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having arrived. On the contrary, it may be presumed from them that all necessary documents were transmitted. It is said that it must be inferred from the order which preceded the document of the 19th March that it was not intended to send the copy of the decree to Dinagepore. This, perhaps, may be inferred from that document taken alone, but it would not be safe to act on such an inference to annul the attachment and sale, especially when it is consistent with the language of the subsequent documents, that the copy was sent with the other papers on the 19th of March; or, at all events, before the attachment was made.

On the whole, their Lordships consider that the appeal should be allowed; and will humbly advise Her Majesty that the decree of the High Court should be reversed, that the decree of the Principal Sudder Ameen should be executed, and that the appellant should have the costs of the litigation in India and of this appeal.

Appeal allowed.

Agents for appellants: Messrs. *Watkins* and *Lattey*.

Agent for respondents: Messrs. *Walters* and *Gush*.

FULL BENCH.

Before Sir Richrd Couch, Kt., Chief Justice, Mr. Justice L. S. Jackson Mr. Justice Glover, Mr. Justice Mitter, and Mr. Justice Pontifex.

1872 Dec. 2.

CALLY CHURN MULLICK *v.* BHUGGOBUTTY CHURN MULLICK. IN THE MATTER OF THE PETITION OF BENUD BEHARI MULLICK.

Act XL of 1858—8 Hindu Resident and domiciled in Calcutta, Majority of.

The age of majority of a Hindu resident and domiciled in the town of Calcutta and not possessed of any property in the mofussil, is the end of fifteen years.

See also 15 B.L.R. 74. 12 B.L.R. 359.

THE following questions were referred on August 21st, 1872, by Macpherson, J., for the opinion of a Full Bench:—

1. "What is the age of majority of a Hindu resident and domiciled in the town of Calcutta, and not possessed of any property in the mofussil?

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2. To what extent does Act XL of 1858 have operation on persons resident in the town af Calcutta ?"

The grounds of reference were stated as follows :—

"The petitioner, Benud Behari Mullick, is entitled to have certain moneys which are now in Court in tho hands of the Receiver paid over to him on his attaining majority. He applies for payment of the money now, on the ground that he has attained majority. He states in his petition (which is verified :— 'That your petitioner, is a resident of Calcutta from his birth and domiciled therein, and that Romanath Mullick, the father of your petitioner, was also a resident of Calcutta and domiciled therein, and that pour petitioner has no properties situated in the mofussil; that your petitioner is of the age of sixteen years and six months, and has therefore attained his majority.'

This raises the question whether, under Act XL of 1858, eighteen is the age of majority of Hindus resident and domiciled in the town of Calcutta, and not possessed of property in the mofussil.

Until quite recently sixteen was always deemed to be the age of majority among Hindus in Calcutta : but doubts have been entertained on the subject since the decision of the Full Bench in the case of *Madhusudan Manji* v. *Debigobinda Newgi* (1) ; and in *Jadunath Mitter* v. *Foyle Chand Dutt* (2), Phear, J., held that, by the operation of Act XL of 1858, the period of minority extends, among Hindus, to eighteen years, as well within the original civil jurisdiction of the High Court, as within the jurisdiction of the civil Courts in the mofussil. More lately the same learned Judge held in *Archer* v. *Watkins* (3) that an Eurasian in Calcutta, who is not an European British subject, comes under Act XL of 1858, and therefore attains majority at eighteen years.

The question was raised before me (but not decided) in the case of *In the goods of Gungaprasad Gosain* (4), and also before the Appellate Court in the same case on appeal (5). In his

(1) 1 B. L. R., F. B., 49.
(2) 7 B. L. R., 607.
(3) 8 B. L. R., 372.
(4) 4 B. L, R., App., 43.
(5) 5 B. L. R., 80.

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judgment in the case of *Kamikhaprasad Roy* v. *Srimati Jagadamba Dasi* (1), Markby, J., states that as, in the course of evidence, it appeared that one of the parties was of the age of seventeen years, "and as it has been held that a Hindu does not come of age till eighteen, he had ordered a guardian for him to be appointed, &c."

