

**(1872) 12 CAL CK 0004**

**Calcutta High Court**

**Case No:** None

Cally Churn Mullick

APPELLANT

Vs

Bauggobutty Churn

Mullick <BR> In Re:

RESPONDENT

Benud Behari Mullick

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**Date of Decision:** Dec. 2, 1872

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### **Judgement**

Sir Richard Couch, Kt., C.J.

Having heard these questions argued by the Advocate-General, who appeared for the petitioner, we thought it advisable before giving our opinion to learn what rule had been followed by the Supreme Court, and afterwards by the High Court since the passing of Act XL of 1858, and before the decisions mentioned in the order of reference. We therefore caused a search to be made among the records of the Court on the Original Side, and the result of it is this:--

In Keerut Chunder Sircar v. Holodher Ghose, a report was made by Morgan, J., on the 22nd of April 1863, finding that the infant plaintiff Bhoobunmohun Ghose had attained his full age of sixteen years; and an order dated the 6th of May 1863 was made, discharging the next friend of the plaintiff, and allowing him to prosecute the suit.

In Devender Narain Roy v. Obhoy Churn Sen it having been proved by affidavit that the plaintiff had attained the age of sixteen years, an order was made on the 15th December 1863 discharging the next friend of the plaintiff, and allowing him to prosecute the suit.

2. In Anunda Gopal Dutt v. The Secretary of State, Levinge; J., made a report dated 30th January 1864, finding that the defendant Bhoobunmohun Dutt had attained his full age of sixteen, years, on which an order was made on the 25th of February 1864, directing the defendant's share of the land in Court to be paid to him.

3. In Anund Lall Dutt v. Sreemutty Monomohun Dossee, an order was made on the 25th of August 1864, discharging the next friend of Anund Lall Dutt, and allowing him to

continue the suit, as he had attained the age of sixteen years.

4. In Monohur Dose v. Bullub Doss, an order was made on the 14th of January 1867, discharging the Receiver as to Ramkissen Doss's share of the property, and directing his share to be delivered to him, he having attained the age of sixteen years. In the same suit a like order was made on the 10th of September 1868, as to Radhakissen Doss's share of the property, he having attained the age of sixteen years.

5. In Pertab Chunder Sett v. Tacoor Dass Sett, an order was made on the 23rd of March 1871, discharging the Receiver, and directing the plaintiff's share of the property to be delivered to him, as he had attained the age of sixteen years.

6. In Monmothonauth Day and Onathnauth Day v. Aushootosh Day, a report was made by Sir Charles Jackson on the 24th of September 1862, which found that the plaintiff Monmothonauth Day had attained the full age of sixteen years, and an order was made on the 14th of June 1866, directing the arrears of maintenance and future maintenance, to be paid to him out of the fund in Court. In the same suit a report by Phear, J., was filed on the 8th of August 1866, finding that the other plaintiff Onathnauth Day had attained his full age of sixteen years; and an order was made on the 2nd of March 1867, directing the arrears of maintenance and future maintenance to be paid to him out of the fund in Court. Then, in the same suit, an order was made, dated the 8th of August 1872, discharging the Receiver, and directing the property in his hands to be delivered and paid to the plaintiffs.

7. On the 11th of May 1867, in the suit of Otool Chunder Bose v. Sreemutty Komulmonee Dossee, Otool Chunder Bose having attained the age of sixteen years an order was made for the discharge of the next friend.

8. In Sreemutty Gobindsoondery Dabee v. Hem Chunder Gossain and Gopaul Chunder Gossain, an order was made on the 16th of December 1871, discharging the guardian, ad litem, Gopaul Chunder Gossain having attained the age of sixteen years.

9. In another suit, Sreemutty Unnopoorina Dossee v. Bhoobun Mohun Neoghy, an order was made on the 19th of September 1872 for the discharge of the next friend, the plaintiff having attained the age of eighteen years; and, subsequently in another case (In the goods of prosonno Coomar Tagore, deceased), on the 20th December 1872, on the statement that the guardian of the infants had declined to act further, and that one of the infants had attained his majority or age of 18 years an order was made that another guardian should be appointed for the other persons who were still infants.

