APPELLATE JURISDICTION. (*a*)
Regular Appeal No. 28 *of* 1862.

TIRUMAMAGAL AMMÁL .....*Appellant.*
RÁMASVÁMI AYYANGÁR and another .....*Respondents.*

The mental incapacity which disqualifies a Hindu from inheriting on the ground of idiocy is not necessarily utter mental darkness.

A person of unsound mind, who has been so from birth, is in point of law an idiot.

The reason for disqualifying a Hindu idiot is his unfitness for the ordinary intercourse of life.

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THIS was a regular appeal from the decision of E. W. Bird, the Acting Civil Judge of Negapatam, in Original Suit No. 1 of 1862. The plaintiff, a Hindu widow, sued her deceased husband's brothers for her son's share of the family-estate. The defendants rested their case chiefly on the ground that the son was disqualified by idiocy to inherit. The Civil Judge adopted their view and accordingly dismissed the suit. The plaintiff now appealed against the Civil Judge's decree.

Branson and *Ramanuja Ayyangar* for the appellant, the plaintiff.

Sadagopacharlu and *Rajagopalacharlu* for the respondents, the defendants.

The arguments for the appellant sufficiently appear from the judgment of the Court, which was delivered by

HOLLOWAY, J. :—The Civil Judge decided that the boy on whose behalf the suit was brought was from idiocy not qualified to inherit. Whether this is so or not was the only question argued before us, and is the only one which it is necessary for us to determine.

As to the unsoundness of mind of the unhappy youth, his incapacity for instruction, his inconceivable delusion as to the most common matters, his inability to perform the most common mental operations, there can be no question. That a deed executed by him would be voidable, that his marriage-contract by English law would be invalid, (*b*), no doubt can exist.

(*a*) Present : Strange and Holloway, J. J.

(*b*) By the Hindu law a marriage is not a contract : it seems therefore that a Hindu idiot's marriage would be valid. See *Dabychurn Mitter* v. *Radachurn Mitter*, 2 Morl. Dig. 99, where a lunatic's marriage was held valid.

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It has, however, been contended that to justify disqualification on the ground of idiocy, there must not be the slightest glimmering of reason, that this is the strict legal definition of idiocy by the law of England, and that by which we must be bound. It would perhaps be very difficult to contend that in this case, the reasoning faculty can strictly be said to exist. There are perceptions, but the power of arranging or combining them, seems scarcely to exist.

We are however clearly of opinion that the mental incapacity which is to disqualify on the ground of idiocy, is not the utter mental darkness for which the appellant's counsel has contended.

Lord Coke (Co. Lit. 247a) classes idiots as one of the species of " non compotes mentis " distinguished from lunatics by the circumstance that the idiot is he " which from his nativitie, by a perpetual infirmitie, is non compos mentis." If then this great authority stood alone, the question by the Law of England would be, first, was this child " non compos mentis "—and, secondly, was he so from his birth ? No jury could hesitate to answer both of these questions in the affirmative. It is not however to be denied that the language of Blackstone (vol. I p. 304) is much more unqualified "a man is not an idiot if he has any glimmering of reason, so that he can tell his parents, his age, or the like common matters." On such common matters we incline to think that this boy is incapable.

The counsel for the appellant referred us to a case in Bligh, which we presume to be *Ball* v. *Mannin* (*a*), and which is much better reported in 1 Dow and Clark 380. This case appears to us to show most clearly that if a person is of unsound mind and has been so from his birth, he is as to all legal disabilities and incapacities in the position of an idiot. The question was whether a deed executed by Ball deceased was void on the ground of incapacity, and it was conceded that there was no evidence whatever of insanity. The Judge left the question of incapacity to the jury, and a bill of exceptions was brought because the judge refused to tell the jury that the deed would not be void if there was any

(*a*) 3 Bligh N. S. 1.

