

The *Senior Government Pleader* (Lala Juala Prasad), for the respondent.

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 ABASI
 v.
 DUNNE.

The judgment of the Court was delivered by

PEARSON, J.—The claim in this suit was simply for the recovery of the minor Chittan from the custody of the Government; and the fact that the plaintiff is a prostitute, and therefore an unfit person to have the charge of the girl, seems to be a sufficient reason for dismissing the claim in the interest of the minor. It may be admitted that the plaintiff would, under the Muhammadan law, be *prima facie* entitled to the guardianship of her younger sister, were her fitness for the charge established; but her own bad character and manner of life must be held to disqualify her; and we must affirm the decree of the lower Courts dismissing her suit. It is stated in the plaint that the tenets of Christianity are being imparted to the minor at the Orphanage at which she has been placed by the Magistrate, and that “in bringing her claim, the plaintiff prays that the Court, after satisfying itself that the plaintiff would not bring up the minor in her own trade of prostitution, and that she would marry her according to Muhammadan law, may order the minor to be given to her.” But it is difficult to see how the minor, if made over to her, could be secured from the evil effects of her example, influence, and association. The appeal is dismissed with costs.

Appeal dismissed.

CRIMINAL JURISDICTION.

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 February 15.

Before Mr. Justice Turner and Mr. Justice Spankie.

EMPRESS OF INDIA v. MULUA.

Regulation IV of 1797, s. 3—Act XLV of 1860 (Indian Penal Code), s. 302—Act VI of 1861—Act XVII of 1862, ss. 1, 2, 4—Act I of 1868 (General Clauses Act), ss. 3, 6—Act VIII of 1868—Act X of 1872 (Criminal Procedure Code).

Up to the 1st January, 1862, a person committing the offence of murder was liable to trial and punishment under the Regulations. By Act XVII of 1862 the Regulations prescribing punishments for offences were repealed “except as to any offence committed before the 1st January, 1862.” By the same Act it was declared that no person who should claim the same should be deprived of any right of appeal or reference which he would have enjoyed under such Regulations. By s. 6 of Act I of 1868 the repeal of an Act does not affect any thing

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done, or any offence committed, or any fine or penalty incurred before the repealing Act shall have come into operation. Under the provisions of this section the repeal of Act XVII of 1852 by Act VIII of 1868 and Act X of 1872 did not, in respect of offences committed before the 1st January, 1862, affect the penalties prescribed by such Regulations, nor were any of the Regulations prescribing punishments for offences, which were in force before the passing of Act XVII of 1862, repealed in respect of offences committed before the 1st January, 1862, prior to the passing of Act I of 1868.

Held accordingly, where a person committed murder in the year 1855, that such person was punishable under the Regulations.

Held also that, inasmuch as such a right as the right of reference given by s. 3 of Regulation IV of 1797 accrues on conviction, and therefore in the present case had not accrued before Act XVII of 1862 was repealed, it is doubtful whether a person convicted of murder committed before the 1st January, 1862, has such right.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court, which was delivered by

TURNER, J.—The prisoner was charged with the offence of murder committed in the year 1855. On that charge he was tried by the Judge of Fatehgarh and convicted and sentenced, under the Regulation in force before the 1st January, 1862, to transportation for life. The Judge has submitted the sentence for confirmation, and at the same time has called the attention of the Court to a Full Bench ruling of the High Court of Calcutta (1), in which it has apparently been held that a person who has committed an offence prior to the 1st January, 1862, could not now be legally convicted and sentenced. We say apparently it was so held, because such was the opinion expressed by the learned Judges before whom the case was originally heard, and although the judgment of the Full Bench proceeds on grounds which do not necessarily involve that conclusion, the conviction was pronounced illegal and set aside.

Up to the 1st January, 1862, the law under which persons were liable to trial and punishment for the offence of which the prisoner has been convicted was declared in the Regulations. On the 1st January, 1862, the Indian Penal Code came into operation, for although in the Code itself the date on which it should

(1) *Empress v. Diljour Misser*, I. L. R., 2 Calc. 225.

take effect was declared to be the 1st May, 1861, that date was altered by the subsequent Act VI of 1861. By Act XVII of 1862, ss. 1 and 2, the Regulations and Acts prescribing punishments for offences were repealed from the 1st January, 1862, "*except as to any offence committed before the 1st January, 1862.*" In respect of those parts of India in which the Code of Criminal Procedure came into operation on the 1st January, 1862, the Acts and Regulations theretofore regulating procedure in the trial of offences were by s. 4 of the same Act, XVII of 1862, repealed; and it was declared that thereafter the Criminal Courts should be guided by the Code of Criminal Procedure and exercise the powers and jurisdiction vested in them under the said Code, provided that no person convicted of an offence committed before the 1st January, 1862, should be liable to any other punishment in respect of such offence than that to which he would have been liable had he been convicted of such offence before the said first day of January, 1862, and that no person who should claim the same should be deprived of any right of appeal or reference to a Sudder Court which he would have enjoyed under any of the Regulations or Acts thereby repealed.

