

Before Mr. Justice Sale.

IN THE GOODS OF SEWNARAIN MOHATA (DECEASED.)

1894

Aug. 6.

Letters of Administration—Probate and Administration Act (V of 1881), section 3—Majority Act (IX of 1875), section 3—Application by person domiciled in State of Bikanir and of age by law of that State though under 18—Disability of minority, Period of, for aliens.

The words "any other person who has not completed his age of 18 years" in section 3 of the Probate and Administration Act (V of 1881), read with the preamble and section 3 of the Indian Majority Act, mean any other person not domiciled in British India. Section 3 of the Probate and Administration Act, therefore, fixes the limit of the period of disability for the purpose of the Act, not only for persons domiciled in British India, but for any other persons whether they be aliens or not.

Where application was made by a person domiciled in the Native State of Bikanir (and who being more than 16 years of age had by the law of that State attained his majority, though he had not attained the age of 18) for letters of administration in respect of the estate of his father who had carried on business and left all his estate and effects in Calcutta: *Held*, that the applicant not having attained the age of 18 years, the application must be refused.

APPLICATION for letters of administration to the estate of Sewnarain Mohata, deceased.

The applicant Sreckissen Mohata was one of the sons of the deceased, and stated that his father, who was a Hindu governed by the Mitakshara law, and had carried on business in Burra Bazar in Calcutta under the name of Sewnarain Sreckisson, died in Calcutta on 14th June 1893, intestate, leaving him surviving Ancha Bibee, his sole widow, and two sons, the petitioner and Gopeekissen, then both minors; that on 11th July 1894, letters of administration to his estate and effects were granted by the High Court to his widow Ancha Bibee during the minority of the infant sons with effect within the province of Bengal; that Ancha Bibee died on 17th April 1894 without having administered the estate of Sewnarain Mohata; that the petitioner "is the eldest son of the deceased Sewnarain, and was born at Bikanir, in the territories of the Maharajah of Bikanir, on the 9th Mough Buddee 1934, corresponding with 27th January 1878, and is now of the age of upwards of 16 years and five months; that your petitioner is not domiciled in British India but is a Hindu subject of the Maha-

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rajah of the Native State of Bikanir, and as such has reached his majority upon attaining the age of 16 years."

The petitioner further stated that the deceased left no immovable property, and had no other property except the stock-in-trade outstandings and profits of the shop in Calcutta.

Mr. *Pugh* appeared in support of the application.

SALE, J.—This is an application for letters of administration to the property and effects of the late Sewnarain Mohata. The deceased came from Bikanir in the territories of the Maharajah of Bikanir. He carried on business as a dealer in piece goods, and died in June 1893, leaving a widow and two sons, Sreekissen, the present applicant, and Gopeekissen. In July 1893 letters of administration to the property and credits of the deceased were granted to his widow during the minority of his infant sons. The widow has recently died, and now Sreekissen Mohata, the elder of the two sons, applies for letters of administration to his father's estate, which in British India consists of a business in piece goods which had been carried on by the deceased in his lifetime and by the widow after his death. The applicant says he is a little over the age of sixteen years, and that according to the law of his own country he has attained the age of majority. It appears from the verified petition of the mother, filed by her when she was applying for letters of administration, that a statement was made as to the age of Sreekissen, which I think sufficiently supports his allegation that he is now over the age of sixteen years: and for the purposes of the present application I will assume that, according to the laws of Bikanir, a person attains his majority at the age of sixteen years.

The question is whether, under the Probate and Administration Act, the applicant, being a major according to the law of his own country, is, notwithstanding that he is still under the age of 18 years, entitled to an order for letters of administration.*

Section 3 of the Probate and Administration Act states that " 'minor' means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed his age of eighteen years; and 'minority' means the status of any such person."

Section 13 of the Act provides that "letters of administration cannot be granted to any person who is a minor."

Turning to the Indian Majority Act, which is specifically referred to in the Probate and Administration Act, we find it stated in the preamble that the Act is intended to apply to persons domiciled in British India, and the preamble proceeds: "It is expedient to prolong the period of non-age, and to attain more uniformity and certainty respecting the age of majority than now exists." Then in section 3, after providing for the case of certain persons as to whom guardians may have been appointed and fixing the age of majority for such persons, it proceeds: "Subject as aforesaid, every other person domiciled in British India shall be deemed to have completed his majority when he shall have completed his age of eighteen years and not before."

