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RANEE HURROSOONDERY DOSSEE v. RAJAH KRISHNAUTH ROY,  
AND THE OTHER CAUSES (1848).

*ex relat. Morton, March 20th, 29th, 1848.*

*In Equity.*

Money in Court payable to a party and his representatives: he dies *felo de se*: it will not be paid out to his representative without the sanction of the Crown.

*Morton* moved, upon petition and notice, on behalf of the widow and representative of Rajah Krishnauth Roy, for payment to her of funds in Court, belonging to the estate, and payable under the decree to the Rajah and his representatives. The decree was a final one, made in the Rajah's lifetime; and it reserved the right of the representatives of the parties to apply as advised upon the death of any.

*Prinsep* opposed, for the complainant, upon several grounds; of which one was, that the Rajah had committed suicide, and had been pro-[36]nounced *felo de se* by a Coroner's jury. The proceedings on the inquisition were put in; and in the schedule of the goods was included the money in Court in this cause. The Court directed the motion to stand over, with leave to serve a notice upon the Advocate General.

This day, the Advocate General appeared and stated, he had ascertained that the solicitor to Her Majesty's Treasury had been communicated with, but that no

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final answer as to the course of procedure which the Crown intended to adopt had been received.

The Court refused to make any order; intimating to the counsel for the widow, that the proper course was to memorialize the Crown.

*Refused.*

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IN THE GOODS OF PORTEOUS (1842).

*ex relat. Morton, Sept. 27th, 1842.*

Registrar preferred to a small creditor, whom he offered to pay.

A promissory note, not due, by a firm of which deceased a member, not a title to administration.

This was a contest for administration between the Registrar and Mutty Loll Seal, a creditor.

The debt was twofold; 1st, an admitted simple contract debt for Rs. 450, due on deceased's private account. 2nd, as holder of a promissory note (not yet due) for Rs. 5,000, drawn by the firm of Oswald and Co. of which deceased was a member. The surviving partners were in Europe; but the business of the firm continued to be carried on here as usual.

*Morton* for the Registrar, offered to pay the Rs. 450; and contended, upon the principle of the case, *In the goods of Pickering* (ante p. 13), that a claim so small in comparison with the estate, which was sworn to exceed a lac, did not constitute an indefeasible title to administration. The promissory note was not, in any view, a legal debt: non constat that it would not be paid when due: and if it were not, the estate of the deceased could only be resorted to in Equity.

*Leith* and *Fulton*, contra, relied upon the creditor's title; and contended, that no distinction ought to be founded upon the extent or the nature of the debt.

The Court (*Seton J.*) considered the claim of Rs. 450 as too insignificant, especially as there was an offer to pay it instantly. There was no ground for treating the note of the firm as a debt due from the estate of the deceased. The claim of a creditor, as a title to administration, must be a substantial legal debt.

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The following is the deed-poll, or rather series of deeds-poll, under the Company's seal, alluded to by Sir R. Chambers; they bear date the 22d day of June, 1688 :—

“ The Governor and Company of Merchants of London trading to the East Indies to all to whom these presents shall come send greeting :

Whereas representation hath been made to us by Sir Josiah Child, Baronet, our Deputy Governor, that, upon long conferences by him, had with Cogee Phanoos Calendar, an Armenian merchant of eminency, and an inhabitant of Isphahan in Persia, as also with Sir John Chardin, of London, knight, they had, on behalf of the Armenian nation, proposed to him several particulars for carrying on a great part of the Armenian trade to India and Persia, and from thence to Europe by way of England, which will redound greatly to His Majesty's advantage in his Customs, and to the increase of the English navigation, if the Armenian nation might obtain such licence from this Company as will give them encouragement so to alter and invert the ancient course of their trade to and from Europe. And we, being always willing to increase and encourage the public trade and navigation of this kingdom after a serious debate of all the propositions relating to this affair, have thought fit to agree and resolve as follows, *viz.*

First, That the Armenian nation shall now, and at all times hereafter, have equal share and benefit of all indulgences this Company have, or shall at any time hereafter grant to any of their own adventurers, or other English merchants whatsoever.

