, substituting, however, the *Shudra-putra* or the son born of a *Shudra* wife for *Yatrakvachanotpadita*, but he divides them into two groups of six each and declares that the first six are heirs and kinsmen and the second six are only kinsmen but not heirs. So *Yajnavalkya*, after describing the different sons, declares,

On failure of the legitimate son, the next in order is the giver of the *pinda* and the taker of the heritage.

(*Yajnavalkya* II, 132 or 134) (*Pindadah*, i.e. performer of *Sraddha*, and *Ansaharah*, successor to the effects). (See *Mitakshara* I, XI, 22).

14. The above classification of sons under twelve heads by the commentators is as I have said not recognized in modern Hindu law. In 20 CWN 702 (Privy Council) , their Lordships of the Privy Council were considering the relative position of an adopted son and a natural son in the same family, and they observed as follows (`p. 67):-

. . . it is sufficient to say that, whatever may have been the position and rights between themselves of such twelve sons in very remote times, all of these twelve sons, except the legitimately born and the adopted, are long since obsolete. A discussion as to their rights and interests, even if they could now be ascertained, would be beside the point and could throw no light on the construction of paras. 24 and 25 of Section 5 of the *Dattaka Chandrika* or upon the position and rights of an adopted son. Hindu law and customs have not stood still, and what we are now concerned with is the position at the present time of an adopted son in a Hindu family.

They held that an adopted son occupied the same position in the family as a natural born son except in a few instances which were actually defined in the *Dattaka Chandrika* and the *Dattaka Mimansa* and which related to marriage and to competition between an adopted son and a subsequently born legitimate son to the same father.

15. What kind of son Manu (Sacred Books of the East, Vol. XXV,) had in contemplation when he recommended the taking of a son in adoption will be understood from the following passage (c. IX, vv. 137 and 138):

Through a son he conquers the worlds, through a son's son he obtains immortality, but through his son's grandson he gains the world of the sun.

Because a son delivers (trayate) his father from the hell called Put, he was therefore called put-tra (a deliverer from Put) by the Self-existent (Svayambhu) himself.

Manu evidently contemplated by the term putar a son begotten by a man and his wife duly married. That is obvious from the division of wives into patnis and non-patnis and the exalted principles of morality which he preached in order to elevate the position of women and the discouragement of subsidiary sons. I do not think it necessary to enter into a discussion of the motive underlying the ancient usage prior to the Codes which permitted a father to claim illegitimate sons as his own. It is sufficient to show that the Rishis in the Codes condemned the affiliation of subsidiary sons.

16. Yajnavalkya describes an "aurasa son" to be one begotten on a lawfully wedded patni-(see Yajnavalkya II, 128). According to Manu:

an "aurasa son" is a son procreated by a man himself on his wife wedded with religious rites-(see Manu, IX, 166).

Apastamba appears to require that the wife should belong to the same caste with the husband and be espoused with religious rites (Sastravivrita) in order that a son begotten on her may be an aurasa son-(see Apastamba, II, 5, 13, 1-2). Putra according to Manu therefore was a perfect son. The necessity of a pure offspring to perform the spiritual duties of a son is inculcated in the following passage in Atri-Smriti (Jibananda Bhattacharya's Edition of Smritis, Vol. I, p, 45):-

A damsel who is purchased by price is not ordained to be a patni; sons born of her cannot present pind (funeral cake) to their father.

Dattaka Chandrika does not even permit a son of irregular marriage even if aurasa to perform the obsequial ceremonies. It says that a son of a wife belonging to an inferior tribe is incapable of performing the religious rites conducive to the spiritual benefit of his father. (See Dattaka Chandrika, I, 14). He might be an aurasa son, but for spiritual purposes he has no value. He may serve the secular purposes, such as, the perpetuation of the line and the family name. That is an important consideration in the present case, for according to the Rishis although an aurasa son may occupy a foremost rank in the classification of sons, he may not be fit to confer spiritual benefit on his father if he is not the offspring of a wife duly married. If therefore according to the texts even an aurasa son of impure origin is not quite fit to offer the pind, any other kind of son not begotten of lawful wedlock will be much less competent to promote spiritual welfare.

