

QUEEN-
EMPRESS
v.
PAUL.

JUDGMENT.—We cannot accept the Judge's interpretation that the word "solemnize" as used in the Act applies to only such marriage ceremonies as are performed by some person possessing or claiming authority to perform them by virtue of ecclesiastical authority. The Judge's view is quite inconsistent with the provisions of the Act which use the word "solemnization" with reference to marriages before the Marriage Registrar who is an official possessing no ecclesiastical character, and before whom no ceremonies are necessary. A marriage before him is a mere civil marriage and yet the word in question is applied to such a marriage equally with marriages accompanied by religious ceremonial. We, therefore, take the meaning of the word to be equivalent to conduct, celebrate or perform. In this view any person, not being the persons being married, who actually took part in performing this marriage, that is in doing any act that was supposed to be material to constitute the marriage was clearly guilty under section 68 of Act XV of 1872 as parties either solemnizing a marriage or professing to do so.

In the case of the persons being married, we consider a charge of abetment is sustainable as without their presence and aid the marriage could not possibly take place. On this ground the acquittal by the Judge of the third accused was wrong. For these reasons we set aside the acquittal of all the accused and direct that they be retried with reference to the merits of the case.

Ordered accordingly.

APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

v.

KUTTI ALL.*

*Local Boards Act—Act V of 1884 (Madras), s. 87, clause 3—Government
Stores—Equipages.*

Stores and carts belonging to the Government jails come within the words

* Criminal Revision Case No. 340 of 1896.

'Government Stores and Equipages' in clause 3, s. 87, Act V of 1884, and are free from tolls under that Act.

QUEEN-
EMPRESS
v.
KUTTI ALI.

PETITION under sections 435 and 439 of the Criminal Procedure Code, praying the High Court to revise the finding of M. Swaminatha Ayyar, Sub-Divisional First-class Magistrate of Calicut Division, in Calendar case No. 12 of 1896, wherein the accused was discharged, under section 253, Criminal Procedure Code, of offences, under section 417, Indian Penal Code, and section 165 of Act V of 1884 (Madras):

The facts are as follows:—

"Sheik Moideen, a warder of the Central Jail, Cannanore, laid a complaint before the Town Second-class Magistrate, Cannanore, charging the defendant, Kutti Ali, the Edakkad Toll-keeper, with illegal collection of the toll from him under section 60, Act V of 1884.

"The evidence shows that articles manufactured at the jail are sent by the jail carts to Public Departments as well as to private parties, and a pass is given by the Superintendent, Central Jail, claiming exemption from payment of tolls. The defendant refused to accept the passes at the Local Fund Toll-gate at Edakkad and stated that the *hukumnamah* given to him by the President, District Board, did not contain any clause to allow the exemption claimed."

Section 87 of Act V of 1884 runs as follows:—

"If the District Board notify under section 60 that tolls on carriages, carts and animals passing along any road within the district shall be levied at the rates specified in the notification, such tolls shall be levied as provided in sections 88 to 92.

"The District Board may compound with any person for a sum to be paid annually or half-yearly in lieu of all such tolls either generally in respect of all roads in the district or specially in respect of any particular road, and may issue licenses to any such person in respect of his carriages, carts and animals;

"Provided always that such composition shall include all the carriages, carts and animals possessed by the person compounding.

"No tolls shall be paid for the passage of troops on their march, or of military and Government stores and equipages, or of military and police officers on duty, or of any person or

QUEEN-
EMPRESS
v.
KUTTI ALI.

“property in their custody, or for the passage of vehicles and animals licensed by the District Board while such licenses are in force.”

The exemption is claimed on two grounds, namely;—

(a) That the articles conveyed come within the category of ‘Government Stores,’ and

(b) That the jail carts come within the meaning of the term ‘Equipages.’

The Magistrate acquitted the accused being of opinion that the articles conveyed were not Government Stores and that the jail carts are not included in the term ‘Equipages.’

The *Acting Public Prosecutor* (Mr. N. Subramaniam) for the Crown.

Mr. *Krishnan* for the accused.

ORDER.—We are of opinion that stores and carts belonging to the Government jails come within the words ‘Government Stores and Equipages’ in section 87 of Act V of 1884, and are free from tolls under that Act.

The First-class Magistrate was, therefore, wrong in discharging the accused on the grounds assigned by him in his judgment.

We, therefore, direct the said Magistrate to restore the case to his file and proceed to dispose of it in accordance with law. The Acting Government Pleader informs us that the object of Government in moving the Court to interfere in this case is merely to ascertain the law. We are of opinion that, if a conviction is obtained against the accused, a purely nominal fine will suffice, as the sense in which the word ‘Equipages’ is used in the Act is not free from doubt and the construction placed upon it by the toll-keeper was not an unnatural one or, in our opinion, so far as the records show dishonest.