

(1867) 11 CAL CK 0001

Calcutta High Court

Case No: None

Rollo

APPELLANT

Vs

Smith and Others

RESPONDENT

Date of Decision: Nov. 29, 1867

Judgement

Markby, J.

In the course of this case an application was made to dismiss the suit on the ground that the plaintiff was under the age of twenty-one years. The plaintiff stated that he was born in the year 1848; that this great grandfather was, according to the tradition of the family, a European residing at Madras, and his great grandmother a native, Hindu or Mahomedan. He did not know whether his great grandfather and great grandmother were married, or who his grandmother was, or whether his grandfather was married. His father married a Miss Clarke. The plaintiff himself and all his relations are Christians. He was born in Calcutta, and has no relatives in Europe that he is aware of. He does not know to what country in Europe his great grandfather belonged. Under these circumstances, I think I must presume that the plaintiff is the legitimate descendant of a European British subject.

2. The question which has been discussed is whether the plaintiff attains his majority at eighteen or twenty-one. If at the former age, he can maintain this suit alone; if at the latter, he must sue by his guardian or next friend.

3. Notwithstanding that I find here and there some doubtful expressions on the subject, I have myself no doubt whatever that the legitimate descendants of a European British subject retain the law of their ancestors, however remote the descent. The case has no analogy to that of the descendants of British subjects resident in a foreign country, who I believe, are generally considered in three generations to lose their nationality, and with their nationality their legal status as subjects of their original country. But a British subject does not lose his nationality by residence in India however long, nor was it contended or could it be contended that the intermarriage with the native woman could in any way affect it.

4. Nor has the position of the plaintiff any analogy with that of Hindu and Mahomedan natives of this country, who have become Christians. It has been considered that the laws of Hindus and Mahomedans are so much connected with their respective religions, that when any one of them gives up his religion he gives up his legal status also. Such persons, therefore, are in the extremely awkward position of having no laws except those few that have been made expressly applicable to them by the Legislature, and perhaps a few universal laws of protection to person and property. But they have no share in any one of the various accumulations of rights and obligations which belong to the members of any long established civilized community, and nearly all material questions which arise between such persons have to be settled by loose analogy or supposed justice. But I find no authority for putting the descendants of British subjects in this unfortunate position, and it seems to me that to do so would be a violation of the protection which the Queen extends to her subjects in all parts of her dominions. I have, therefore, no doubt that the plaintiff is a person subject to the modified form of English Law usually administered in this Court. I consider that there is no difference in this respect between a person of the plaintiff's descent, and a person of the purest English blood just arrived from England, and domiciled here.

5. It is no doubt true that the Legislature has introduced some rather strange anomalies upon this subject. For instance, it has defined a "minor," in Act X of 1865, as any person who shall not have completed the age of eighteen years, and in many important matters it has assigned to persons who have attained that age, the position of majors. Thus a person who is sole executor or sole residuary legatee may, at the age of eighteen years, himself obtain probate or Letters of Administration. But it would be carrying implication much too far to suppose that this was intended by the Legislature as an alteration of the age of majority for all purposes; and it would lead to this consequence that a young man leaving England and settling in this country would attain his majority for all purposes at eighteen years. I, therefore, think that the plaintiff is still a minor, and that he is unable to maintain this suit, but I do not think it necessary to dismiss the suit; it will be sufficient to direct that he appoint a guardian or next friend to sue for him, which I accordingly direct him to do.