17. It was contended on behalf of the appellant that having regard to the special place a *dasi-putra* has in Hindu law, particularly among Shudras, for he could claim inheritance in his father's estate, the circumstance of birth from illicit connection should not be regarded as a defect for conferring spiritual benefit on a Shudra father, as Shudras do not observe all the obsequial rituals commonly observed by the regenerate classes. It is also said that there is no express prohibition in the texts against the adoption of an illegitimate son among Shudras. That view does not seem to be correct. If the object of affiliation is principally to confer spiritual benefit on the father, it is difficult to discriminate between regenerate classes and Shudras in the matter of selection of a son in adoption. I think the rules as regards *Anuloma* and *Pratiloma* sons apply equally to Shudras, for they are entitled to practise the universal Dharmas or duties. We were referred to the text of Manu, (Sacred Books of the East, Vol. XXV, c. X, 5, 41), to the following effect:-

But all those born in consequence of a violation (of the law) are, as regards their duties, equal to sudras.

It is urged that as the Shudras belong to the lowest varna and as persons born of adultery with regenerate classes are to be treated as equal to Shudras, it is not proper to say that among Shudras there should be a prohibition against the adoption of an adulterous son. Vijnanesvara in his commentary has explained the expression "as regards their duties are equal to Shudras" as merely implying that they are entitled to serve the twice born. Yajnavalkya says (c. IV, 90):

By men of the same caste (Varna) in women of the same caste (Vama) are born (sons of equal birth or caste). In blameless marriages sons (are begotten) continuing the line.

That precept applies equally to Shudras. Manu (X. 5) says:-

In all castes (Varna) those (children) only which are begotten in the direct order on wedded wives, equal (in caste and married as) virgins, are to be considered as belonging to the same caste (as their fathers).

The word "varna" is a generic term. There may be numerous "jatis" in the same "varna". A son produced by a lawfully wedded wife of a lower varna by a lawfully wedded husband of a higher varna is and not regarded as legitimate and is described as an *Anuloma* son. The sons produced of women of different varnas and not wedded to the begetter are *Pratiloma* sons. The word "sajati" means one having the same jati as his father and mother if they are married. Yajnavalkya explains the "jatis" of sons begotten of a Shudra woman by either a Brahmin, Kshatriya or Vaisya. For instance, a son begotten on a Shudra by a Brahmin father is termed *Nisada* or a *Parasava*, that on a Vaisya an *Ambastha*, and that on a Kshatriya a *Murdhavasikta* (see Yajnavalkya, I, 91, 92). I was unable to discover any text giving a particular "jati" to a son born to a Shudra woman from an unknown father. No authority was cited in support of the view that an adulterous son could be taken in adoption by a Shudra, nor, as I have said, were

we referred to any text recognizing the capacity of a mother to give her adulterous son in adoption.

18. It is necessary, in my opinion, that among Shudras a son in order to possess the capacity to be given and taken in adoption must be of the same class as that of the adopter (see Manu IX, 168, quoted in Mitakshara, c. I: c. XI, Section 9). The Mayukha quotes the following passage from Saunaka in support of the view that the son to be adopted by Shudras must be from amongst those of the Shudra caste (Mandlik's translation, Parts I and II, p. 53):

Amongst Brahmanas, the adoption of a son should be made from amongst the sapindas, or in their absence, an asapinda [one not a sapinda] may be adopted, otherwise one should not be adopted; amongst Kshatriyas, one from their own class, or one whose gotra is the same as that of the [adopter's] preceptor may be adopted; amongst Vaisyas, from amongst those of the Vaisya class; amongst Sudras, from amongst the Sudra class; amongst all classes, from amongst their respective classes only, not from others.

