

ORIGINAL CIVIL.

Before Panckridge J.

1930

Nov. 17, 24.

In the matter of PHANINDRACHANDRA SET.*

Lunacy—Jurisdiction—Application under s. 38 of the Indian Lunacy Act (IV of 1912)—Letters Patent of 1862, cl. 16—Letters Patent of 1865, cl. 17—Charter of 1774 establishing Supreme Court in Bengal, cl. 25—The Lunacy (Supreme Courts) Act (XXXIV of 1858)—The Lunacy (District Courts) Act (XXXV of 1858).

The Original Side of the Calcutta High Court has no jurisdiction to direct an inquisition or appoint a guardian of a person alleged to be a lunatic, if such a person is not resident in Calcutta.

Section 14 of 13 Geo. III, c. 63, confines the jurisdiction of the Supreme Court, beyond the limits of Calcutta, to British subjects. In the early statutes relating to India, the words "British subject" mean a subject of the King of British birth.

In the matter of *Ameer Khan* (1) referred to.

Jaundha Kuar v. The Court of Wards (2) followed.

Anilabala Chowdhurani v. Dharendra Nath Saha (3) distinguished.

In re *Tarunchandra Ghosh* (4) distinguished.

APPLICATION.

This was an application under section 38 of the Indian Lunacy Act by one Sreemati Tarubala Dasee, asking for an order directing an inquisition whether her husband, Phanindrachandra Set, was of unsound mind and incapable of managing himself and his affairs, and also that, if upon such inquisition he were found to be of unsound mind, the applicant might be appointed guardian of his person and manager of his estate.

The alleged lunatic was a Hindu and was described as residing at 1, Rustomjee Parsi Road, Cossipore, *i.e.*, outside the ordinary original civil jurisdiction of the High Court.

A preliminary point was raised, *viz.*, whether a Judge on the Original Side of the High Court had the jurisdiction to entertain the application.

A. K. Roy, Standing Counsel, for the applicant.

Cur. adv. vult.

*In the matter of Indian Lunacy Act.

(1) (1870) 6 B. L. R. 392.

(3) (1920) I. L. R. 48 Calc. 577.

(2) (1881) I. L. R. 4 All. 159.

(4) (1929) I. L. R. 57 Calc. 533.

1930

In the matter of
*Phanindra-
chandra
Set.*

PANCRIDGE J. This is an application under the Indian Lunacy Act, 1912, presented by one Sreemati Tarubala Dasee, asking for an order directing an inquisition whether her husband, Phanindrachandra Set, is of unsound mind and incapable of managing himself and his affairs, and also that, if upon such inquisition he be found to be of unsound mind, the applicant may be appointed guardian of his person and manager of his estate.

The applicant is represented by the learned Standing Counsel, who informed me at the outset that his application raised an important question of jurisdiction. The alleged lunatic is a Hindu, and he is described as residing at 1, Rustomjee Parsi Road, Cossipore, that is to say outside the local limits of the ordinary original civil jurisdiction of this Court.

The matter is one of some public importance, and I have thought it right to set out in a considered judgment the reasons which have led me to the conclusion that this Court has no jurisdiction to entertain the petition, which should have been presented to the Court of the District Judge of the 24-Parganas.

The jurisdiction of the High Court as to infants and lunatics depends on clause 17 of the Letters Patent of 1865, which conferred on the Court the like power and authority with regard to the persons and estates of infants, idiots and lunatics within the Bengal Division of the Presidency of Fort William as that which was vested in the said High Court "immediately before the publication of these "presents," that is to say by clause 16 of the Letters Patent of 1862. That clause of the Charter establishing this Court gave it the like jurisdiction as to infants and lunatics as was then vested in the Supreme Court. The Charter of 1774 establishing the Supreme Court, by clause 25, authorised and empowered that Court to appoint "guardians and "keepers for infants and their estates, and also "guardians and keepers of the persons and estates of "natural fools, such as are or shall be deprived of

“their understanding or reason by the act of God, so “as to be unable to govern themselves and their “estates.” Nothing is said in this clause as to the local limits of such jurisdiction, but, in my opinion, section 14 of 13 Geo. III, c. 63, has the effect of confining it beyond the limits of Calcutta to British subjects “who shall reside in the kingdoms or “provinces of Bengal, Bihar and Orissa or any of “them.” I think it is well recognized that in the early statutes relating to India the words “British “subject” mean a subject of the King of British birth. *In the matter of Ameer Khan* (1).

1930
 In the matter of
*Pharindra-
 chandra
 Set.*
Pancleridge J.

I have been unable to find any subsequent enactment conferring on the Supreme Court lunacy jurisdiction in the case of Indians resident in the *mofussil*. The distinction appears to be accepted in subsequent legislation. The Lunacy (Supreme Courts) Act, 1858, gives power to those Courts to direct an enquiry as to “any person subject to the “jurisdiction of the Court.” The preamble of the Lunacy (District Courts) Act of the same year states that it is expedient to make better provision for the case of the estates of lunatics “not subject to the “jurisdiction of the Supreme Courts of Judicature.” In 1881, the Allahabad High Court [*Jaundha Kuar v. The Court of Wards* (2)] decided that, under its own Letters Patent, it had no original jurisdiction in respect of the persons and estates of lunatics who were natives of India. In the course of that case, the Court ascertained from the Registrar of the Original Side of this Court that at that date its powers in matters of lunacy, as the successor and inheritor of the powers of the old Supreme Court, were, as regards natives of India, only exercised within the limits of the town of Calcutta itself, and that, in other respects, the procedure directed by the Lunacy (District Courts) Act, 1858, was followed in Lower Bengal. The Court expressed the view that this practice was correct.

(1) (1870) 6 B. L. R. 392.

(2) (1881) J. L. R. 4 All. 159.

1930

In the matter of
Pharindra-
chandra
Seth.
Pancbridge J.

The Indian Lunacy Act, 1912, repealed both the Acts of 1858, but made no alteration in the law with regard to the matter now under consideration. Indeed, if the position was, as the petitioner contends, Chapter V of that Act would, in practice, be meaningless, as far as this province is concerned. For a person to come under that chapter, he must be not subject to the jurisdiction of a High Court, and must be resident within the jurisdiction of a district court. But if the petitioner's contentions are sound, all persons resident within the jurisdiction of a district court in Bengal are subject to the Original Jurisdiction of this Court.

This question of jurisdiction was considered in *Anilabala Chowdhurani v. Dharendra Nath Saha* (1), where it was held that the jurisdiction of the Pabna district court was ousted because the alleged lunatic (an Indian) resided both at Pabna and at Calcutta, but it is clear from that case that, but for his residence at Calcutta, the Pabna district court would have had jurisdiction and the Original Side of this Court would not.

The petitioner relies on a recent decision of Lord-Williams J., *In re Tarunchandra Ghosh* (2), where the Court held that, under clause 17 of the Charter, the Court had power to appoint a guardian of an Indian infant resident outside the Original Jurisdiction. The order was made *ex parte* on the father's application, it being stated there was no opposition. The attention of the Court was not drawn to 13 Geo. III, c. 63, nor to the cases to which I have referred above. Moreover, the language of clause 25 of the Charter of 1774, as regards infants, differs from its language as regards lunatics. I do not think that that decision prevents me from holding as I do that the Original Side of this Court has no jurisdiction to direct an inquisition or appoint a guardian of person or property in the case of an Indian not resident in Calcutta. The application is dismissed.

Attorneys for the applicant: *H. B. Dutt & Co.*

O. U. A.

(1) (1920) I. L. R. 48 Calc. 577.

(2) (1929) I. L. R. 57 Calc. 533.