Secondly, That they shall have free liberty, at all times hereafter, to pass and repass to and from India in any of the Company's ships, on as advantageous terms as any freeman whatsoever.

Thirdly, That they shall have liberty to live in any of the Company's cities, garrisons, or towns in India, and to buy, sell, and purchase land and houses, and be capable of all civil offices and preferments, in the same manner as if they were Englishmen born; and shall always have the free and undisturbed liberty of the exercise of their own religion. And we hereby declare, that we will not continue any Governor in our service that shall, in any kind, disturb or discountenance them in the full enjoyment of all the privileges hereby granted to them; neither shall they pay any other or greater duty in India than the Company's factors, or any other Englishmen born do, or ought to do.

[38] Fourthly, That they may voyage from any of the Company's garrisons to any other ports or places in India, the South Seas, China, or the Manillas, in any of the Company's ships, or any permissive free ships allowed by the Company: and may have liberty to trade to China, the Manillas, or any other ports or places within the limits of the Company's charter, upon equal terms, duties, and freight, with any free Englishman whatsoever.

But whereas all persons in England do pay for bullion outwards two per cent. for freight and permission, and three per cent. home-wards for diamonds and other precious stones, it is hereby [Here follows a long detailed account of dues payable by Armenians upon various articles of merchandize] And it is agreed, that the permission-money and freight for all goods outward bound to be paid in India, as aforesaid, shall be accounted for at eight and one half rupees per pound sterling, upon hypothecation of the goods to the Company in London. And we do declare, that, for ease of accounts, the custom due to the Company in East India is to be included, together with the other charges, *viz.*, freight and permission according to the premises, and all inserted in one sum upon the respective bills of loading; which sum is always to be paid before the delivery of the goods to the persons mentioned in the said bills of loading, which is the true intent of the hypothecation before expressed. That all goods which have once paid custom are not to pay any again, either upon importation, or exportation, of the same goods to the place where they first pay it, or to any other port or place belonging to us in the East Indies. That every person that shall take passage on any of the Company's ships, shall pay in East India twelve pounds sterling for his permission outwards, at the rate of eight rupees and one half per pound sterling; and the like sum to be paid here for every person that

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shall take passage homeward, besides eight pounds per head for sea-provisions, which it is hereby agreed shall always be paid in London. And for such persons who shall board at the Captain's table, they shall pay ten guineas to the Captain for the same; but the servants shall be messed apart by themselves, and always have the same allowances of ship-provisions as the officers and seamen of the ship have, or ought to have. And it is also granted to the said Armenians that the passengers shall be allowed, both out and home, to carry with them their wearing cloths, furniture, and provisions, not exceeding one quarter of a ton for each man, freight free. And whereas the said Armenians have used to drive a great trade from India to Turkey over-land, by way of Persia and Arabia, and are now desirous to drive that whole trade by the way of England; it is hereby declared and agreed, That [39] the said Armenians have liberty to send, upon any of the Company's ships for England, any sorts of goods of East India, consigning them to the Company by true invoices and bills of lading, and not otherwise, paying ten per cent. permission on the value of the said goods in London, besides the same freight as we ourselves pay. And it is hereby declared, that the Company have liberty to detain, and keep in their possession, all such goods as shall be consigned unto them as aforesaid, until they have shipped them off upon English shipping, bound to Turkey, Venice, or Leghorn, and taken security that they shall not be landed in any other ports or places of Europe, except the place to which they shall be consigned, according as they shall be directed by the said Armenian proprietors or their agents. And, lastly, it is declared and agreed, That, notwithstanding anything aforesaid, it shall and may be lawful for the said Company to reserve and keep for their own use any of the said goods so intended for Turkey as aforesaid, paying the proprietors one third part clear profit on the first cost of the goods as aforesaid; all freight, charges and disbursements whatsoever being first deducted and foreprized, eight rupees in India being in this case to be accounted for one pound sterling. In witness whereof, the Governor, Deputy Governor, and three of the committee of the said Company have hereunto set their hands, and caused the larger seal of the said Company to be affixed, this two and twentieth day of June, anno Domini 1688, and in the fourth year of the reign of our Sovereign Lord James the second, by the grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, &c."