The Mitakshara on Yajnavalkya (c. II, on Achar, I, V. 90) states that sons born of women of the same caste that are married to the man beget sons who belong to the same caste and that persons like the kunda and golaka, the maiden's son, the sahodhaja and the like are not of the same varna. All these differ from savarnas and are only entitled to perform the duties common to all, such as ahimsa (non-injury to life). Steele in his Book on the Law and Custom of Hindu Caste (p. 180) says that children of the women living in adultery have no caste. There are similar observations in Mayna Bai v. Uttaram.

19. It follows from what is stated above that persons born in lawful wedlock belong to the caste of their parents, whilst the apadhvmsajas, that is born of adultery, belong to no caste, and are "analogous to Shudras as to their duties." As I have said, it does not follow from the text referred to that they belong to the "Shudra varna". The commentator merely, describes what duties such sons should perform and he ascribes to them the lowest duties which befall to men. Yajnavalkya (c. II, 128-132) after enumerating the twelve kinds of sons (see Mandlik's Hindu Law, pp. 218-219) expressly says that all the twelve sons must be sajatiya, then only will they succeed to the estate of the father. The sages never contemplated that an adulterous son would be called upon to perform a religious ceremony. The Nimayasindhu makes it clear (see p. 381 of Naure's translation, 2nd Ed.) that only an aurasa son can offer sraddha or pinda. It does not say that any son outside the description of sons, such as a son born of adulterous intercourse to a widow, could be taken to perform the spiritual duty to his adoptive parent. The fact that the Shudras do not observe the ceremonial of "Datta homa" and that certain restrictions imposed by the texts on the regenerate classes as to the choice of the boy do not apply to them, would not in my opinion legalise the adoption of an illegitimate offspring by a Shudra.

20. It is important to bear in mind that a son entitled to perform sraddha in the

adoptive family must be capable of performing sraddha to his own father. This a son bom in adultery cannot do, for he has no known father. The rituals too do not permit a son to offer sraddha to his mother independently of the father. If, therefore, he is incapable of finding his natural father so as to perform his sraddha, in my opinion, it is difficult to see how he could minister to the spiritual requirements of the adoptive family. It appears from the following passage in Dattaka Mimansa (Stokes' Translation, Section VI, pl. 36, p. 609) that the adopted son must associate his genitive father when performing the funeral ceremony known as " sapindi-karana":-

"This is general":-that is, this ceremony of "sapindi-karana", where the adopted son, and his son also are sons of two fathers must be equally performed [by their descendants] with both sets of forefathers. (See also Dattaka Chandrika-Stokes, III Ed., pl. 19-21, pp. 650-651).

If, therefore, he has no genitive father to whom he can offer pinda, he will not be able to perform the "sapindi-karana" of the adoptive father. In that view of the matter it seems to me difficult to support the defendant.

21. Consequently I think the Courts below were right in holding that the defendant's adoption is not legal and valid. I would therefore dismiss this appeal with costs.

John Beaumont, C.J.

22. I have had the opportunity of reading the judgment which my learned brother has just delivered, and I agree with the conclusions at which he has arrived. I do so with some reluctance, because I cannot help feeling that, if the mother of an illegitimate child desires to part with it in favour of some one anxious to take it, the arrangement is not one which the law should discourage. Moreover, a law which penalizes a man during the whole of his life on account of the accident of his birth seems to me essentially unjust. However, adoption under Hindu law cannot be regarded solely from the standpoint of social expediency, or abstract justice. The system is based, as the Privy Council has recently held, on the religious sentiments of the people and the belief that the soul of the deceased man will derive benefit from the performance of religious ceremonies by his surviving son, natural or adopted. The texts referred to by my learned brother seem to" show that an illegitimate son, at any rate one who is not a dasi-putra, would not be regarded as qualified to perform the requisite religious ceremonies for his adoptive father, and, if that is so, the basis on which a valid adoption must rest is absent. I agree, therefore, that the appeal must be dismissed with costs.