QUEEN-EMPRESS v. BAODUR BHAI.

for food in any house within the Municipality, but that such cannot have been the intention of the legislature may be inferred from cl. 3, which expressly prohibits the slaughter of any cattle, sheep, goats, or pigs within the Municipality except in a public or licensed slaughter-house.

Having regard to the subject matter of legislation (slaughter-houses), the preceding clause and the context, we think that the expression "the flesh thereof" in cl. 2 can only be taken to mean the flesh of the animal intended for food and slaughtered in the same place, otherwise there was no necessity for cl. 3 which prohibits the slaughtering of cattle, sheep, or pigs otherwise than in a public or licensed slaughter-house.

If the butchers used the premises on which their shops are situated as slaughter-houses, their action would be punishable under s. 192. This, however, is not alleged in the complaint. If they merely sold in their shops a supply of meat obtained elsewhere, which is all that is apparently alleged, they have committed no offence.

The view we have taken appears to be similar to that taken by the High Court of Bombay in *Rája Paba Khoji, in re* (1), and *Queen-Empress* v. *Magan Harjivan* (2).

On these grounds, the order dismissing the complaint was right, and we must dismiss this petition.

APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.

MILLARD AND ANOTHER, *in re.**

1887. March 22. April 1.

Penal Code, ss. 103 *and* 494—*Native Christian—Marriage by relapsed convert.*

A was baptized in infancy into the Roman Catholic Church, but subsequently relapsed, with the rest of her family, into Hindúism and was married to a Hindú. Her Hindú husband since discarded her, and alleged that he would not have married her if he had known that she had been baptized. A was subsequently re-admitted into the Roman Catholic Church and married by B, a priest, to a Roman Catholic during the lifetime of her Hindú husband

(1) I.L.R., 9 Bom., 272. (2) I.L.R., 11 Bom., 106.

* Criminal Revision Case No. 55 of 1887.

Held, that A's marriage with the Hindú was subsisting and valid at the time of her Christian marriage; that she was guilty of the offence of bigamy; and that B was guilty of abetting that offence. *Lopez* v. *Lopez* (I.L.R., 12 Cal., 706) discussed.

In re MILLARD.

PETITION under ss. 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the proceedings of J. Hope, the Sessions Judge of South Arcot in calendar case No. 2 of 1887, convicting the first and second accused, respectively, of the offences of marrying during the lifetime of a husband, and of abetting that offence under ss. 494 and 109 of the Indian Penal Code.

The facts of this case, which were not in dispute, were stated by the Sessions Judge as follows:—

"During the famine that prevailed ten years ago the first accused Irisi, then a little girl, was taken by her parents away from their village Polakunam in the Tiruvannamalai taluk to Alladi in the Tindivanam taluk. There they, along with other people, were baptized by the Roman Catholic priest of the place. Almost immediately after, they returned to their own village and Irisi's father died. This was about 1877. In 1885 Irisi was married to the first witness Subban in accordance with the custom of the pariah caste (to which the parties belong) and with religious rites which were non-Christian. She cohabited with her husband for about a month, during which she conformed to his religion. The immediate cause of their separation does not appear. Possibly it was Subban's discovery that she had once been baptized. At any rate he now alleges he was deceived and would not have married her had he known the fact. And when the Roman Catholic priest, Mr. Millard, who is the second accused in Court, tried subsequently to effect a reconciliation between them, Subban refused to take her back on the ground of her being a Christian, and even consented to pay Rs. 20 to meet the expenses of her second marriage.

"In September 1886, Irisi was married by the Reverend Mr. Millard under her Christian name of Therèse to a Christian named Zachary. If her marriage to Subban was a valid marriage she must be found guilty of bigamy and the priest must be found guilty of abetting her in the commission of the offence."

Grant and *Laing* for petitioners cited (*inter alia*) ex parte

In re MILLARD.

Karaka Náchiár,(1) *Gopal Singh* v. *Dhungazee*,(2) *The Government of Bombay* v. *Ganga*,(3) and *Weir's Criminal Rulings*, Ed. II, page 216.

The *Government Pleader* (Mr. *Powell*) in support of the conviction cited also *Regina* v. *Sambhu Rágha*.(4)

The arguments further adduced on this petition appear sufficiently, for the purpose of this report, from the judgment of the Court (Collins, C.J., and Parker, J.).

JUDGMENT.—The first accused Irisi has been convicted under s. 494 of the Penal Code for marrying again during the lifetime of her husband Subban, and the second accused, a Roman Catholic priest, has been convicted for abetting her in the commission of that offence.

