

*Appellate Jurisdiction(a)**Civil Miscellaneous Regular Appeal No. 330 of 1871.*JOSEPH VATHIAR OF NAZARETH.....*Appellant.*

Petitioner, a Native Christian, applied, under Act XXVII of 1860, for a certificate of heirship to his deceased grandfather. The Civil Judge refused it on the ground that Native Christians are not "Hindus" within the meaning of the term as used in Section 331 of the Indian Succession Act X of 1865, and, therefore, that they are affected by the provisions of that Act and cannot proceed under Act XXVII of 1860. *Held*, upon appeal, that the order of the Civil Judge was right.

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THIS was an appeal against the order of F. C. Carr, the Acting Civil Judge of Tinnevely, dated the 21st September 1871, passed on Civil Miscellaneous Petition No. 1210 of 1870.

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Petitioner, a Native Christian, applied under Act XXVII of 1860 for a certificate of heirship to his deceased grandfather. The Civil Judge made the following order, refusing the certificate—

“When this case came on for hearing, it was brought to my notice that the parties were Native Christian converts. It, therefore, appears to me that they are affected by the provisions of the Indian Succession Act X of 1865, which is made applicable to all residents in India except (by Sec. 331) “to intestate or testamentary succession to the property of any Hindu, Muhammadan, or Buddhist.” These words must be held to be religious distinctions and not national distinctions, for the two latter words, ‘Muhammadan’ and ‘Buddhist,’ are of only one meaning, and, by analogy, therefore, ‘Hindus’ must mean those of the Hindu religion. I am, therefore, of opinion that Native Christians cannot come to this Court under an Act which, except as far as it relates to Hindus, Muhammadans and Buddhists, is superseded. Mr. Sitaram, the petitioner’s Pleader, says that these people and the majority of the Native Christians still live in the Hindu manner, and their domestic relations are unchanged, and, by Act XXI of 1850, their rights of inheritance are in no way impaired by their change of religion; he also quoted the Privy Council judgment in the Abraham case, wherein it was laid down that a man may, if he pleases, abide by the old law although he has

(a) Present : Morgan, C. J., Holloway and Kindersley, JJ.

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renounced 'the religion, and urged that the parties in this case showed by their mode of life that they intended their rights still to be governed by Hindu law.

I was unable, however, to agree to this argument, because the *Abraham* case ruled that Act XXI of 1850 does not apply where parties have ceased to be Hindus in religion (9, Moo. I. A., 239) and, further, because the judgment of the Privy Council is dated February 1863, and, therefore, cannot affect the Indian Succession Act of 1865. Certificate refused accordingly."

The petitioner appealed.

The appeal was first heard on the 8th January 1872 and was re-heard before a Full Bench on the 22nd of the same month.

J. H. S. Branson, for the appellant.

The Court delivered the following

JUDGMENT :—We are of opinion that the order of the Judge is right. We should have entertained some doubt upon this point save for the power contained in the Act of exempting such classes from its operation as to the Governor-General in Council may appear fit.

The provisions of the Act both as to substantive law and procedure, seem exclusive.
