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The second clause of the same section makes punishable wilful acts of driving or knowingly permitting cattle to be upon a railway line, and provides that, at the option of the railway administration, the owner, instead of the person in charge shall be punishable. This provision is of a very penal character, and it removes the discretion as to the person to be held liable to punishment from the Court to the railway authorities. No such discretion is given to the railway administration when the straying of the cattle has been through negligence. There is nothing to restrict the power and duty of the Magistrate to ascertain in such cases whether the person charged has himself been guilty.

In the case referred we are of opinion that the acquittal of the owner was correct.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

QUEEN-EMPRESS

v.

VEERADU.*

Christian Marriage Act—Act XV of 1872, ss. 3, 68—*Unauthorized marriage of a Christian child—Persons professing Christian religion.*

The accused who was charged with having committed an offence under Indian Christian Marriage Act, section 68, was acquitted on its appearing that the Christian whose marriage he purported to solemnize was a child of the age of three years. The child had been baptized and her father was a Christian:

Held, that the child was a person professing the Christian religion within the meaning of section 3 of the Indian Christian Marriage Act, and that the acquittal was wrong.

CASE of which the records were called for by the High Court in the exercise of its revisional jurisdiction being sessions case No. 2 of 1894 on the file of the Sessions Court of Masulipatam.

The facts of the case and the grounds of the judgment of acquittal were stated by E. C. Rawson, the Sessions Judge, as follows:—

The prisoner is charged under section 68 of the Indian Christian Marriage Act (Act XV of 1872) with having solemnized a

* Criminal Revision Case No. 398 of 1894.

marriage between Jalatati Kabulaya and Nakka Martha (the latter being a Christian), he not being authorized to do so under section 5 of the Act.

The facts alleged are that the marriage was fixed for the 11th April last, but that the first four prosecution witnesses (who are respectively a catechist, a sub-catechist, a preacher, and an unofficial member of the Lutheran community) protested against it, and it was accordingly put off till next day. On the evening of the 12th, the marriage was performed by the accused. The witnesses give a detailed description of the ceremony.

The fifth prosecution witness, the Rev. Dr. Uhl, of the Lutheran Mission, deposes that he received a report of the marriage and filed a complaint. He also proves that accused has no license to perform marriages.

I do not think it necessary to discuss the prosecution evidence at length, as I am of opinion that, even assuming it to be tru no offence has been committed within the meaning of section of the Act.

It is admitted that the girl Martha, who was married, is on three years old. Now section 68 renders penal the unauthoriz solemnization of a marriage "between persons one or both whom is or are a Christian or Christians." And the word "Chr tian" is defined for the purposes of this Act as meaning a "pers w ofessing the Christian religion."

In order, therefore, to convict the accused, it would be necessa hold that the girl Martha is a "person professing the Christia ligion."

It is argued by the Public Prosecutor that there is a gener sumption, that the children of Christian parents are al ristians. And he relies on the Privy Council case of *Skinner de*(1) wherein it was held that a child born in India, who ther was a European British subject and a Christian, must l resumed to have the father's religion and his corresponding civ Ind social status. But that was a case in which the question w a e of guardianship, and I do not see how the ruling can l plied to the facts of this case. The Indian Christian Marriag is a special law creating certain special offences in connectio with Christians. For the purposes of this Act, the Legislature h

(1) 14 M.I.A., 309.

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specially defined what they mean by a Christian. They say it is a person who "professes the Christian religion." It is not pretended by the Public Prosecutor, and it would of course be an absurdity so to pretend, that a baby of three years old can "profess" the Christian or any other religion.

While I fully admit, therefore, that for ordinary purposes (for instance in questions relating to the girl's civil or social status), the presumption that she was a Christian might be made; I am unable in dealing with a special penal Act, creating a special offence, and containing a special definition, to read anything more into the definition than has been deliberately put there. If it be argued that it is not likely that the Legislature intended to exclude a marriage of this sort (which from a Christian point of view is of course more objectionable than that of a grown up woman) from the penal provisions of the Act, I can only say that Judges have power simply to administer the law as it is, and not introduce things which they may think ought to be the law to Acts which do not contain them.

For the above reasons I am compelled to hold that the evidence for the prosecution does not show that the accused has committed the offence charged, and I, therefore, under section 289 of the Criminal Procedure Code record a finding of not guilty, and order that the accused be set at liberty.

The *Government Pleader* and *Public Prosecutor* (Mr. *Powell*) for the Crown.

The accused was not represented.

JUDGMENT.—The words "person who professes the Christian religion" as used in Act XV of 1872 mean in our opinion not only adults who profess that religion, but also their children, who are in law presumed to follow their father's religion; and it is not evidence that the child in this case was baptized.

We must set aside the order of acquittal and direct that the case be re-tried.