The effect then of Act XVII of 1862 was this; it left the Regulations and Acts under which offences were theretofore punishable unrepealed in respect of an offence committed before the 1st January, 1862; and while it declared that the Criminal Courts should in the investigation and trial of offences be thereafter guided by the provisions of the Code of Criminal Procedure, and enjoy the powers and jurisdiction conferred on them by that Act, it saved offenders guilty of offences committed before the 1st January, 1862, from liability to any other punishment in respect of such offences than that to which they would have been amenable under the repealed Regulations and Acts, and secured to them the same rights of reference and appeal to a Sudder Court which they would have enjoyed if they had been tried under the Regulations and Acts thereby repealed.

By the General Clauses Act, I of 1868, s. 3, it is provided that in all Acts made by the Governor-General in Council for the purpose of reviving either wholly or partially a Statute, Act, or Re-

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gulation repealed, it shall be necessary expressly to state such purpose, and by s. 6 of the same Act it is enacted that the repeal of any Statute, Act, or Regulation shall not affect any thing done, or any offence committed, or any fine or penalty incurred before the repealing Act shall have come into operation. By the repealing Act VIII of 1868 the 1st, 2nd, and 7th sections of Act XVII of 1862 were repealed, and by Act X of 1872 the sections of the Act then unrepealed were also repealed. There being no express words to that effect, the repeal of Act XVII of 1862 of course did not revive the Regulations in so far as they had been repealed by the Act, but neither did it operate to repeal those Regulations in so far as they were not repealed by the Act. Thus in respect of offences committed prior to the 1st January, 1862, the penalties prescribed by the Regulations were not affected by the repeal of Act XVII of 1862, nor, so far as we can discover, were any of the Regulations prescribing punishments for offences, which were in force before the passing of Act XVII of 1862, repealed in respect of offences committed before the 1st January, 1862, prior to the passing of the General Clauses Act, I of 1868.

We agree with the High-Court of Calcutta that a person could not be convicted of an offence committed prior to the 1st January, 1862, under Act XVII of 1862, and for this reason, that that Act was a repealing Act and not an Act providing for the punishment of such offences. But it is another question whether persons who have committed offences prior to the 1st January, 1862, are not amenable to punishment under the Regulations. To the several repealing Acts passed since the General Clauses Act came into operation, the provisions of s. 6 of the General Clauses Act apply, and the repeal of a Regulation subsequently to the passing of the Act does not relieve offenders from the penalties to which they were liable under the Regulations.

It is a more difficult question whether the right of reference remains after the repeal of Act XVII of 1862. That right had not accrued before the Act was repealed, for it accrued on conviction, and the conviction did not take place till after the repeal of Act XVII of 1862; but to avoid any illegality by the omission of confirmation if it be still required, we have considered the case on the

merits and hold the conviction justified by the evidence and the sentence not improper. We therefore confirm it.

Conviction affirmed.

APPELLATE CIVIL.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Spankie.

BALDEO PANDAY (PLAINTIFF) v. GOKAL RAI (DEFENDANT).*

Bond—Interest.

G gave B a bond for the payment of certain money within a certain time, with interest at the rate of 1½ per cent. per mensem, in which he agreed that, in case of default, the obligee "should be at liberty to recover the principal money and interest from his person and property" and mortgaged "his four anna share in mauza K until payment of the principal money and interest." Held that the bond contained an express contract for the payment of interest after due date at the rate of 1½ per cent. per mensem, and that such contract was enforceable.

Seemle that, where there is no express agreement fixing the rate of interest to be paid after the date a bond becomes due, an agreement to pay at the rate of interest agreed to be paid before such date cannot be implied, but the Court must determine what would be a reasonable rate to allow. In such a case the rate agreed to be paid before such date may ordinarily be regarded as the rate to be allowed after such date, provided that the rate agreed to be paid before such date is not excessive.

THIS was a suit for money charged on immoveable property by a bond. This bond was dated the 8th January, 1872, and the plaintiff claimed to recover thereunder Rs. 1,913-11-0, principal and interest. The suit was instituted on the 11th May, 1877. The facts of the case are sufficiently stated for the purposes of this report in the judgments of the High Court, to which the plaintiff appealed against the decree of the lower appellate Court.

Munshi *Kashi Prasad* and *Shah Asad Ali*, for the appellant.

Mr. *J. E. Howard*, the *Senior Government Pleader* (*Jala Juala Prasad*), and *Pandit Bishambhar Nath*, for the respondent.

The following judgments were delivered by the Court :

STUART, C. J.—In this case I think the appeal must be allowed. I am not sure that I quite follow the Subordinate Judge in the rea-

* Second Appeal, No. 1076 of 1877, from a decree of J. W. Power, Esq., Judge of Gházipur, dated the 6th September, 1877, modifying a decree of *Maulvi Zain-ul-Abdin*, Additional Subordinate Judge of Gházipur, dated the 28th May, 1877.