It appears to me that Act XL of 1858 was intended to apply to the mofussil, and not to persons in the town of Calcutta and not possessed of property in the mofussil. But the matter is a very important one, and, therefore, I refer it for the decision of a Full Bench."

The *Advocate-General*, offg (Mr. *Paul* and Mr. *Woodroffe* for the petitioner.

Mr. *Lowe* for the plaintiff.

Mr. *Kennedy* for the defendant, who was the petitioner's guardian.

Mr. *Phillips* for the Receiver.

The *Advocate-General*.—The title of Act, XL of 1858 cannot be taken into consideration in construing the Act—7 Bac. Abr. 452. To ascertain the purposes of the Act, we must look at the Regulations repealed by s. 1, and in lieu of which the Act was passed. All those Regulations relate to the mofussil. S. 29 of Act XL of 1858 says:—"The expression 'Civil Court,' as used in this Act, shall be held to mean the principal Court of original jurisdiction in the district, and shall not include the Supreme Court; and nothing contained in this Act shall be held to effect the powers of the Supreme Court over the person or property of any minor subject to its jurisdiction." Then s. 26 defines who are minors for the purposes of the Act. A person who has no property would not be within the scope of the Act, nor would he be disentitled to sue for work and labor

(1) 5 B. L. R., 517.

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done after he has attained the age of sixteen. [JACKSON, J., referred to s. 2,] I submit that the Act merely relates to the case of Hindus holding property in the mofussil. The view taken by Phear, J., in *Jadunath Mitter* v. *Boyle Chand Dutt* (1), is incorrect. It rests on a fallacy resulting from his having taken the title and preamble of the Act, and drawn an argument therefrom; but, as I have already shown, the title cannot be looked at, and the preamble leads rather to an inference contrary to that drawn by his Lordship.

It is said in that case that, if the Court holds that the period of majority in the presidency town is sixteen years, there would be an anomaly; but there must be anomalies where two separate Courts have to apply different laws. From the very commencement the Legislature has guarded itself against interfering with the law of Hindus in presidency towns. Had it intended to make eighteen the age of majority for all purposes in Calcutta, it would have expressed that intention in clear language, but not only has it omitted so to do, but the whole history of Legislature on the subject shows that such was not its intention; the Succession Act, the Hindu Wills' Act, and both the Limitation Acts specially fix the age of majority for the purpose of those Acts respectively; this would have been unnecessary if Act XL of 1858 had once for all fixed the age of majority at eighteen. The words "for the purposes of the Act" are words of restriction limiting the application of the Act to those cases only in which the Act itself is invoked. [COUCH, C.J.—The Full Bench decision in *Madhusudan Manji* v. *Debigobinda Newgi* (2) goes beyond that, and we are bound by the Full Bench decision.] I do not think that that has been the invariable practice, for instance, in the case of *Mahomed Akil* v. *Asadunnissa Bibee* (3), a Full Bench decision was afterwards set aside by a Bench of six Judges [JACKSON, J.—In that case it was held that the minutes written by three Judges, who had retired or were no longer members of the Court, could not be looked on as judgments so as to influence the decision to be given on appeal.

(1) 7 B. L. R., 607.
(2) 1 B. L. R., F. B., 49.
(3) 9 W. R., 1.

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By a rule (1) passed in July 1867, every decision of a Full Bench is to be treated as a conclusive authority upon the point of law or usage having the force of law, determined by the Full Bench, unless it be (subsequently) reversed, or a contrary rule be laid down by the Privy Council. COUCH, C.J.—It would be better in future if it were strictly the practice to consider that a Full Bench decision settles the law.] I would only draw the Court's attention to the fact that the High Court of Bombay has ruled differently; see the supplement to Thomson on Limitation, p. 7 note. In *Archer* v. *Watkins* (2), Phear, J., held that Act XL of 1858 was applicable to Eurasians. If that is correct, the Act does affect the powers of this Court. In *In the goods of Gungaprasad Gosain* (3), Macpherson, J., though he refuses to express any opinion on the point, does seem to think that Act XL is a mofussil Act.

No objection was raised either on behalf of the plaintiff or of the guardian to the order prayed for.

