Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Advocate-General of Bengal v. *Ranee Surnomoyee, from the Supreme Court of Judicature at Fort William, in Bengal: delivered 22nd July,* 1863.

Present:

LORD KINGSDOWN.
SIR EDWARD RYAN.
SIR JOHN T. COLERIDGE.

SIR LAWRENCE PEEL.
SIR JAMES W. COLVILE.

THE question in this case arises on the claim of the Crown to a portion of the personal estate of Rajah Christenauth Roy Bayadoor, who destroyed himself in Calcutta on the 31st October, 1844, and was found by inquisition to have been *felo de se*.

We understand that the Rajah had a residence in Calcutta, though his raj or zemindary was at some distance from that city. He was a Hindu both by birth and religion.

On the morning of the day on which he destroyed himself he made a Will, by which he left a large portion of his property to the East India Company for charitable purposes.

The will was disputed by his widow, who was his heiress, and a suit was instituted by her against the East India Company and others to determine its validity. It was agreed between the litigating parties that the question should be tried by an issue at law. The widow insisted, amongst other objections, that the Testator was not in a fit state of mind to make a will at the time of its execution.

The issue was tried, and a verdict was found by the Judges against the will, upon what ground does

not distinctly appear, and the verdict was acquiesced in by the Indian Government.

If the Crown, by virtue of the inquisition, was entitled to all the personal property of the Rajah, the validity or invalidity of the will was, as regards his personal estate, of no importance.

Now the inquisition had found that the goods and chattels of the Rajah when he committed self-murder amounted within Calcutta to 987,063 rupees, and without the town of Calcutta to 289,500 rupees; and it stated that all this property was claimed by the widow.

No claim to any part of it appears at that time to have been set up by the East India Company on behalf of the Crown, and very large sums were from time to time, by the order or with the consent of the Indian Government, paid over to the widow in the years 1846 and 1847.

A portion, however, of the Rajah's personal estate, amounting to between 6 and 7 lacs of rupees, was secured in the Supreme Court, in order to provide for the payment of life annuities to two ladies, both then living. The existence of these charges seems to have been the only reason why this fund was not transferred to the widow with the rest of the estate.

One of the annuitants is now dead, and the fund reserved to answer her annuity is of course set free. This fund is now claimed by the Indian Government under the finding on the inquisition of 1844.

It is stated in the affidavit of a gentleman who was Manager for the widow on the death of her husband, that he was advised in 1844 by three English Counsel of eminence whom he names, that the verdict on the inquisition might be set aside on the ground, both of misdirection by the Coroner, and as being against the weight of evidence, but that proceedings were not taken for that purpose because the Government represented, through its law Agents, that no claim would ever be made under the verdict.

If the facts be such as we have stated, it is impossible not to feel some surprise at the present demand; and if we differed from the Court below, it would deserve much consideration whether a claim which seems to have been abandoned in 1844 ought now to be entertained. But these

facts do not seem to have been noticed by the Judges in India; there may possibly be circumstances with which we are unacquainted to account for the course taken by the Government, and we think it better to dispose of the case on the merits.

At what time then, and in what manner, did the forfeiture attached by the law of England to the personal property of persons committing suicide in that country become extended to a Hindu committing the same act in Calcutta?

The sum of the Appellant's argument was this:—that the English Criminal Law was applicable to natives as well as Europeans, within Calcutta, at the time when the death of the Rajah took place, and the sovereignty of the English Crown was at that time established; that the English settlers when they first went out to the East Indies in the reign of Queen Elizabeth took with them the whole law of England both civil and criminal, unless so far as it was inapplicable to them in their new condition; that the law of *felo de se* was a part of the criminal law of England which was not inapplicable to them in their new condition, and that it therefore became part of the law of the country.

Where Englishmen establish themselves in an uninhabited or barbarous country, they carry with them not only the laws, but the sovereignty of their own State; and those who live amongst them and become members of their community become also partakers of and subject to the same laws.

But this was not the nature of the first settlement made in India—it was a settlement made by a few foreigners for the purpose of trade in a very populous and highly civilized country, under the government of a powerful Mahomedan ruler, with whose sovereignty the English Crown never attempted nor pretended to interfere for some centuries afterwards.

If the settlement had been made in a Christian country of Europe the settlers would have become subject to the laws of the country in which they settled. It is true that in India they retained their own laws for their own government, within the factories which they were permitted by the ruling powers of India to establish; but this was not on the ground of general international law, or because the Crown of England or the laws of England had any

proper authority in India, but upon the principles explained by Lord Stowell in a very celebrated and beautiful passage of his Judgment in the case of the Indian Chief (3 Rob., 28).

The laws and usages of Eastern countries where Christianity does not prevail are so at variance with all the principles, feelings, and habits of European Christians that they have usually been allowed by the indulgence or weakness of the Potentates of those countries to retain the use of their own laws, and their factories have for many purposes been treated as part of the territory of the Sovereign from whose dominions they come. But the permission to use their own laws by European settlers does not extend those laws to natives within the same limits, who remain to all intents and purposes subjects of their own Sovereign, and to whom European laws and usages are as little suited as the laws of the Mahometans and Hindus are suited to Europeans. These principles are too clear to require any authority to support them, but they are recognized in the Judgment to which we have above referred.

