

We must observe, however, that the defence is only available to the defendant if he is interested as mentioned above.

NARANAYYAN  
v.  
NAGESWARAY-  
YAN.

We set aside the order of remand and send back the appeal to the District Judge for disposal with reference to the foregoing observations.

The costs of this appeal will abide and follow the result.

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## APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

v.

YOHAN AND OTHERS. \*

1892.  
January 17.

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*Christian Marriage Act—Act XV of 1872, s. 68—Solemnization of marriage under Hindu rites between a Native Christian and a Hindu, by a person not authorized to perform marriages under s. 5 of the Act.*

A person who performs a ceremony of marriage according to Hindu form between a Native Christian and a Hindu commits an offence under section 68 of Act XV of 1872, unless he is authorized to solemnize marriages under section 5 of the Act.

PETITION under sections 435 and 439 of the Criminal Procedure Code, praying the High Court to revise the judgment of H. T. Ross, Sessions Judge of Gódvári, acquitting the prisoners in calendar case No. 39 of 1891.

The third accused, a Hindu, performed the ceremony of marriage according to Hindu form between the first accused, who was a Native Christian at the time, and a Hindu girl, who was given in marriage by the second accused, her uncle. The Sessions Judge acquitted the accused persons on the ground that section 68 of the Christian Marriage Act (XV of 1872) does not apply to marriages in Hindu form, solemnized by a Hindu, though one of the parties is found in fact to be a Christian, and that the whole Act appears to contemplate marriages in the Christian form alone, differing in that particular from Act V of 1865.

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\* Criminal Revision Case No. 488 of 1892.

QUEEN-  
EMPERESS  
\*  
YOHAN.

The *Acting Government Pleader and Public Prosecutor (Subramanya Ayyar)* for the Crown.

Mr. *Mitchell* for the accused.

JUDGMENT.—We cannot agree with the view taken by the Sessions Judge. The preamble and sections 4, 5 and 63 of the present Act XV of 1872 are almost identical with the preamble and sections 4, 5 and 56 of Act V of 1865.

Section 68, as amended by section 6, Act II of 1891, makes punishable the solemnization of a marriage between persons of whom one is a Christian, unless the person solemnizing such marriage has been authorized for that purpose under section 5. It is conceded that the third accused was not authorized under section 5, and hence the case is exactly similar to that in Proceedings of the Madras High Court dated 21st March 1871(1) and the accused are, *primâ facie*, liable to punishment.

We are told that this application has been made by Government merely to obtain an authoritative declaration of the law and a re-trial is not pressed for, having regard to the length of time which has elapsed.

We, therefore, do not think it necessary to pass any further order.

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## APPELLATE CIVIL.

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

NAGAMMA (PLAINTIF), APPELLANT,

v.

VIRABHADRA (DEFENDANT), RESPONDENT.\*

*Hindu law—Maintenance—Forfeiture of widow's right to maintenance by reason of unchastity.*

The unchastity of a widow deprives her wholly of her right to maintenance, and the fact that there has been an agreement as to maintenance makes no difference. *Valu v. Ganga*(2) and *Vishnu Shambhog v. Manjamma*(3) followed.

SECOND APPEAL against the decree of P. Subbayar, Subordinate Judge of South Canara, in appeal suit No. 246 of 1892, reversing

(1) 6 M.H.C.R., App. 20.

(2) I.L.R., 7 Bom., 84.

\* Second Appeal No. 634 of 1893.

(3) I.L.R., 9 Bom., 108.