

1867
 IN THE GOODS
 OF DUNCAN.

edly has a discretion in the matter. It will, if it sees any chance of the grant leading to confusion, or to the creation of conflicting titles which would end in needless litigation, refuse to grant Letters of Administration, or to grant them on terms so as to avoid such a result. In England the Court does not always feel itself obliged to grant the probate or Letters of Administration to the person who has the best right. This is a case in which there is risk of the kind which I have just suggested. I shall, therefore, grant Letters to the Administrator-General with the direction that they shall not issue for one month, to give the executor time to apply to the Punjab Court for probate, or his attorney for Letters of Administration with the Will annexed. On this being done, application may be made here for the recall of these Letters. The Administrator-General's costs to be paid out of the estate in any event.

Proctors for the Administrator-General: *Messrs. Berners, Sanderson, and Fergusson.*

Proctors for Mr. J. H. Matthews: *Messrs. Stack & Co.*

Before Mr. Justice *Markby.*

ROLLO *v.* SMITH AND OTHERS.

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 Nov. 29.

European British Subject—Age of Majority—Suit by Minor.

A. stated that he was born in 1848; that his great grandfather was, according to the tradition of the family, a European (but of what country in Europe he did not know) residing at Madras, and his great grandmother a native, Hindu or Mahomedan; that he did not know whether his great grandfather and great grandmother were married, or who his grandmother was, or whether his grandfather was married; that his father married a lady bearing an English name; that he himself and all his relations were Christians; that he was born in Calcutta, and knew of no relatives in Europe. *Held*, that he was the legitimate descendant of a European British subject, and therefore his age of majority was 21 years.

Plaintiff being a minor, his suit was not dismissed, but he was directed to appoint a next friend to sue for him.

Mr. *Woodroffe* and Mr. *Evans* for the plaintiff.

Mr. *Ingram* (Mr. *Kennedy* with him) for the defendants.

THIS suit was brought for goods sold and delivered and upon account stated. It was objected (*inter alia*) for the defendants

that this suit could not be maintained by the plaintiff on the ground of his being under the age of 21 years, and therefore a minor.

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Mr. *Woodroffe* argued that 21 years of age was not the period of majority in India for other than *European* British subjects. See 1 *Morley's Digest*, "British subject," p. 89, note; *Calvin's Case* (1); *Hogg v. Greenway* (2); s. 3 of the Indian Succession Act (X. of 1865); Reg. XXVI., 1793, section 2; *Macpherson's Civil Procedure*, p. 15. But supposing the plaintiff is a minor, the suit is maintainable; minority is no ground for dismissal, see *Warwick v. Bruce* (3); at most the case should have been adjourned for the appointment of a next friend; *Flight v. Bolland* (4), quoted in *Macpherson on Infants*, p. 364; but here the irregularity has been waived by payment into Court; *Chitty's Archbold's Practice*, 1206 (edn. of 1856.)

Mr. *Evans*, on the same side, contended, that in the case of persons to whom the Indian Succession Act applies, 18 years of age is the period of majority, there not being any positive rule of law; otherwise, under section 215, a youth over 18 and under 21 can sue for outstandings due to his father in respect of his business, but not for debts accrued since his father's death in respect of the same business while carried on by himself.

Mr. *Ingram*.—The objection is not one of form, but of principle. If the suit is dismissed, what security is there against the infant for costs. And the plaintiff here is an infant. The interpretation clause (section 3) of the Succession Act is limited to the Act itself. The test is not whether the plaintiff is a European British subject or not, but is he a Mahomedan or Hindu; if he is not, the English law applies, *Musleah v. Musleah* (5); 21 Geo. III., c. 70, s. 17; *Abraham v. Abraham* (6); *Killican v. Juggurnath Dutt* (7).

MARKBY, J.—In the course of this case an application was

(1) *Coke's Reports*, Part vii, l.

(2) 1 *Coryton*, 97.

(3) 2 *M. and S.*, 205,

(4) 4 *Russ.*, 298.

(5) *Fulton*, 420.

(6) 9 *Moore's E. I. A.*, 195—241.

(7) *Morton*, 119.

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made to dismiss the suit on the ground that the plaintiff was under the age of 21 years. The plaintiff stated that he was born in the year 1848 ; that his great grandfather was, according to the tradition of the family, a European residing at Madras, and his great grandmother a native, Hindu or Mahomedan. He did not know whether his great grandfather and great grandmother were married, or who his grandmother was, or whether his grandfather was married. His father married a Miss Clarke. The plaintiff himself and all his relations are Christians. He was born in Calcutta, and has no relatives in Europe that he is aware of. He does not know to what country in Europe his great grandfather belonged.

Under these circumstances, I think I must presume that the plaintiff is the legitimate descendant of a European British subject.

The question which has been discussed is whether the plaintiff attains his majority at 18 or 21. If at the former age, he can maintain this suit alone ; if at the latter, he must sue by his guardian or next friend.

Notwithstanding that I find here and there some doubtful expressions on the subject, I have myself no doubt whatever that the legitimate descendants of a European British subject retain the law of their ancestors, however remote the descent. The case has no analogy to that of the descendants of British subjects resident in a foreign country, who I believe, are generally considered in three generations to lose their nationality, and with their nationality their legal *status* as subjects of their original country. But a British subject does not lose his nationality by residence in India however long, nor was it contended or could it be contended that the intermarriage with the native woman could in any way affect it.

Nor has the position of the plaintiff any analogy with that of Hindoo and Mahomedan natives of this country, who have become Christians. It has been considered that the laws of Hindoos and Mahomedans are so much connected with their respective religions, that when any one of them gives up his religion he gives up his legal *status* also. Such persons, therefore, are in the extremely awkward position of having no laws except those

few that have been made expressly applicable to them by the Legislature, and perhaps a few universal laws of protection to person and property. But they have no share in any one of the various accumulations of rights and obligations which belong to the members of any long established civilized community, and nearly all material questions which arise between such persons have to be settled by loose analogy or supposed justice. But I find no authority for putting the descendants of British subjects in this unfortunate position, and it seems to me that to do so would be a violation of the protection which the Queen extends to her subjects in all parts of her dominions. I have, therefore, no doubt that the plaintiff is a person subject to the modified form of English Law usually administered in this Court. I consider that there is no difference in this respect between a person of the plaintiff's descent, and a person of the purest English blood just arrived from England, and domiciled here.

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It is no doubt true that the Legislature has introduced some rather strange anomalies upon this subject. For instance, it has defined a "minor," in Act X. of 1865, as any person who shall not have completed the age of 18 years, and in many important matters it has assigned to persons who have attained that age, the position of majors. Thus a person who is sole executor or sole residuary legatee at the age of 18 years, himself obtain probate or letters of administration. But it would be carrying implication no farther to suppose that this was intended by the Legislature as an alteration of the age of majority for all purposes. It would lead to this consequence that a young man leaving his country and settling in this country would attain his majority for all purposes at 18 years.

I, therefore, think that the plaintiff is still a minor, and that he is unable to maintain this suit, but I do not think it necessary to dismiss the suit; it will be sufficient to direct that he appoint a guardian or next friend to sue for him, which I accordingly direct him to do.

Attorney for the plaintiff: *Baboo D. C. Dutt*,

Attorney for the defendants: *Mr. Dover*.