Mr. *Phillips* for the Receiver.—It is not disputed that the preamble of Act XL of 1858 may be considered in construing the Act. The preamble is followed by a series of provisions describing how the Civil Courts are to act in respect of the property of minors But the Act does not affect the powers of the Supreme Court which all along has a similar jurisdiction in respect of Hindus in Calcutta. The Act, I submit, recognizes those powers, while it brings persons in the mofussil under the jurisdiction of the Civil Courts. The Full Bench decision recognizes the applicability of the Act to persons with respect to whom its provisions might be put in force although none of its provisions have in fact been put in force, and it may well be that s. 26 was intended to define the age of majority both for the Civil Courts in the mofussil and the Supreme Courts in presidency towns In *Jadunath Mitter* v. *Boyle Chand Dutt* (4), Phear, J. answered

(1) *Rule passed July* 1867.—"Every decision of a Full Bench shall be treated as a conclusive authority upon the point of law, or usage having the force of law, determined by the Full Bench, unless it be (subsequently) reversed, or a contrary rule be laid down by the Judicial Committee of the Privy Council. A Full Bench shall consist of not less than five Judges." See Broughton's Civil Procedure, 4th edition, App., 710.

(2) 8 B. L. R., 372.

(3) 4 B. L. R., App., 43.

(4) 7 B. L. R., at p. 614.

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the argument that his construction of the Act would affect the powers of the Court by observing that it would only extend the period of time during which those powers could be exerted; but there is yet another answer, *viz.* that any alteration in the age of majority can only affect the *status* of person who are minors; the power of the Court over minors will be the same but the persons who are minors will be different. [COUCH, C.J.—If the Court could not order the property under its control of a person under eighteen to be made over to him, that would be affecting the powers of the Court.] I submit not; it could scarcely be said that the powers of the Court over infant foreigners subject to its jurisdiction would be affected by a law of their native country which should alter the age of majority. The argument against the construction put upon Act XL by the Advocate-General derived from the inconvenience which would arise from the same person having a double *status* is a very strong one if admissible.

The *Advocate-General* did not reply on the arguments as to the extent of Act XL of 1858; but submitted that the true construction of the rule referred to by Jackson, J., was that the decision of a Full Bench might be reversed by another Full Bench. [COUCH, C.J.—Only where it has been reversed by the Privy Council.]

Cur. adv. vult.

The judgment of the Court was delivered by

COUCH, C.J. (who, after reading the questions referred, continued).—Having heard these questions argued by the Advocate-General, who appeared for the petitioner, we thought it advisable before giving our opinion to learn what rule had been followed by the Supreme Court, and afterwards by the High Court since the passing of Act XL of 1858, and before the decisions mentioned in the order of reference. We therefore caused a search to be made among the records of the Court on the Original Side, and the result of it is this:—

In *Keerut Chunder Sircar* v. *Holodher Ghose*, a report was made by Morgan, J., on the 22nd of April 1863, finding that the infant plaintiff Bhoobunmohun Ghose had attained his full age of sixteen years; and an order dated the 6th of May 1863 was made, discharging the next friend of the plaintiff, and allowing him to prosecute the suit.

In *Devender Narain Roy* v. *Obhoy Churn Sen* it having been proved by affidavit that the plaintiff had attained the age of sixteen years, an order was made on the 15th December 1863 discharging the next friend of the plaintiff, and allowing him to prosecute the suit.

In *Anunda Gopal Dutt* v. *The Secretary of state*, Levinge, J., made a report dated 30th January 1864, finding that the defendant Bhoobunmohun Dutt had attained his full age of sixteen years, on which an order was made on the 25th of February 1864, directing the defendant's share of the fund in Court to be paid to him.

In *Anund Lall Dutt* v. *Sreemutty Monomohun Dossee*, an order was made on the 25th of August 1864, discharging the next friend of Anund Lall Dutt, and allowing him to continue the suit, as he had attained the age of sixteen years.

In *Monohur Doss* v. *Bullub Doss*, an order was made on the 14th of January 1867, discharging the Receiver as to Ramkissen Doss's share of the property, and directing his share to be delivered to him, he having attained the age of sixteen years. In the same suit a like order was made on the 10th of September 1868, as to Radhakissen Doss's share of the property, he having attained the age of sixteen years.