(signed) *Benjamin Bathurst*, governor  
*Josiah Child*, deputy governor  
 ——— *Worcester*  
*John Moore*  
*George Boun*

"The Governr and Company, &c. to all, &c.

Whereas Cogee Phanoos Calendar, an Armenian merchant of eminency, and an inhabitant of Ispahan in Persia, hath taken great pains in making an agreement with the said Company for a great trade to be carried on in English shipping by himself and others of the Armenian nation; the said Governor and Company, in consideration thereof do, by these presents (at the request of the said Cogee Phanoos Calendar) freely grant unto him and his family the sole trade of Garnet, he pay-[40]ing ten per cent. custom for the same, and the usual freight paid by the Company. And the said Company do hereby declare, that they will neither trade in the said commodity themselves, nor suffer any other persons, English or strangers, for the future to trade or traffic in that commodity. Given under the Company's large seal, as also under the hands of &c." [Same date and signed as the former.]

"The Governor and Company, &c. to all, &c.

Whereas it hath been represented to us, that the Armenian nation have a desire to carry on a trade and commerce with our people in the East Indies, we do, for the better encouragement of that nation to settle and cohabit in the several garrisons, cities, and towns in the East Indies under our jurisdiction, by these presents, declare, grant, and agree, that whenever forty or more of the Armenian nation shall become inhabitants in any of the garrisons, cities, or towns belonging to the Company in the East Indies, the said Armenians shall not only have and enjoy the free use and exercise of their religion, but there shall be also allotted to

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them a parcel of ground, to erect a church thereon, for the worship and service of God in their own way. And that we will also, at our own charge, cause a convenient church to be built of timber, which afterwards the said Armenians may alter and built with stone, or other solid materials, to their own good liking. And the said Governor and Company will also allow fifty pounds per annum, during the space of seven years, for the maintenance of such priest, or minister, as they shall chuse to officiate therein, Given &c.” [As the last one.]

With reference to the above documents, the following remarks were addressed by the Company's solicitor, Mr. Nuthall, to his employers, in May 1772; when the position of the Armenians in the Company's territories was the subject of debate in the House of Commons.

“1st. It is no treaty, or contract; the Armenians are not parties to it, consequently not bound by it. It is nothing more than a set of orders, or regulations, issued by the old East India Company, for the purpose of encouraging the Armenians to employ the Company's ships in trade, under particular duties and freight therein specified.

“2dly. It does not appear, from any of the India Company's records, that the Armenians ever acted under this grant, or ever claimed the privileges and immunities therein mentioned, from 1688, to this time; or ever consigned to the Company their goods from India for the Turkey trade, or otherwise, as was the plain intention of the instrument.

“3dly. But, admitting this to be an agreement binding on the old Company, and that there is evidence of its being put in execution, can [41] it be insisted upon, that after the surrender of the old Company's charter and all their powers, the present East India Company, who derive their rights under a different charter, is concluded by it, and bound to perform, or acquiesce in it? It might as well be urged, that the bye-laws and resolutions of the old Company were binding on the new Company; there is no act of parliament, or charter, that warrants any such position.” Mr. Sayer, the then standing counsel of the Company subscribed to Mr. Nuthall's remarks, and said of them, that they “effectually put an end to all pretended treaties with the Armenians in the year 1688.”

