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right. The understanding on one side and the other, that a particular law subsists, is not to be identified with an understanding in the sense of a contractual engagement by the parties interested in a legal act that they are to abide by that law in spite of its repeal or supersession. (1)

We must, therefore, confirm the decree of the District Court in both cases, with costs.

*Decree confirmed.*

(1) See the observations of M. Demolombe on a similar question. *Traite de la Publication, des effets et des applications des lois*, p. 75.

### APPELLATE CRIMINAL.

( 41 )

*Before Mr. Justice West and Mr. Justice Pinhey.*

December 12.

EMPRESS v. UMSA DBAKSH.\*

*Kidnapping—Indian Penal Code (Act XLV of 1860), Section 361—  
 Guardianship—Minor.*

A child under ten years of age is, *prima facie*, subject to guardianship, and any one removing such child without permission properly obtained, takes the risk of such act upon himself; the fact of having omitted to inquire whether the child had a guardian or not, is no defence to a charge of kidnapping a minor from lawful guardianship under section 361 of the Indian Penal Code.

THIS was an application for revision of an order passed by G. Drutt, Acting Sessions Judge of Ahmedabad, confirming the order of A. L. P. Larken, Assistant Sessions Judge, sentencing the accused to three years' rigorous imprisonment on conviction of kidnapping a minor from lawful guardianship.

The evidence for the prosecution showed that the minor, a girl of ten years of age, was living with her husband and mother-in-law, and was sent out to collect and sell cowdung cakes, that as she was returning home the accused detained her at her house and took her away, intending to go to a different place with her.

*P. M. Mehta* with *Gokaldas Kahandas* for the accused.—The facts found do not constitute kidnapping: *Reg. v. Green*, (1) *Queen v. Güdner Singh*, (2) and *Queen v. Mussamat Oozeerun*. (3)

\* Application (Criminal) for revision, No. 233 of 1878.

(1) 2 Russell on Crimes, 958.

(2) 4 Calc. W. R. 6 Cr. Rul.

(3) 7 *ibid.* 98 Cr. Rul.

The accused when removing the girl was not legally bound to inquire whether she had a guardian if the girl herself consented to accompany her, as she did.

*Per Curiam.*—The Court is of opinion that the fact of the accused not inquiring at the time of removing a child ten years of age from lawful guardianship, whether she had a guardian or not, is no excuse; for, by not inquiring, the accused takes the risk on himself and cannot escape its legal consequences. A child of such tender age is, *prima facie*, subject to guardianship, and no one is at liberty to take away such child without permission properly obtained. The objective fact of the child being in the keeping of a guardian, satisfies in this respect the requirements of this section of the Code.

*Application refused.*

### APPELLATE CIVIL.

( 42 )

*Before Mr. Justice Melvill Mr. Justice Kemball.*

GORDHAN PEMA (PLAINTIFF) v. KASANDAS BALMUKUNDAS  
(DEFENDANT.)\*

*Civil Procedure Code (Act X of 1877), Section 283, and Section 57, cl. (a)—Court of Small Causes—Jurisdiction—Act XI of 1865, Section 12.*

A suit brought by a defeated claimant, under sec. 283 of Act X of 1877, to establish his right to, and to recover possession of, certain moveable property attached in execution of a decree of a Small Cause Court, is within the jurisdiction of, and must, therefore, under Act XI of 1865, sec. 12, be instituted in a Small Cause Court.

THE following question was referred for the opinion of the High Court by Sunmukharam Navnitral Hora, First Class Subordinate Judge at Surat:—

“Whether a suit brought by a defeated claimant, under section 283 of Act X of 1877, to establish his right to, and to recover possession of, certain moveable property attached in execution of a decree of a Small Cause Court is maintainable in a Subordinate Judge’s Court, or must be instituted in the Small Cause Court which attached the property and passed the summary decision which it is the object of the suit to set aside?”

\* Civil Reference, No. 16 of 1873,