But if the English law were not applicable to Hindus on the first settlement of the country, how could the subsequent acquisition of the rights of sovereignty by the English Crown make any alteration? It might enable the Crown by express enactment to alter the laws of the country, but until so altered the laws remained unchanged. The question, therefore, and the sole question in this case is whether by express enactment the English law of *felo de se*, including the forfeiture attached to it, had been extended in the year 1844 to Hindus destroying themselves in Calcutta.

We were referred by Mr. Melville in his very able argument, to the Charter of Charles II in 1661 as the first and, indeed, the only one which in express terms introduces English law into the East Indies. It gave authority to the Company to appoint Governors of the several places where they had or should have factories, and it authorized such Governors and their Council to judge all persons belonging to the said Company, or that should live under them, in all causes, whether civil or criminal, according to the laws of the Kingdom of England, and to execute judgment accordingly.

The English Crown, however, at this time clearly

had no jurisdiction over native subjects of the Mogul, and the Charter was admitted by Mr. Melville (as we understood him) to apply only to the European servants of the Company; at all events it could have no application to the question now under consideration. The English law, civil and criminal, has been usually considered to have been made applicable to natives within the limits of Calcutta in the year 1726 by the Charter 13 Geo. I. Neither that nor the subsequent Charters expressly declare that the English law shall be so applied, but it seems to have been held to be the necessary consequence of the provisions contained in them.

But none of these Charters contained any forms applicable to the punishment, by forfeiture or otherwise, of the crime of self-murder, and with respect to other offences to which the Charters did extend, the application of the criminal law of England to natives not Christians, to Mahomedans, and Hindus, has been treated as subject to qualifications without which the execution of the law would have been attended with intolerable injustice and cruelty.

To apply the law which punishes the marrying a second wife whilst the first is living to a people amongst whom polygamy is a recognized institution would have been monstrous, and accordingly it has not been so applied.

In like manner, the law, which in England most justly punishes as a heinous offence the carnal knowledge of a female under 10 years of age, cannot with any propriety be applied to a country where puberty commences at a much earlier age, and where females are not unfrequently married at the age of 10 years.

Accordingly, in the case referred to in the argument, the law was held not to apply.

Is the law of forfeiture for suicide one which can be considered properly applicable to Hindus and Mahometans?

The grounds on which suicide is treated in England as an offence against the law, and punished by forfeiture of the offender's goods and chattels to the King, are stated more fully in the case of Hales *v.* Petit, in Plowd. Rep. 261, than in any other book which we have met with. It is there stated that it

is an offence against Nature, against God, and against the King.

Against Nature, because against the instinct of self-preservation; against God, because against the commandment, "Thou shalt not kill," and a *felo de se* kills his own soul; against the King, in that thereby he loses a subject.

Can these considerations extend to native Indians, not Christians, not recognizing the authority of the Decalogue, and owing at the time when this law is supposed to have been introduced no allegiance to the King of Great Britain?

The nature of the punishment also is very little applicable to such persons. A part of it is that the body of the offender should be deprived of the rites of Christian burial in consecrated ground. The forfeiture extends to chattels real and personal, but not to real estates; these distinctions, at least in the sense in which they are understood in England, not being known to or intelligible by Hindus and Mahometans.

Self-destruction, though treated by the law of England as murder, and spoken of in the case to which we have referred in Plowden as the worst of all murders, is really, as it affects society, and in a moral and religious point of view, of a character very different not only from all other murders, but from all other felonies. These distinctions are pointed out with great force and clearness in the notes attached to the Indian Code, as originally prepared by Lord Macaulay and the other Commissioners. The truth is, that the act is one which in countries not influenced by the doctrines of Christianity has been regarded as deriving its moral character altogether from the circumstances in which it is committed:—sometimes as blameable, sometimes as justifiable, sometimes as meritorious or even an act of positive duty.

In this light suicide seems to have been viewed by the founders of the Hindu Code, who condemn it in ordinary cases as forbidden by their religion; but in others, as in the well-known instances of suttee and self-immolation under the Car of Juggernauth, treat it as an act of great religious merit.

We think, therefore, the law under consideration inapplicable to Hindus, and if it had been introduced

by the Charters in question with respect to Europeans, we should think that Hindus would have been excepted from its operation. But that it was not so introduced appears to us to be shown by the admirable Judgment of Sir B. Peacock in this case; and if it were not so introduced, then, as regards natives, it never had any existence.

It would not necessarily follow that therefore it never had existence as regards Europeans. That question would depend upon this, whether, when the original settlers, under the protection of their own Sovereign, were governed by their own laws, those laws included the one now under consideration; whether an offence of this description was an offence against the King's peace, for which he was entitled to claim forfeiture; whether the factory could for this purpose be considered as within his jurisdiction. In that case it might be that the subsequent appointment of Coroners by the Act of the 33 Geo. III would render effectual a right previously existing, but for the recovery of which no adequate remedy had been previously provided.

We are not quite sure whether the Court below intended to determine this point or not. Much of the reasoning in the Judgment is applicable to Europeans as well as to natives, but the Chief Justice in his Judgment says :—

"At present we have merely to consider the question so far as it relates to the goods and chattels of a native who wilfully and intentionally destroys himself, and who cannot in strictness be called a *felo de se:* and we now proceed to deal with that question, and with that question alone."

The point so decided we think perfectly clear, and it is not necessary to go further. Since the New Code, which confines the penalty of forfeiture within much narrower limits than existed previously to its enactment, and does not extend it to the property of persons committing suicide, the case can hardly again arise.

We have no doubt that it is our duty in this case humbly to advise Her Majesty to dismiss the Appeal, with costs.