

s. 27 of Act XL of 1858 *obliges the Civil Court to appoint a female as the guardian of the person of a female minor.* We think that it may well be doubted whether the Act did not mean to leave the law as it was, in which case we might take as our guide the rule of Mahomedan law.

1885
BHOOGHA
v.
ELAHI BUX.

But it would seem from *Baillie's Mahomedan Law*, second edition, p. 438, that where a girl has not attained the age of puberty, the *grandmother* is her proper guardian, in preference to her uncle or other male relative, so that even if Act XL left the matter open, the rule of Mahomedan law would seem in favor of the petitioner.

We think, therefore, that the judgment of the lower Court should be reversed, and that the girl should be given over to her grandmother as her guardian. Each party under the circumstances will pay their own costs.

Appeal allowed.

CRIMINAL REFERENCE.

Before Mr. Justice Mitter and Mr. Justice Norris.

JOYDEO SINGH (PETITIONER) v. HARIHAR PERSHAD SINGH
(OPPOSITE PARTY)*

1885
May 22.

Sanction—Fresh sanction granted more than six months after expiry of prior sanction—Grounds upon which such fresh sanction should not be granted—Criminal Procedure Code, Act X of 1882, s. 195.

Sanction was granted to prosecute a defendant for forgery and perjury alleged to have been committed by him in a civil suit which was decided against him on the 22nd August 1882. The defendant then preferred an appeal which was dismissed on the 9th August 1883. The plaintiff commenced criminal proceedings against the defendant, under the sanction, on the 23rd July 1884, but such proceedings having been commenced more than six months after the date of the sanction, the charge was dismissed. The plaintiff then on the 20th August 1884 applied for a fresh sanction which was granted on the 13th April 1885.

Held, that assuming that the Munsiff who granted the fresh sanction had power to do so, as to which the Court expressed no opinion, such fresh sanction should not have been granted unless some explanation was given for

* Criminal Revision No. 171 of 1885, against the order passed by Moulvie Ata Hossein, Munsiff of Arungabad, dated the 13th April 1885.

1885
 JOYDEO
 SINGH
 v.
 HARIHAR
 PERSHAD
 SINGH.

the omission to commence proceedings within six months, and as no such explanation was given, or any special grounds shown why a fresh sanction should be given, the Munsiff did not exercise a sound discretion in granting such fresh sanction, and consequently his order was set aside.

THIS was an application to set aside an order granting sanction to prosecute the petitioner for forgery and giving false evidence.

The facts were as follow :—

The petitioner, one Joydeo Singh, had been one of the defendants in a regular suit in which Harihar Pershad Singh, the opposite party, was plaintiff. That suit was decided on the 22nd August 1882 against the defendant, and on the application of the plaintiff the Munsiff, on the same day, granted sanction to the plaintiff to prosecute Joydeo Singh and one Charan Singh for forgery and giving false evidence. The defendants preferred an appeal against the Munsiff's judgment, deciding the case against them and the decree passed thereon, but that appeal was dismissed on the 9th August 1883. On the 23rd July 1884 the plaintiff instituted criminal proceedings against Joydeo Singh and Charan Singh under the sanction granted on the 22nd August 1882. The case came on for hearing on the 19th August 1884 before the Deputy Magistrate, who then for the first time discovered that the sanction upon which the proceedings were based had been granted more than six months previous to their being commenced, and he accordingly dismissed the case. The plaintiff Harihar Pershad Singh then on the 20th August 1884 applied to Moulvie Ata Hossain (Baboo Gecool Chand, the Munsiff who had heard the regular suit and granted the previous sanction having meanwhile been transferred) the then Munsiff of Arungabad to renew the sanction granted by his predecessor to prosecute Joydeo Singh and Charan Singh, and that officer accordingly granted a rule calling upon the petitioner to show cause why such application should not be complied with. The rule came on for argument on the 13th April 1885, and resulted in a fresh sanction being granted to prosecute Joydeo Singh. Joydeo Singh now applied to the High Court to set aside that order on the following grounds :—

(1) That the Munsiff was wrong in renewing an order barred by limitation ;

(2) That there is no provision in the Code providing for the renewal of an order sanctioning a prosecution ;

(3) That the officer who granted the sanction not being the officer who had heard the original suit or granted the previous sanction could not give sanction without first holding a preliminary enquiry ; and

(4) That the order was therefore bad in law and made without jurisdiction.