In *Pertab Chunder Sett* v. *Tacoor Dass Sett*, an order was made on the 23rd of March 1871, discharging the Receiver, and directing the plaintiff's share of the property to be delivered to him, as he had attained the age of sixteen years.

In *Monmothonauth Day and Onathnauth Day* v. *Aushootosh Day*, a report was made by Sir Charles Jackson on the 24th of September 1862, which found that the plaintiff Monmothonauth Day had attained the full age of sixteen years, and an order was made on the 14th of June 1866, directing the arrears of maintenance and future maintenance, to be paid to him

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out of the fund in Court. In the same suit a report by Phear, J., was filed on the 8th of August 1866, finding that the other plaintiff Onathnauth Day had attained his full age of sixteen years; and an order was made on the 2nd of March 1867, directing the arrears of maintenance and future maintenance to be paid to him out of the fund in Court. Then, in the same suit, an order was made, dated the 8th of August 1872, discharging the Receiver, and directing the property in his hands to be delivered and paid to the plaintiffs.

On the 11th of May 1867, in the suit of *Otool Chunder Bose* v. *Sreemutty Komulmonee Dossse,* Otool Chunder Bose having attained the age of sixteen years an order was made for the discharge of the next friend.

In *Sreemutty Gobindsoondery Dabee* v. *Hem Chunder Gossain and Gopaul Chunder Gossain,* an order was made on the 16th of December 1871, discharging the guardian, *ad litem,* Gopaul Chunder Gossain having attained the age of sixteen years.

In another suit, *Sreemutty Unnopoorna Dossee* v. *Bhoobun Mohun Neoghy,* an order was made on the 19th of September 1872 for the discharge of the next friend, the plaintiff having attained the age of eighteen years; and, subsequently in another case (*In the goods of prosonno Coomar Tagore, deceased*), on the 20th December 1872, on the statement that the guardian of the infants had declined to act further, and that one of the infants had attained his majority or age of 18 years an order was made that another guardian should be appointed for the other persons who were still infants.

It seems that, until the order of Markby, J., in the case of *Kamikhaprasad Roy* v. *Srimati Jagadamba Dasi* (1), the age of mojority of a Hindu resident in Calcutta was considered in this Court to be sixteen years. It does not appear that there was any argument upon the question before Markby, J., made the order which he refers to in his judgment in *Kamikhaprasad Roy* v, *Srimati Jagadamba Dasi* (1). In the argument in *Jadunath Mitter* v. *Bolye Chand Dutt* (2),an unreported decision of Norman, J., to the same effect is quoted, but the date

(1) 5 B. L, R., 508, at p. 517 (2) 7 B. L. R., 607.

of it is not given. In the case before Phear, J., *Jadunath Mitter* v. *Bolye Chand Dutt* (1), the question was argued, and the decision reserved. This was in August 1871, from which time it seems that decision has been followed. In considering the questions referred to us, we cannot overlook the fact that for more than ten years after the passing of Act XL of 1858, the Judges of this Court sitting on the Original Side did not consider that it had made any alteration in the law administered by this Court on its Original Side as to the age of majority of Hindus which had been held in the Supreme Court—*Nocoor Bysack* v. *Gopaulchund Seal* (2)—to be sixteen years. And no doubt this view of the law must have been frequently acted upon during those years, and many titles to property in Calcutta must depend upon it. However great the inconveniences which would arise from our coming to a decision invalidating those titles might be, we should be bound to do so, if the construction of the Act were clear; but if it is doubtful, this inconvenience may be a reason for following what we may regard as the contemporaneous exposition of the Act.

The question depends upon what is meant in s. 26 by the words "for the purposes of this Act, every person shall be held to be a minor, who has not attained the age of eighteen years." The title of the Act is "an Act for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal." If we looked only at the title and s. 26, we might say that the town of Calcutta was within the purposes of the Act, it being included in the Presidency of Fort William. But the title of an Act, although it may sometimes aid in the construction of it, is not a safe expositor of the law, being often loosely and carelessly inserted. And there is the established rule that, in the exposition of Statutes, the intention is to be deduced from a view of the whole and of every part taken and compared together. The general statement in the title and preamble of the Act is not sufficient to show what are its purposes. We must look for them in the provisions which are made in it. The purpose is stated generally in s. 2, *viz.*, the subject-

(1) 7 B. L. R., 607. (2) Mor. Rep., 82.

