

own right, the former for Rs. 6,310, and the latter for Rs. 4,947; and they also applied for the administration as the constituted agents and attorney of a Mr. Wilmot in England, who was a bond creditor to the amount of Co.'s Rs. 34,686, which was sworn to be the greater part of his fortune.

[15] *Davies, A. G.*, for the petitioner, contended that the point had been already decided in effect in this Court and cited four cases, *In the goods of Kellican*, *In the goods of Kirkman*, *In the goods of Peacock*, (a) and *In the goods of Churchill*, in which last case (November, 1785) the Court granted administration to a banian, being merely a creditor for a higher amount, in preference to two Europeans of good character, whose debts were of the same nature, but to a smaller amount. In the present case the petitioner was the principal creditor' in amount as well as in degree, because the attorney of the principal creditor could not be said to come within the description in the charter.

J. Dunkin for the caveat, submitted that Perreau and Palling, having united in the caveat and in their petition, were to be considered as one creditor, and then the joint debt would be greater than that of Bondfield

Chambers, J. said that the meaning of the word 'principal,' as applied to creditor, was nowhere defined, and that he conceived it to be rather a question of fact than of law. In deciding the question, the nature of the security ought to be the first and chief, but not the only consideration;—for the magnitude of the debt and the fitness of the person ought in some cases to have weight. It was not necessary to determine absolutely in the present case, whether the nature of the security constituted the principal creditor, because Bondfield was a judgment creditor, and also to a higher amount than either Perreau or Palling. The administration would be granted to him on condition of his entering into articles and bonds of average to pay Perreau, Palling and Wilmot pro rata, after payment of his own judgment debt.

[16] *Hyde, J.* agreed to this conclusion, but gave no absolute opinion whether the nature of the security alone constituted the principal creditor.

Jones, J. was of opinion that the words 'principal creditor' import, in the first place, the creditor of highest degree; and, secondly, among those who are equal in degree, the creditor whose debt is of the greatest magnitude. (a)

Caveat over-ruled with costs.

IN THE GOODS OF PHANUS JOHANNES (1788).

Chambers' Notes, Aug. 21st, 1788.

Administration granted of the estate of an Armenian, dying out of Calcutta.

DAVIES, A. G. moved that letters of administration be granted to Gregory Sarkies, administrator of Parsick Muckerton, and in that capacity a creditor of the deceased. The deceased died at Seyidabad in Bengal. possessed

[15] (a) See these three cases reported ante, p. 6, 12.

[16] (a) As to the preference given to one creditor over another, by reason of the superior nature or larger amount of the debt, see *Kearney v. Whittaker*, 2 Cas. temp. Lee 324, *Carpenter v. Shelford*, ib. 502. Wms. Executors, p. 292.

of goods there,* but the affidavit stated that he had lived under the protection of the British Government, which implied that he did not live in the French factory.

[Mr. Justice Chambers, in his notes, observes upon this case:—"Though this and many other cases, respecting the goods of Armenians, in which letters of administration or probate of their wills have been granted, may seem not to come within the description of the charter, except when, having resided in Calcutta, the deceased was, by local allegiance, a British subject, yet, it seems reasonable to give so much latitude of construction to the words British subjects dying within the pro-[17]vinces, as to include a class of Christians who are strangers and foreigners here, and who consider themselves, whether they live in the town of Calcutta or out of it, as residing under the protection of the British Government, and not of the Subahdar. And this construction is the rather admitted in practice, because the convenience of it is acknowledged by the Armenians themselves, who are universally desirous of ascertaining in this mode the succession to their estates. A further argument in favour of this practice may be drawn from a deed poll under the Company's seal, (a) executed at London A.D. 1788, by which Armenians are permitted to live in any of the Company's towns, and to sell and purchase houses and land, and to be capable of all civil offices as if they were Englishmen born."

Administration granted.

IN THE GOODS OF DIXON (1790).

Chambers' Notes, March 27th, 1790.

Administration granted to a married woman without joining her husband.

ON the renunciation of the executors, administration was applied for by Mrs. Smith, the sole legatee in the will. It appeared on the face of the will that the petitioner was a married woman.

The Court (*Chambers, Hyde and Jones, Js.*) at first doubted whether administration could be granted to her alone, without her husband, but on considering the cases in 2 Burn's Eccl. law 639, they held it right.

Administration granted. (b)

[17] (a) *q. v. in notis.*

(b) But it should be with the husband's consent: Toller's Executors, p. 91. Com. Dig. Admor. (B) 6. The husband is entitled to administer in his wife's right, for his own safety, as he would be liable for her devastavit, and, incident to this right, he has the power of disposition over the personal estate vested in his wife as executrix or administratrix. Wms. Exors. 770 (3d edit.)