[390] The Court under the 91st section is empowered to issue a summons to the person in possession to show by what title he claims to hold and occupy the premises. If he does not appear and show cause to the contrary, that is to say, if he does not appear, or if, having appeared, he does not show cause to the contrary, then, on proof of the holding and of the determination of the tenancy, if any, and of the right of the claimant to possession, the Court may issue a warrant to place the claimant in possession.

What is the meaning of the term "showing cause to the contrary?"

We may refer to the English decision *Fearon* v. *Norvall* (17 L. J. Q. B., 161) that the cause shown must be cause which is in the opinion of the Court sufficient.

The decision of this Court to which we have been referred indicates as sufficient cause proof that the right to possession depends on a difficult or really doubtful question of title to the ownership in the property *bonâ fide* raised by the person in possession; and expressing the illustration more generally, we agree that proof of the existence of a difficult or doubtful question as to the right to possession *bonâ fide* raised by the person in possession is sufficient cause.

It is not the mere assertion of a right or title to possession that will justify the Small Cause Court in refusing relief: it must first be satisfied that the right or title is asserted in good faith and on reasonable grounds.

NOTES.

[*See*, also, (1890) 15 Bom., 400.]

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[391] APPELLATE CIVIL.

The 14th December, 1881.

PRESENT:

MR. JUSTICE KERNAN AND MR. JUSTICE KINDERSLEY.

Narasimma Thatha Acharya.....(Plaintiff), Appellant

and

Anantha Bhatta and others.....(Defendants), Respondents.*

Paricharaka office and emoluments—Sale of, by Archaka, invalid.

An Archaka† cannot sell the office and emoluments of Paricharaka‡ inasmuch as they are *extra commercium*.

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binding on a question of title, and the sections clearly secure to the person in possession the right to have the title to the property tried by another Court competent to decide finally.

Upon a consideration of all the sections we are (although not insensible to the inconvenience pointed out by the learned First Judge) unable to come to the conclusion that the First Judge was right in refusing to enter upon the case merely because the defendants set up independent title in themselves. We think they had a right to put the plaintiff upon proof of his right to the possession, although that involved the consideration of a question of conflicting title between the plaintiff and the defendant.

* Second Appeal No. 317 of 1881 against the decree of J. Hope, District Judge of Chingleput, confirming the decree of V. Sundaramier, District Munsif of Tiruvallur, dated 6th December 1880.

† A priest who alone is allowed personally to attend upon the idol. From Archa=idol.

‡ Assistant to the Archaka—not allowed to touch the idol.

THE plaintiff and the fifth, sixth, and seventh defendants were Dharmakartas of the pagoda of Sri Vijiaragava Perumal at Tirupakuli in the taluk of *Conjeeveram*.

The first and second defendants were the Archaka Mirasidars in the pagoda.

This suit was brought to set aside a sale made in 1875 of one-third of the Paricharaka rights of the first and second defendants to the third and fourth defendants and for an injunction to prevent the third and fourth defendants from performing the duties of the Paricharaka office.

The fifth defendant did not appear and was reported dead.

The rest of the defendants pleaded that the sale was valid.

The material portion of the Munsif's judgment was as follews :—

"The present sanctity of Archaka is a matter of great moment as, according to the evidence, the devotees have to take food and water from his hands. The offices of Archaka and Paricharaka have always been held conjointly by persons who are fit to be Archakas. Now the person who has purchased the Paricharakan Mirasi is one incompetent to hold the Archakan's office. The sale in question amounts more to the splitting of the duties of a Mirasidar into two and assigning one portion of them to a person who is incompetent to do the other portion than to the assignment of a single and complete Mirasi. In the single instance adduced, wherein the predecessor of defendants 1 and 2 assigned away their Mirasis to defendants 1 **[392]** and 2, the Archaka and Paricharaka Mirasi were coupled together. There is no doubt that the efficient performance of the duties would be considerably affected by such splitting of duties and the introduction of strangers without the consent of the trustees. I am therefore of opinion that the sale of this office is illegal.