In a letter from the Mahomedan governor of Hooghly to the Court at Moorshedabad, in 1728, complaining of the European trade, it is said; “The Armenians used formerly to pay 5 per cent. customs. In Shah Allum's time they obtained a firmaun for paying no more than 3½ per cent. and according to which firmaun, they have Jaffier Khawn's perwannah, and now they carry on their business in Calcutta under the English protection; and those of them that want a perwannah for Surat, come to Hooghly and get one, by which the king is a great sufferer.”

The above documents and particulars are taken from Mr. Bolts' *Considerations on Indian affairs*, London, 1775.

The Armenians, since the close of the 14th century of the Christian era, have ceased to exist as a nation having a civil government, and have been a scattered and wandering (although a distinct) race. Leo, their last king, was taken captive into Egypt, A. X. 1375.

In 1688, the date of the Company's deeds, the pontiff or ecclesiastical Superior of the Armenians, was Eleazar; elected under the patronage and by permission of their Turkish governors. In 1808, the emperor Alexander was prevailed on to accept the style of Protector of the Armenian church; and in 1810, the Persian monarch, who had succeeded the Turk as lord of the mother-country of the descendants of Haic, obtained from their pontificate, a stipulated revenue, equal to £400 sterling, the price of his guarantee from religious persecution.

(See *Avdall's translation of Chamich's History of Armenia*, Calcutta, 1827).

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The following is an extract from an opinion of H. M.'s advocate-general, attorney-general and solicitor-general, and the E. I. Company's standing counsel, which was published in General Orders, Fort William, 3rd November, 1843; “Upon this point, viz., the

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interference of the Registrar, there appears to be a difference between the case of an officer or soldier in the service of Her Majesty and an officer or soldier in the Company's service. With respect to the case of an officer or soldier in the service of Her Majesty, we are of opinion, that the officer acting in respect of the deceased's effects may require the Registrar to take out letters of administration in respect of the surplus in question, and that upon such requisition, and not otherwise, the Registrar is lawfully entitled to take out such letters of administration, this is the effect of the Act 6 Geo. IV. c. 61, s. 1. With regard to the case of an officer or soldier in the Company's service, we are of opinion, that under the stat. 3 & 4 Vic. c. 37, s. 52, the Registrar cannot, in any case, be required, and is not, in any case, entitled to take out letters of administration in respect of the surplus in question. He may, however, if required and authorized so to do, but not otherwise, take out administration and interpose in respect of the estate before it is collected."

(signed) *J. Dodson*  
*Fred. Pollock*  
*Wm. Pollett*  
*Loftus Wigram*

## [43] ADMIRALTY.

IN RE THE SHIP HINCHINBROOK (1782).

*Hyde's Notes, July 2nd, 1782.*

Held, that the charter gives no jurisdiction to the Court on its admiralty side to try prize causes.

**B**RIX moved, on the petition of John Petrie, agent for George Johnstone, commodore of a squadron of His Majesty's ships, that the Court would receive the petition, and proceed to adjudge a certain captured vessel as prize, according to the prayer of the petition.

IMPEY, C. J. I had occasion to consider this question very early. As soon as the war began, I received a letter from Sir Edward Hughes, desiring to know, whether, if a ship, which had been taken, and was at Madras, should be sent to Bengal, the prize could be condemned in this Court. I cannot say that it cost me much time to deliberate, for, on looking into the charter, I thought it very clear the Court could not try any such question. Thinking that it might be convenient if this Court could try prize causes, I mentioned it in a letter to England, and, having received no answer, I conclude it is not intended that this Court should have jurisdiction to try prize causes. The stat. 19 Geo. III. ch. 67 directs how those Courts which have jurisdiction to try prize causes, shall proceed, but it does not give jurisdiction to those Courts of admiralty which do not possess such jurisdiction.

CHAMBERS and HYDE, Js., concurred.

Refused. (a)

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[43] (a) But see the next case.