

## **Potter v Minahan (1908) 7 CLR 277**

<https://lawcasesummaries.com/knowledge-base/potter-v-minahan-1908-7-clr-277/>

### **Facts**

- James Minahan arrived in Australia after living in China for 26 years. Minahan had been born in Melbourne.
- People born in Australia were British citizens by right, regardless of their parents' origins.
- Minahan's father was a Chinese storekeeper who had taken Minahan to China at age 5. His mother was an Irish Australian who stayed in Australia.
- Minahan's father had a store in Indigo, Victoria - he retained a half share of that shop which passed to Minahan on his father's death.
- Upon returning to Australia, Minahan sat and failed the Dictation Test - a test to determine his English skills.
- Minahan was classified as a "prohibited immigrant" within the meaning of the Immigration Restriction Act - despite his Australian birth.
- Minahan commenced proceedings, arguing that he was not an immigrant, but an Australian citizen.

### **Issues**

- Was Minahan an immigrant under who's entry to Australia could be legislated against under section 51 (xxvii) of the Constitution and therefore subject to the laws of the Immigration Restriction Act?

### **Held**

- Under a strict reading of the Act, three of the five justices (Griffith CJ, Barton and O'Connor JJ) decided that Minahan had been born in Australia and always retained an interest in Australia, he was not an immigrant for the purposes of the Act.
- It was a right of every British born subject to be able to remain in, depart and re-enter Australia as they saw fit.
- It was not possible to remove Minahan's rights of citizenship unless there was a clear intention with "irresistible clearness" by Parliament to do so.

### **Quotes**

"It is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness."

(O'Connor J at page 304)

**Full Text**

The full text is available here: <https://jade.io/summary/mnc/1908/HCA/63>

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