

1878

GULZARI LAL  
v.  
THE COLLECTOR OF  
BARRILLY.

The following judgment was delivered by the Court :  
PEARSON, J.—The principle of the ruling of the Bombay Court (1), on which the lower appellate Court has relied, appears to us to be reasonable, and we decline to interfere.

*Appeal dismissed.*

## APPELLATE CIVIL.

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1878  
February 15.

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Pearson.*

ABASI (PLAINTIFF) v. DUNNE (DEFENDANT).\*

*Custody of Minor—Guardian—Muhammadan Law.*

*Held*, where the plaintiff sued for the custody of her minor sister, as her legal guardian under Muhammadan law, that the fact of the plaintiff being a prostitute was, although she was legally entitled to the custody of such minor, a sufficient reason for dismissing the suit in the interests of such minor.

THIS was a suit for the custody of the plaintiff's minor sister, Chittan, the suit being based on the plaintiff's right of guardianship under Muhammadan law. In November, 1871, the Sessions Judge of Cawnpore tried a case in which the plaintiff in this suit, who was a prostitute by profession, had charged another prostitute with obtaining possession of Chittan for the purposes of prostitution. The accused was acquitted by the Sessions Judge, with an injunction to the Magistrate of the District to make suitable arrangements for the welfare of the minor. The Magistrate procured Chittan's admission to the Ghuttia Orphanage at Cawnpore. The present suit was instituted against the Magistrate and the Superintendent of the Orphanage. The lower Courts dismissed the suit on the ground that the plaintiff, being a prostitute, was not a proper person to have the custody of the minor.

The plaintiff appealed to the High Court, contending that under Muhammadan law she was the legal guardian of the minor and therefore entitled to the custody of her person.

Maulvi Obeidul Rahman Mir Akbar Husain, and Mir Zahur Husain, for the appellant.

\* Special Appeal, No. 1312 of 1877, from a decree of J. H. Prinsep, Esq., Judge of Cawnpore, dated the 30th August, 1877, affirming a decree of Munshi Lalta Prasad, Munsif of Cawnpore, dated the 9th January, 1877.

(1) I. L. R., 1 Bom. 7

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

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The Judgment of the Court was delivered by

ABASI  
v.  
DUNNE.

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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1878  
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