10. It seems that, until the order of Markby, J., in the case of [Kamikhaprasad Roy and Others Vs. Srimati Jagadamba Dasi and Others](#), the age of majority of a Hindu resident in Calcutta was considered in this Court to be sixteen years. It does not appear that there was any argument upon the question before Markby, J., made the order which he refers to in his judgment in [Kamikhaprasad Roy and Others Vs. Srimati Jagadamba Dasi and Others](#) In the argument in Jadunath Mitter v. Bolye Chand Dutt 7 B.L.R., 607, an

unreported decision of Norman, J., to the same effect is quoted, but the date of it is not given. In the case before Phear, J., *Jadunath Mitter v. Bolye Chand Dutt* 7 B.L.R., 607, the question was argued, and the decision reserved. This was in August 1871, from which time it seems that decision has been followed. In considering the questions referred to us, we cannot overlook the fact that for more than ten years after the passing of Act XL of 1858, the Judges of this Court sitting on the Original Side did not consider that it had made any alteration in the law administered by this Court on its Original Side as to the age of majority of Hindus which had been held in the Supreme Court--*Nocoor Bysack v. Gopaulchund Seal* Mor. Rep., 82--to be sixteen years. And no doubt this view of the law must have been frequently acted upon during those years, and many titles to property in Calcutta must depend upon it. However great the inconveniences which would arise from our coming to a decision invalidating those titles might be, we should be bound to do so, if the construction of the Act were clear; but if it is doubtful, this inconvenience may be a reason for following what we may regard as the contemporaneous exposition of the Act.

11. The question depends upon what is meant in s. 26 by the words "for the purposes of this Act, every person shall be held to be a minor, who has not attained the age of eighteen years." The title of the Act is "an Act for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal." If we looked only at the title and s. 26, we might say that the town of Calcutta was within the purposes of the Act, it being included in the Presidency of Fort William. But the title of an Act, although it may sometimes aid in the construction of it, is not a safe expositor of the law, being often loosely and carelessly inserted. And there is the established rule that, in the exposition of Statutes, the intention is to be deduced from a view of the whole and of every part taken and compared together. The general statement in the title and preamble of the Act is not sufficient to show what are its purposes. We must look for them in the provisions which are made in it. The purpose is stated generally in s. 2, viz., the subjecting to the jurisdiction of the Civil Court the care of the persons of all minors (except European British subjects) and the charge of their property, except proprietors of estates "who have been or shall be taken under the protection of the Court of Wards." The sections which follow contain provisions for effecting this, and are followed by s. 26. We think the word "purposes" there refers to the provisions in the preceding sections. Then s. 29 defines the expression "Civil Court" as used in the Act to be the principal Court of original jurisdiction in the district, and not to include the Supreme Court. Consequently, none of the powers conferred by the Act could be exercised within the jurisdiction of the Supreme Court. The proviso that nothing contained in the Act should be held to affect the powers of the Supreme Court over the person or property of any minor subject to its jurisdiction was unnecessary, and seems to have been inserted from abundant caution.

12. We think the construction which was first put upon the Act, that it did not alter the Hindu law in Calcutta as to the age of majority, was the right one; and that such a change was not intended by the legislative authority when the Act was passed. If it is desirable

that the law should be uniform in Calcutta and the mofussil, it may be made so by the Legislature without affecting existing titles, which must be affected by a decision of this Court, as we should declare what the law has been since the passing of Act XL of 1858. As to Phear, J.'s reason that we ought not to attribute to the Legislature the intention to set up for the same persons two standards of majority, one to prevail in the mofussil, and the other in Calcutta, we think the answer is that two standards have been set up in the Mofussil by Regulation XXVI of 1793, and it was the state of the law until Act XL of 1858 was passed. It appears to us that the grounds upon which the Full Bench came to the decision in [Madhusudan Manji Vs. Debigobinda Newgi](#) do not apply to the questions before us. We think the first question should be answered by saying that the age of majority in such a case is the end of fifteen years. The second question does not arise in the case, it being stated that the petitioner has no property in the mofussil. We will not undertake now to define to what extent the Act may operate when a person resident in the town of Calcutta has property in the mofussil.

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(1) Rule passed July 1867.--"Every decision of a Full Bench shall be treated as a conclusive authority upon the point of law, or usage having the force of law, determined by the Full Bench, unless it be (subsequently) reversed, or a contrary rule be laid down by the judicial Committee of the Privy Council. A Full Bench shall consist of not less than five Judges." See Broughton's Civil Procedure, 4th edition, App., 710.