

## APPELLATE CIVIL.

*Before Harrison and Addison JJ.*

HARI CHAND (PLAINTIFF) Appellant

*versus*

GHULAM RASUL (DEFENDANT) Respondent.

Civil Appeal No. 534 of 1931.

*Guardians and Wards Act, VIII of 1890, section 19: Appointment of guardian other than father—when competent—Change of religion—whether renders father unfit.*

*Held*, that change of religion does not render a father unfit to be guardian of the person and property of his minor son, and, if the father is alive and able to provide for the latter's welfare and it is not shown that he is unfit for some good reason, other than change of religion, no other guardian can be appointed; *vide* section 19 of the Guardians and Wards Act.

*Miscellaneous first appeal from the order of Mr. James Read, District Judge, Rawalpindi, dated 19th March 1931, dismissing the application of Hari Chand for appointment as guardian of the person and property of the minor Dina Nath (alias Ghulam Mustafa), son of Ghulam Rasul Shaikh, convert Muslim, of Golra, Tahsil Rawalpindi.*

GOBIND RAM KHANNA, for Appellant.

SHUJA-UD-DIN, S. K. AEMAD and MOHAMMAD AMIN, for Respondent.

The judgment of the Court was delivered by :—

HARRISON J.—This case has been referred to a Division Bench to decide whether in the case of a father, who is not unfit, the Court has power to appoint another person as guardian of the minor on the ground of the welfare of the minor.

All that the counsel has been able to point out to us is that it has been decided that in coming to a decision under section 19 as to the fitness of the father the points detailed in section 17 should be taken into consideration. This merely amounts to emphasizing the necessity of considering the fitness of the father and deciding whether he is able to ensure the welfare of his children.

In this case it has not even been urged that the father is in any way unfit. It has been pointed out that he has changed his religion, and it is conceded by counsel that this in itself does not amount to unfitness. In these circumstances, it has not been shown that there is any reason to suppose that the father is unfit; and, as laid down in section 19, he being alive and able to provide for the welfare of his children, no guardian can be appointed.

The appeal will be dismissed with costs. Pleader's fee Rs. 48. The *ad interim* order of the 16th April, 1931, stands discharged. The order passed by the learned District Judge under section 25 directing that the child be returned to his father will now be carried out.

N. F. E.

*Appeal dismissed.*

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HARI CHAND

v.

GHULAM RASUL.

HARRISON J.