The facts found are that in 1877 Irisi, when a little girl, was, with her parents, baptized into the Roman Catholic Church, but that, after her father's death, the family relapsed into Hindúism; that Irisi was married in 1885, in accordance with the custom of the pariah caste, to one Subban; that, after some cohabitation, Subban made the fact of her former baptism a reason for discarding her; that she has since been re-admitted to the Roman Catholic Church by the second accused and was married by him to one Zachary, a Roman Catholic Christian, in 1886.

The Sessions Judge held that the marriage between Irisi and Subban, not having been dissolved under the Native Converts' Marriage Dissolution Act XXI of 1866, was a valid subsisting marriage at the date of Irisi going through the form of a Christian marriage with Zachary, hence that both the accused were liable to conviction, but he imposed a merely nominal punishment, on the ground that they had acted under a mistaken view of the law.

The grounds on which we are asked to set aside this conviction on revision are—

(1) That the pariah marriage between Irisi and Subban was legally void.

(2) That even if valid, it was dissoluble by the Canon law of the Roman Catholic Church, and that it should be presumed it was legally dissolved.

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(1) 3 M.H.C.R., 254.
(2) 3 W.R., 206.
(3) I.L.R., 4 Bom., 330.
(4) I.L.R., 1 Bom., 347.

On the first ground it is contended that Irisi never reverted to Hindúism at all, and hence that her marriage with Subban was void under the Indian Christian Marriage Act (Act XV of 1872), s. 4. But there was ample evidence on which the Judge was entitled to find that the family had relapsed into Hindúism after their return to their own village, and we must, therefore, hold that the marriage of Irisi and Subban was a valid marriage.

The second question is, whether that marriage had been legally dissolved at the date of the alleged Christian marriage. Mr. Laing contends that it is dissoluble by Canon law, and that, though there is no evidence on record that it was so dissolved, there is a legal presumption—the marriage having been performed—that all the necessary preliminaries were properly observed.

We are clearly of opinion that in this case there is no such presumption. The rule we are asked to apply to the facts before us is, that when once a marriage in fact has been proved, there arises a presumption, in the absence of evidence to the contrary, that there has also been a marriage in law. There can be no such presumption as to a form of marriage gone through, when a former valid subsisting marriage has been proved. In such case, the *onus* is entirely upon the defence to show that the earlier subsisting marriage has been validly dissolved.

We are then asked to admit evidence to prove (1) that the marriage between Subban and Irisi could be dissolved by Canon law, and (2) that it was in fact so dissolved; and we are referred to the case of *Lopez* v. *Lopez*(1) in support of the contention that a dispensation, according to the rule of the Church of Rome, can give validity to a marriage between persons within prohibited degrees when such parties are not governed by English statute law, but by the customary law of the class to which they belong.

The rule there laid down can have no application to such a case as the present, where one of the contracting parties, viz., Subban, has never been governed by the customary law of the Roman Catholic Church. It would be irrelevant, therefore, to take evidence upon this subject, since no rules of Canon law could operate to deprive Subban of his wife.

It is then urged that the Native Converts Marriage Dissolution Act (Act XXI of 1866) does not apply to Roman Catholics and, in

(1) I.L.R., 12 Cal., 706

In re MILLARD.

fact, that Roman Catholics have always been exempted from the operation of the Marriage Acts passed by the Governor-General in Council. In support of this contention we are referred to s. 34 of that Act and the Indian Christian Marriage Act (Act XV of 1872), s. 65.

The object of Act XXI of 1866 was to legalize, under certain circumstances and with a certain procedure, the dissolution of marriages of native converts to Christianity who were deserted or repudiated on religious grounds by their wives or husbands, and s. 34 of the Act declared that nothing in that Act should be taken to declare invalid any marriage of a native convert to Roman Catholicism if celebrated in accordance with the rules, rites, ceremonies and customs of the Roman Catholic Church. The section does not exempt Roman Catholic converts from the procedure laid down by the Act, but merely declares that nothing in that Act shall render a Roman Catholic marriage invalid. This would certainly not render it lawful for a Roman Catholic priest to marry a woman to another man, her own husband being still living.

All that is enacted by s. 65, Act XV of 1872, is a prohibition against the solemnization of a marriage between Roman Catholic Christians under Part VI of that Act, *i.e.*, by a certificate granted by a person licensed under the Act. The effect of the change of the law was merely that Roman Catholics could only have their marriages solemnized by their own clergy according to the rites of their church, nothing being said about prohibited degrees—see *Lopez* v. *Lopez* (1)—but it certainly will not authorize a Roman Catholic clergyman to solemnize a marriage between a man and a woman who, by the law of the land, is still the wife of another man.

We entertain no doubt that the conviction was right and must, therefore, dismiss this petition.

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(1) I.L.R., 12 Cal., 706.