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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th May 1874, and was referred to a Select Committee with instructions to make their report thereon in six months :—

Bill No. 9 of 1874.

A Bill to amend the Law respecting the age of majority.

WHEREAS it is expedient that there should be greater uniformity than now exists in the age at which persons domiciled in British India attain majority ; It is hereby enacted as follows :— Preamble.

1. This Act may be called "The Indian Majority Act, 1874." Short title.

It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with her Majesty; Local extent.

and it shall come into force and have effect only on the expiration of three months from the passing thereof. Commencement and operation.

2. Nothing herein contained shall effect—

(*a*) the capacity of any person to act in the following matters (namely),—Marriage, Dower, Divorce, and Adoption;

(*b*) the religion or religious rites and usages of any class of Her Majesty's subjects in India, or

(*c*) the capacity of any person who before this Act comes into force has attained majority under the law applicable to him.

3. Subject as aforesaid, every person domiciled in British India shall be deemed to have attained his majority when he shall have completed the age of eighteen years but not before. Age of majority of persons domiciled in British India.

4. In computing the age of majority of any person, the day on which he was born is to be included, and he shall be deemed to have attained majority at and from the commencement of the day on which he has attained the prescribed age. Age of majority how computed.

Illustration.

A, a Hindu, Muhammadan, or Eurasian, domiciled in British India, was born on the first of January 1850. He comes of age at the first moment of the thirty-first day of December 1867.

STATEMENT OF OBJECTS AND REASONS.

The mass of persons domiciled in this country may roughly be divided into (1) Hindús, (2) Muhammadans, (3) European British subjects, (4) persons to whom the Indian Succession Act applies.

In the present state of the law, the ages at which persons belonging to these classes respectively attain their majority may be stated as follows :—

I. By the Hindú *çástras*, except those prevailing in Bengal, the end of the sixteenth year is the limit of minority ; in Bengal, the end of the fifteenth year is deemed to be the limit of minority, according to the Hindú law as understood there.

2 Strange's Hindu Law, 76.

Shámacharn Sarkar's *Vyavastha Darpana*, p. 396.

By Bengal Regulation XXVI. of 1793 and Madras Regulation V. of 1804, the minority of Hindú proprietors of estates paying revenue to Government was extended, in the case of such persons in each presidency respectively, to the end of the eighteenth year.

By Acts XL. of 1858 and XX. of 1864, for the care of the persons and property of minors in the Presidency of Fort William in Bengal and in the Presidency of Bombay, respectively, it was enacted that, for the purposes of those Acts, every person should be deemed to be a minor who had not attained the age of eighteen years. European British subjects are excluded from the purview of the Acts. The effect of those Acts clearly was, for the purposes of those Acts, to alter the Hindú law as to the age of majority in the cases of persons to whom the Acts applied, and in course of time the question was raised in the Calcutta High Court as to whether the Acts did not similarly affect the age of majority of Hindús

subject to the ordinary original jurisdiction of that Court, and was decided in the affirmative. This opinion was not, however, accepted by other Judges of the same Court before whom the question arose, and the matter having been by one of them expressed to be in a complicated and unsatisfactory state was the other day referred to a Full Bench of the Court, which decided that a Hindú resident in Calcutta, who had no property in the Mofussil, attained his age of majority on the completion of his fifteenth year, and refrained from deciding what was the effect of the Acts upon persons resident in Calcutta and possessed of property in the Mofussil.

per Macpherson J. *In the goods of Gangaprasad Gossain*, 4 Ben. L. R., Appendix 43.

Cally Churn Mullick v. *Bhuggobutty Churn Mullick.*

Hari Mahadaji Joshi v. *Vasudev Moreshvar Joshi*, 2 Bom. H. C. R. 344.

In Bombay it has been decided that, notwithstanding Act XX. of 1864, a Hindú resident in the Mofussil came of age on attaining sixteen years, so as to be able to prosecute a claim by suit.

Maharajah Govind Nath Roy v. *Gulal Chand*, 5 S. D. A. Rep. 276.

In a case which came before the late Sadr Diwání Adálat of Bengal, it was held that according to the Jain law, majority begins on the completion of sixteen years.

II. By Muhammadan law, the end of the fifteenth year, or the attainment of puberty, is the age of majority; but Muhammadans are, equally with Hindus and other British subjects in this country not being Europeans, affected by the Regulations and Acts already noticed.

Macnaghten's M. L. Chapter VIII., i.

III. European British subjects not domiciled in this country come of age at twenty-one, and it has been held that they and their legitimate descendants, even though domiciled in this country, do the same, so far as regards their capacity to contract. This opinion has been questioned in a recent case.

Rollo v. *Smith*, 1 Beng. L. R. O. C. 10.
Archer v. *Watkins*, 8 Beng. L. R. 372.

IV. The class of persons to whom the Indian Succession Act applies, includes Europeans by birth or descent, domiciled in British India, East Indians or Eurasians, Jews, Armenians, Parsis, and native Christians. The Indian Succession Act defines a minor to be a person who has not completed the age of eighteen years, and defines 'minority' to be the status of such a person. In the case of *Rollo* v. *Smith*, already referred to, Mr. Justice Markby said that it would be carrying implication much too far to suppose that this definition was intended by the legislature as an alteration of the age of majority for all purposes; and held that a person of one of the classes to whom the Act applies did not attain his majority, so as to have the full capacity to contract, until he attained the age of twenty-one. In the later case of *Archer* v. *Watkins*, Mr. Justice Phear treated the question as still an open one, and held that, by the provisions of Act XL. of 1858, a person of one of the classes to whom the Indian Succession Act applies, attained the age of majority, for all purposes of contract, at eighteen years. The ground of this decision, so far as regards the effect of Act XL. of 1858, was overruled in the subsequent decision of the Full Bench in *Mullick* v. *Mullick*; and the law respecting the age of majority of persons in this class is, perhaps, in a more unsatisfactory state than even that relating to persons in the other classes.

Such being, briefly, the present state of the law, it is obvious, that, in the highly important matter of the age at which persons can enter into binding contracts with others, and undertake responsibilities as majors, the law of this country is most confused and uncertain. To remedy this the present Bill has been drawn. The alteration proposed by it in the Hindú and Muhammadan laws, in cases now governed on this point by those laws, is not one which affects any principle of those laws touching the religion or conscience of those persons who are subject to them. The change has, already in part, been made by the Regulations and Acts above-mentioned; and no objection has ever been made to the change thus effected.

To avoid, however, the possibility of any mistake on this point, it is expressly provided in the Bill that it is not to affect the capacity of any person to act in matters connected with marriage, dower, divorce, and adoption. By their own laws Muhammadans and Hindús are empowered to act in these matters at an earlier age than that here fixed as the age of majority, and it is not intended to interfere with their capacity in these respects.

The Bill also provides that it shall not affect the religion or religious rites and usages of any class of Her Majesty's subjects or the capacity of any person who, before the commencement of the proposed Act, shall have attained majority under the law applicable to him.

It has been thought advisable to extend the Act to all persons, including European British subjects domiciled in British India. Were European British subjects excluded in all cases, it would be necessary for all persons dealing with them to ascertain whether they came within the legal definition of the term, an inquiry often difficult, and which would be most embarrassing were the exception extended, as in *Rollo* v. *Smith*, to all legitimate descendants, however remote, domiciled in British India, of European British subjects. The fourth section states the law as it now stands.

(Signed) VIJAYARA'M RAJ, *of Vizianagram.*

CALCUTTA,
April 28th, 1874.

WHITLEY STOKES,
Secretary to the Government of India.

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