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MALTASS AGAINST MALTASS.

Dr. LUSHINGTON delivered his sentence in this case, which was argued last court day, relating to the will of Mr. John Maltass, who died at Smyrna in 1842. He was born at that place, his parents being British subjects. He passed a few years of his boyhood in England for education, and returned to Smyrna, where his father resided, engaged in trade, and for many years the deceased himself was occupied in commercial pursuits, being a member of a firm there established, but which was dissolved many years before his death. He married at Smyrna, and left a widow and several children. The question was, by what law the succession to his personal estate was to be governed. The first question (laying aside for the present that of domicil) was whether he was a British subject or not. Having been born of British subjects, though abroad, he would be entitled to all the rights and subject to the obligations of a British subject. The next point was the domicil; but this would be unimportant, if the law of Great Britain and Turkey, with respect to the succession to his property, should be the same: for by the law of domicil is meant, not the general law, but the law which the country of the domicil applied to the case, which might be wholly different from that applied to the subjects of the country itself. Assuming that he was domiciled in Smyrna, what was the law of Turkey applicable to British subjects dying domiciled there?—a question which depended upon the construction of the treaties between Great Britain and the Porte. The leading object of those treaties was to protect British merchants trading to Smyrna, by modifying the Turkish law, or to insure them justice. It was clear that a residence in Smyrna by British merchants was contemplated; and if the contracting parties provided for the case of residence, it seemed almost necessarily to follow that they must have intended to provide for the case of domicil. The terms of the treaties were so wide as to comprise all British merchants resident in Smyrna, the only exception being the case of a British subject becoming a Mussulman. A variety of reasons appeared to operate most strongly in favour of a liberal and extended construction of the treaties. The learned judge here read passages of the treaties, which appeared to apply to British merchants generally, and not merely to those temporarily resorting to the Turkish dominions. If, then, the treaty be applicable to British merchants resident or domiciled in Smyrna, the only remaining question was as to the provision of the treaties pertaining to the succession to their personal estate; and the effect of the treaties was that the law of Great Britain should operate upon such estate,—that is (in the absence of proof to the contrary), the law of Eng-

land, as contra-distinguished from the law of Scotland or any British colony, and that law was now the statute of wills. The last will executed by the testator in this case, not being attested by two witnesses, was by that statute a nullity; it had no revocatory effect, and the will of 1834, which was validly executed according to the law then in force, was, therefore, entitled to probate. This decision did not affect the question of domicil; for if the testator was legally domiciled in Turkey, the law of the domicile, under the treaties, required that the succession should be governed by British law; and, if he was domiciled in England, the English law *proprio vigore* obtained. The learned judge concluded a very able and lucid judgment, of which the foregoing is but an outline, by observing that he had given no opinion as to the question whether a British subject could or could not acquire a Turkish domicile; it was not necessary he should do so; but he might observe that, with regard to British subjects, being Christians, every presumption was against the intention of their voluntarily becoming domiciled in the dominions of the Porte; as to British subjects originally Mussulmans, as in the East Indies, or becoming Mussulmans, the same reasoning would not apply. He pronounced for the will of 1834.