Munshi *Mahomed Yusuf* for the petitioner.

Mr. *Twidale* for the opposite party.

The judgment of the High Court (MITTER and NORRIS, JJ.) was delivered by

MITTER, J.—The petitioner before us was defendant in a civil suit. The suit was decreed by the Munsiff on the 22nd August 1882, and at the end of the judgment a sanction was given for the prosecution of the petitioner for forgery and for giving false evidence. There was an appeal preferred against the Munsiff's decree, and that appeal was disposed of against the petitioner on the 9th August 1883. Then on the 23rd July 1884, the plaintiff in the civil suit commenced the criminal proceeding for which he had obtained the sanction on the 22nd August 1882.

While this proceeding was pending, it was discovered that the sanction upon which the prosecution relied was more than six months old. Thereupon on the 20th August another application was made for obtaining a fresh sanction, which was given on the 13th April 1885.

This rule was obtained by the petitioner upon the plaintiff to show cause why the order of the Munsiff, dated 13th April 1885, should not be set aside.

It is contended before us that under s. 195 of the Criminal Procedure Code, it was not competent to the Munsiff to give a fresh sanction for the prosecution. It seems to me to be unnecessary to express any opinion upon this point, because, assuming that the Munsiff had power to grant the fresh sanction, he should not have granted it unless some explanation was given for the omission to commence the proceeding within six months. The order of the 13th April 1885 has been read to us. It discloses

1885

JOYDEO
SINGH
v.
HARIHAR
PERSHAD
SINGH.

1885
 JOYDEO
 SINGH
 v.
 HARIHAR
 PRSHAD
 SINGH.

no special grounds for granting this fresh sanction. Neither does it appear from the record that any explanation was given by the opposite party to this rule as to why proceedings were not commenced at least within six months from the date when the decree of the Munsiff was confirmed in appeal.

Under these circumstances I am of opinion that the Munsiff did not exercise a sound discretion in granting the fresh sanction prayed for. We accordingly set aside the order of the Munsiff of the 13th April 1885.

Order set aside.

Before Mr. Justice Mitter and Mr. Justice Norris.

QUEEN EMPRESS v. DURGA SONAR (ACCUSED)*

1885
 May 26.

Evidence—Deposition of accused person when admissible in evidence against him in subsequent proceeding—Evidence Act (I of 1872) s. 80.

A deposition given by a person is not admissible in evidence against him in a subsequent proceeding without its being first proved that he was the person who was examined and gave the deposition.

A pardon was tendered to an accused, and his evidence was recorded by the Magistrate. Subsequently the pardon was revoked, and he was put on his trial before the Sessions Judge along with the other accused. At the trial the deposition given by him before the Magistrate was put in and used in evidence against him without any proof being given that he was the person who was examined as a witness before the Magistrate.

Held, that the deposition was inadmissible without proof being given as to the identity of the accused with the person who was examined as a witness before the Magistrate.

IN this case the accused and three others were charged with the murder of one Nemani Sonar.

On February 2nd, the accused Durga made a confession before the Joint Magistrate, who recorded the usual memorandum at the foot of the confession as required by s. 164 of the Criminal Procedure Code. Subsequently a pardon was tendered to Durga, on the 10th February by the Joint Magistrate, who recorded his reasons for so doing as required by s. 337 of the Code, as follows: "I am inclined to believe that he (Durga) was

* Criminal Reference No. 16 and Appeal No. 322 of 1885, made by J. W. Badcock, Esq., Officiating Sessions Judge of Bhagalpore, on the 4th of May 1885.