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ing to the jurisdiction of the Civil Court the care of the persons of all minors (except European British subjects) and the charge of their property, except proprietors of estates "who have been or shall be taken under the protection of the Court of Wards." The sections which follow contain provisions for effecting this, and are followed by s. 26. We think the word "purposes" there refers to the provisions in the preceding sections. Then s. 29 defines the expression "Civil Court" as used in the Act to be the principal Court of original jurisdiction in the district, and not to include the Supreme Court. Consequently, none of the powers conferred by the Act could be exercised within the jurisdiction of the Supreme Court. The proviso that nothing contained in the Act should be held to affect the powers of the Supreme Court over the person or property of any minor subject to its jurisdiction was unnecessary, and seems to have been inserted from abundant caution.

We think the construction which was first put upon the Act, that it did not alter the Hindoo law in Calcutta as to the age of majority, was the right one; and that such a change was not intended by the legislative authority when the Act was passed. If it is desirable that the law should be uniform in Calcutta and the mofussil, it may be made so by the Legislature without affecting existing titles, which must be affected by a decision of this Court, as we should declare what the law has been since the passing of Act XL of 1858. As to Phear, J.'s reason that we ought not to attribute to the Legislature the intention to set up for the same persons two standards of majority, one to prevail in the mofussil, and the other in Calcutta, we think the answer is that two standards have been set up in the Mofussil by Regulation XXVI of 1793, and it was the state of the law until Act XL of 1858 was passed. It appears to us that the grounds upon which the Full Bench came to the decission in *Madhusudan Manji* v. *Debigabinda Newgi* (1) do not apply to the questions before us.

We think the first question should be answered by saying that the age of majority in such a case is the end of fifteen years.

(1) 1 B. L. R., 49.

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The second question does not arise in the case, it being stated that the petitioner has no property in the mofussil. We will not undertake now to define to what extent the Act may operate when a person resident in the town of Calcutta has property in the mofussil.

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Attorney for the plaintiff: Baboo *Womesh Chunder Banerjee.*

Attorney for the petitioner: Baboo *Greesh Chunder Mitter.*

Attorney for the petitioners's guardian: Baboo *Sreenath Chunder.*

Attorneys for the Receiver: Messrs. *Berners, Sanderson,* and *Upton.*

ORIGINAL CIVIL.

Before Mr. Justice Macpherson.

RAJMOHUN BOSE AND ANOTHER *v.* THE EAST INDIAN RAILWAY COMPANY.

1872
Sept. 9 *to* 13 *&* *Nov.* 18.

Jurisdiction—Letters Patent, 1865, *cl.* 12—*Act VIII of* 1859, *s.* 5—*Suit for Land—Nuisance—Acts done under Powers conferred by the Legislature—Reg. I of* 1824—*Act XLII of* 1850—*Land taken for Public Purposes—Injunction—decree—time to abate uiNsance—Liberty to apply.*

See also 14B.L.R. 12.

The plaintiffs, the owners and occupiers of a house and premises in Howrah, sued for an injunction to restrain a nuisance cause by certain workshops, forges, and furnaces erected by the defendants, and for damages for injury done thereby.

The defendants were a Railway Company incorporated under an Act of Parliament for the purpose of making and maintaining railways in India, and by an agreement (entered into under their Act of Incorporation) between them and the East India Company, they were authorized and directed to make and maintain such railway stations, offices, machinery, and other works (connected with making, maintaining, and workig the railways) as the East India Company might deem necessary or expedient. The workshops complained of were erected in 1867 under the sanction of the Bengal Government on land purchased by the Government in 1854 for the purposes of the railway under Regulation I of 1824 and Act XLII of 1850, and which had been made over to the defendants.

Held, that the suit was *in personam,* and not a suit "for land or other immoveable property," within the meaning of cl. 12 of the Letters Patent, 1865, or of s. 5 of Act VIII of 1859.