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glimmering of reason. Lord Tenterden in delivering the judgment of the House of Lords upheld the Judge's direction, and at page 392 said. "The strict legal definition of an idiot in an old book which I have brought is that if a man can repeat the letters of the alphabet, or read what is set before him, he cannot be taken to be an idiot, but you would say that this was contrary to common sense, far as to repeating the letters of the alphabet or reading what is set before him, a child of three years old can do that. Then the question is whether the party was of sound mind or not." The authority of this very eminent judge appears to be in favor of the old definition of Coke, for, seeing that there was no evidence of insanity, that the case was put upon the ground of idiocy, the direction could not be right if the definition of Blackstone is in truth correct. The case is at any rate a clear authority for the position that weakness of mind far short of that described will disable from contracting.

It will be found that the doctrine of Hindu law, by which on this question we are to be bound, is very similar. "An idiot" "a person deprived of the internal faculty: meaning one incapable of discriminating right from wrong" (Mitákshará chap. II, section X, par. 2), and a more expanded definition in W. H. Macnaghten's *Principles and Precedents of Hindu Law* (*a*) : Idiot—"a person not susceptible of instruction :" "One who cannot support the performance of duties (*b*)." "Devoid of knowledge of himself, and one whose intellectual faculties are imbecile (*c*)" These authorities seem clearly to show that the question in Hindu law is precisely the same as would be derived from Coke's definition and from the case of *Bull* v. *Mannin*. The reason of the rule is no doubt, as Sir. T. Strange states it (*d*), the unfitness of persons so situated for the ordinary intercourse of life.

We are deeply sensible of the mischief which would result from any attempt to interfere with the disposition or enjoyment of property merely on account of eccentricity of conduct. The imprudent, the unthrifty, the profligate entail misery upon themselves and others, but they are not on that

(*a*) Vol. II. p. 135, Class 4, citing Jimutavâhana. (*b*) Ibid: citing Raghunandana

(*c*) Ibid. citing Chandeevara. (*d*) I Strange's *Hindu Law*, 152.

account to be treated as insane. We are fully satisfied that an idiot in Hindu law is one of unsound and imbecile mind who has been so from his birth. The question of unsoundness and imbecility is to be determined not upon wire-drawn speculations but upon tangible and unmistakeable facts: and being clearly of opinion that there are such facts in this case, that this unhappy youth is congenitally imbecile, and therefore incapable o f inheriting—we dismiss this appeal with costs.

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Appeal dismissed.

INSOLVENT JURISDICTION. (*a*)

In the Matter of THOMAS PEREIRA, an Insolvent.

Under a vesting-order an insolvent's estate became vested in the Official Assignee who paid the scheduled creditors the principal of their debts. A discharging-order was then made under sec. 59 of the Indian Insolvent Debtors' Act (11 Vict. c. 21.) At the date of such order the Official Assignee had Rupees 143-1-8 to the credit of the insolvent's estate. He subsequently received the interest on certain securities which had been bequeathed to the insolvent for his life before the date of the vesting-order.

Held :—That the discharging-order did not make the vesting-order void ; nor as regarded the estate vested in the Official Assignee did it revest immediately the right of property in the insolvent :

That creditors are entitled to interest on interest-carrying debts out of a surplus remaining in the Official Assignee's hands after payment of the scheduled amount of debts :

That notwithstanding the discharging-order the Court might direct the rupees 143-1-8 and the interest subsequently received to be paid to the insolvent's creditors rateably in respect of interest on their debts calculated down to the date of the discharging-order and that the balance should be paid to the insolvent or his representative ;

That the interest subsequently received by the Official Assignee was "neither after acquired property" within the meaning of sec. 59, nor "a debt growing due to the insolvent before the Court shall have "made its order" within the meaning of sec. 7 of 11 Vict. c. 21.

Re Alexander MacClean concurred in.

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IN this case the following judgment, from which the facts sufficiently appear, was delivered by

SCOTLAND, C. J. :—This case comes before the Court on two distinct applications : one by two of the insolvent's creditors, claiming to have interest allowed them upon their debts, and the other on behalf of the insolvent, since deceased, for an order directing the Official Assignee to pay over the sum in his hands of rupees 379-4-8. The material facts are these. The insolvents estate became vested in the Official Assignee under an adjudication and vesting order