"A declaration to that effect will be made in this suit, for plaintiff has certainly a cause of action. He has the right to see that the existing right and customs are maintained.

"But I believe there are no grounds for giving an injunction to restrain the defendants 3 and 4 from doing the Paricharakan duties. They appear to be the nominees of sixth and seventh defendants who form the majority of the trustees. As they themselves are not incompetent to perform the duties, there cannot be an injunction."

The plaintiff and the third and fourth defendants appealed separately.

The District Judge confirmed the Munsif's decree.

The plaintiff appealed to the High Court, and the third and fourth defendants filed objections to the decree so far as it ruled that the sale was invalid.

Parthasaradi Ayyangar and *T. Rangacharyar* for Appellant.

P. Rangacharyar for third and fourth Respondents.

The Court (KERNAN and KINDERSLEY, JJ.,) delivered the following

Judgment :—We do not think that we should hesitate to give judgment confirming the decree so far as it goes, and, further, to grant an injunction to restrain the third and fourth defendants from doing any act under any title alleged under the illegal sale.

The sale is of duties of part of the office of Archaka, that is, for a certain number of days in every month of such part, of the duties of Paricharakum. The Archaka duties are those of offering up worship in the temple on behalf of the community; and in the course of the worship the worshippers take from the hand of the Archaka water which is considered to be sacred water. The alienees, third and fourth defendants, are not of the same sect as the Archaka, who has, as it appears, been always a Bhatta.

It is the duty of the Archaka alone to perform this, the duty of presenting such water, as well as others. There are some emoluments attached to the

performance of the duties, and it it is the right to receive these emoluments as well as the right to perform the duty that has been sold for Rs. 150.

We have no doubt that such office so intimately connected wih and essential to the religious worship is not legally the subject of [393] sale. *Vencatarayar* v. *Srinivasa Ayyangar* (7 M. H. C. R., 32); *Rajah of Cherakal* v. *Mootha Rajah* (7 M. H. C. R., 210).

We, therefore, allow the injunction to go in the modified form abovementioned, and allow the plaintiff's appeal with costs and disallow the defendants' objection with costs.

NOTES.

[The office of Shebaiti right is not saleable :—(1907) 12 C. W. N., 98. *See* also (1896) 23 Cal. 645 ; (1890) 17 Cal. 557.

See the notes to (1876) 1 Mad. 235 P. C. in the 'Law Reports' Reprints.]

[4 Mad. 393]

APPELLATE CRIMINAL.

The 20th and 22nd December, 1881.

PRESENT:

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE MUTTUSAMI AYYAR.

Madapusi Srinivasa Ayyangar	... Petr. in	No. 553,
Guntur Desikacharyar	... ,,	,, 554,
Bashkara Narasimmacharyar	... ,,	Nos. 568, 569, 570,
Tirumalai Kasturi Ayyangar	... ,,	No. 584,
Agaram Alagasinga Ayyangar	... ,,	,, 589

against

The Queen.*

Madras Act III of 1869—Departmental inquiry—Indian Penal Code, Section 172 Onus probandi—Facts to be proved.

A Collector, who, in order to draw up a report for the information of Government, holds a departmental inquiry into the conduct of a Tahsildar accused of extortion in the discharge of his executive duties, is authorized under the provisions of Madras Act III of 1869 to issue summonses for the attendance of persons whose evidence may appear to him necessary for the investigation.

In order to prove the commission of an offence under Section 172† of the Indian Penal Code, the prosecutor must show that a summons, notice, or order has been issued, and that the accused knew, or had reason to believe, that it had been issued.

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* Petitions Nos. 553, 554, 568, 569, 570, 584, 589 of 1881 against the sentences of A. Pinto, Deputy Magistrate of Chingleput, in Summary trials 18, 17, 26 and 52, Calendar Case 31, and Summary trials 21 and 20 of 1881.

†[Sec. 172 :—Whoever absconds in order to avoid being served with a summons, notice, or other proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both, or if the summons, notice, or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.]

Absconding to avoid service of summons, or other proceeding from a public servant.