The classification therefore adopted by the Probate and Administration Act, so far as the provisions relating to the age of majority are concerned, comprises first all that class of persons to whom the Majority Act applies, that is to say, persons who are domiciled in British India; and, next, the class consisting of "any other persons who have not completed the age of eighteen years." Obviously, therefore, if the classification is to be of an intelligible character, the words "any other person" must mean any other person not domiciled in British India, and therefore must include persons whether they be aliens or foreigners. If that be so, then the effect of section 3 as regards aliens is to provide that, when under the provisions of the Probate and Administration Act they seek the authority of the British Court for the purpose of dealing with property in British India, they must, before they can obtain such authority, be of the age of eighteen years. It was contended by Mr. Pugh that it must be taken that the Legislature, in fixing the age of disability under the Probate and Administration Act, must be taken to refer only to the case of persons domiciled in this country, and that it must not be assumed, unless there are clear expressions in the Act to the contrary, that the Legislature was seeking to attach the condition of disability to persons to whom no such condition of disability would attach under the laws of their own country.

Two cases were referred to by Mr. Pugh in support of his

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contention—*Jefferys v. Boosey* (1) and *Macleod v. Attorney General for New South Wales* (2). In the former of these cases a passage at page 895 of the report was specially referred to. It is as follows: "The general rule is, that words in an Act of Parliament, and indeed in every other instrument, must be construed in their ordinary sense, unless there is something to show plainly that they cannot have been used, and so, in fact, were not used, in that sense. Here the words to be construed are, 'author,' 'assignee' and 'assigns.' These words plainly comprehend aliens as well as others; and there is nothing, as it seems to me, in any part of the Act to show that they are to be restricted." That passage would seem to support what I venture to think is the natural construction of the section of the Probate and Administration Act, by virtue of which aliens would come within the words "any other person," as used in section 3. A further passage in the same case at page 926 of the report was also referred to. That passage is as follows: "The Legislature has no power over any persons except its own subjects, that is, persons natural born subjects, or resident, or whilst they are within the limits of the kingdom. The Legislature can impose no duties except on them; and when legislating for the benefit of persons, must *prima facie* be considered to mean the benefit of those who owe obedience to our laws, and whose interests the Legislature is under a correlative obligation to protect."

It is here clearly indicated that the persons whose rights the Legislature would have a right to affect, besides persons domiciled within its jurisdiction, are aliens resident within the jurisdiction, or while they are within the jurisdiction.

The second case which has been referred to is much to the same effect. In that case a person who had married in the colony of New South Wales, and who, in the lifetime of his wife, married again at St. Louis in the United States of America, was, on his return to the colony of New South Wales, prosecuted for bigamy under a Colonial statute. It was held that the words "whoever" and "wheresoever," though of universal application, must be understood as having been used by the Legislature subject to

(1) 4 H. L. C., 815.

(2) L. R., 1 App. Cas., 455.

the well-known and well-considered limitation that they were only legislating for those who were actually within their jurisdiction and within the limits of the colony. The limitation as thus laid down is said to be found at page 459 of the report.

Now it appears to me there is nothing in either of these two cases which indicates that anything but the ordinary and natural construction should be placed on the words of the section of the Probate and Administration Act which defines the age of majority. And seeing that the action of the Legislature in fixing the age of majority at the age of 18 years is merely intended to apply to the cases of those persons who are seeking to deal with property within the jurisdiction of the Court, I do not think it can be said that the plain meaning of the section is to be set aside for the purpose of making the definition of the *status* of minority apply only to persons domiciled in this country. To my mind the words are express, and the limit of the period of disability is for the purpose of the Act fixed at 18 years, not merely for persons domiciled in this country, but for any other persons whether they be aliens or not.

The result is that I must refuse the application.

Application refused.

Attorney for the petitioner : *Mr. H. C. Chick.*

J. V. W.

CRIMINAL REVISION.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Rampini.

BEHARY LALL TRIGUNAIT, FIRST PARTY (PETITIONER) v. DARBY,
SECOND PARTY (OPPOSITE PARTY.)^a

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July 24.

Criminal Procedure Code (1882), section 145—Possession, Order of Criminal Court as to—Parties to proceedings—Right to notice.

Where proceedings under section 145 of the Code of Criminal Procedure were instituted by a Magistrate regarding a dispute as to the right to dig for coal in a certain *mouza* which was claimed by a Company to the exclusion of those in possession of the surface rights of a portion of the *mouza*, and the

^a Criminal Revision No. 347 of 1894, against the order passed by N. Warde Jones, Esq., Sub-Divisional Magistrate of Govindpur, dated the 18th May 1894.