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s. 76 is not correct, and that the construction for which the learned counsel contends is the right one.

Then, as regards the other point, we are of opinion that under s. 80 it was necessary to publish the general notice mentioned in s. 6 of the Act in the way prescribed by s. 80. In this view we are supported by an unreported decision of this Court in Criminal Motion No. 297 of 1884, dated 12th September 1884. The words, "every proclamation and general notice by this Act required to be issued or given," used in s. 80 are sufficiently wide to include the notice referred to in s. 6.

Upon both these grounds, therefore, we are of opinion that the convictions in these two cases are wrong. We accordingly set aside the convictions and sentences in these two cases. The fines, if realized, will be refunded.

Conviction quashed.

APPELLATE CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Macpherson.

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BHOOCHA (PETITIONER) *v.* ELAHI BUX (OPPOSITE PARTY.)*

Guardianship of infant female child not having attained puberty—Maternal grandmother as guardian—Act IX of 1861, *s.* 3—*Mahomedan Law.*

Under the Mahomedan law, the grandmother is entitled to the guardianship of a minor female child in preference to the child's paternal uncle, where such child, although married to a minor, has not attained puberty.

THIS was an application made under Act IX of 1861 by one Bhoocha for a declaration as to her right to the guardianship of her granddaughter Inami Begum, as against one Elahi Bux, her paternal uncle. Inami Begum, at the time of this application, was a minor, not having attained the age of puberty, but was married, and was living in the house of her paternal uncle Elahi Bux. It appeared that since the death of Inami's father, she and her mother had lived sometimes with her grandmother and

* Appeal from Order No. 257 of 1884, against the order of W. H. Page, Esq., Officiating Judge of Bhagulpore, dated the 21st of May 1884.

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sometimes with Elahi Bux, but that Elahi Bux used to make a monthly allowance for the support of the mother and daughter. Subsequently the mother of Inami married one Ahmed Ali, a man of no position, and a few days subsequent to the marriage Inami went permanently to live with her paternal uncle, and in his house was married to a Mahomedan boy 12 or 14 years of age. On the hearing of this application, the following issues were fixed:—

(1) Has the girl been married?

(2) Is the petitioner entitled to the custody of the girl's person?

The Judge found that the child had been legally married; and with regard to the second issue, he gave the following judgment:—

"The petitioner's pleader has urged, that failing the mother, the maternal grandmother is the proper person to have charge of the child; and no doubt, other things being equal, she would have a preferential claim; but I do not find that there is any absolutely binding rule on the subject, and I think that s. 3 of Act IX of 1861 allows the Court a discretion, when empowering it 'to make such order as it shall think fit in respect to the custody and guardianship of the minor.' Mr. *Amir Ali* in his work on the Personal Law of the Mahomedans lays down at p. 212 that 'the right of *hazanat* is founded primarily for the benefit of the child, and is to be exercised by those relations who are most likely to bestow care and kindness upon it;' and at p. 210 quotes with approval the remarks of Mr. Santayra, *viz.*, '*l'intérêt de l'enfant l'importe sur toutes les autres considérations, et les juges ont la faculté de subordonner l'application de la règle aux circonstances de fait;*' all the circumstances of the present case show that the best interest of the minor will be served by her being left where she is; she will not lack female guardianship, because the aunt of her husband is living in the house of her uncle, and has charge of her. I therefore refuse the application."

Bhoocha appealed to the High Court.

Moulvi *Serajul Islam* for the appellant.

Mr. *Mullick* and Baboo *Tarrack Nath Dutt* for the respondent.

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Judgment of the Court was delivered by

GARTH, C.J.—We are extremely unwilling in this case to interfere with the order of the lower Court. We believe that under the circumstances the uncle of the girl is a far preferable guardian of Inami Begum to the petitioner, the grandmother.

But the decision of *Mitter* and *Wilkinson*, JJ., in *Fuseehun* v. *Kajo* (1) is directly in favor of the appellant; and we think that we are bound by that decision, unless we are prepared to refer the question to a Full Bench.

That also was a case decided under Act IX of 1861. The plaintiff was the maternal grandmother of the minor, a girl aged 12 years, *who had attained puberty*. The parties who claimed to be guardians were, first, the mother of the minor, who, as in this case, had married again, and was disqualified from being guardian; and, secondly, the paternal uncles of the minor. The Court held that, though under Mahomedan law the uncles would be the proper guardians, s. 21, Reg. X of 1793 (applicable to minors under the Court of Wards), and s. 27 of Act XL of 1858 (applicable to other minors) read together prohibited the appointment of any one but a female to be the guardian of a female. The girl was accordingly made over to the custody of the maternal grandmother and taken away from that of the paternal uncles.

In this case the plaintiff is the grandmother of the minor, who, although she has not attained puberty, is found to have been lawfully married. The defendant is the girl's paternal uncle. The mother of the girl, as in the case referred to, has married again, and is consequently disqualified from acting as guardian.

The facts of the above case are, therefore, so far as the main point in question is concerned, undistinguishable from those of the present, and we consider that we are bound by it. At the same time, we have so much doubt as to whether that case was rightly decided, that we should be disposed to refer the question to a Full Bench if it were not for the fact that the girl in this instance, although married, appears not to have attained the age of puberty.

The only ground upon which we doubt the correctness of the above case is this: that the learned Judges seem to consider that

(1) I. L. R., 10 Calc., 15.

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.

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.