ABBUBAKER SAHEB v. MOHIDIN SAHEB.

Munsif's order is not a valid one, because the omission to send the certificate required by section 224 could not affect the jurisdiction of the Court to sell. It would be a mere irregularity not entitling any party to have the sale set aside after confirmation. The only ground, as it appears to us, on which the order of the District Munsif could be supported would be that the sale had been brought about by fraud to which the purchaser was a party. Fraud as between the decree-holder and the judgment-debtor only could not affect the purchaser.

The District Munsif does not find distinctly that the purchaser was party to the fraud, and he also omits to say whether the fraud was discovered after the confirmation of the sale.

We are of opinion that, unless there was evidence that the purchaser was party to the fraud, and that the judgment-debtor discovered it subsequently to the confirmation of the sale, the District Munsif would have had no jurisdiction to set it aside. In the absence of such evidence the case would be a proper one for interference under section 622. We must ask the Principal District Munsif of Calicut to return a finding on the above question within one month from the date of the receipt of this order. Seven days will be allowed for filing objections after the finding has been posted up in this Court.

APPELLATE CRIMINAL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.

1896. September 30.

QUEEN-EMPRESS

v.

PAUL AND OTHERS.*

Indian Christian Marriage Act—Act XV of 1872, s. 68—Solemnize.

In Indian Christian Marriage Act, section 68, the word "solemnize" is equivalent to the words "conduct, celebrate or perform." Therefore any unauthorised person not being one of the persons being married, who takes part in performing a marriage, that is, in doing any act supposed to be material to constitute the marriage is liable to be convicted under that section; and a charge of abetment is sustainable against the persons being married.

* Criminal Appeal No. 255 of 1896.

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APPEAL under section 417 of the Code of Criminal Procedure against the judgment of acquittal passed by E. J. Sewell, Sessions Judge of North Arcot, in sessions case No. 45 of 1895.

The facts of this case were stated in the judgment of the Sessions Judge as follows :—

"The first defendant Paul is a Native Christian. The second "defendant Bakkaiyan is a Hindu by religion. The third de- "fendant Simeon is stated in the charge to be a Native Christian. "Paul and Bakkaiyan are charged under section 68 of the Indian "Christian Marriage Act with solemnizing or professing to sol- "emnize a marriage between third defendant, a Christian, and "a woman professing Hinduism in the absence of a Marriage "Registrar, they not being authorized under the Indian Christian "Marriage Act to solemnize marriages. The third defendant, the "man married, is charged under the same section with abetting "the offence.

"The first defendant's defence is that he was not even present "at third defendant's marriage and did not solemnize it. The "second defendant's defence is that he took no part in the cere- "mony but only acted as cook.

"The third defendant's defence is that he had before the date "of the marriage—2nd September 1895—ceased to profess the "Christian religion. He also denied that the marriage was solem- "nized by first and second defendants so that, of course, he denies "abetting them.

"It appears from the evidence for the prosecution that the "Reverend L. R. Scudder, a Missionary of the American Re- "formed Church in North Arcot, having learnt that some of the "Native Christians under his care in the village of Bassoor were "contemplating marriage according to non-Christian rites, and "without observing the provisions of the Indian Christian Mar- "riage Act went to Bassoor on 1st September and remonstrated "with the elders of the church—of whom first defendant is one— "and pointed out to them that if they carried out their intention "they would expose themselves to legal penalties. Dr. Scudder "and other witnesses called, state that the third defendant Simeon "*alias* Vilvanathan attended the church, listened to the proceed- "ings and said nothing whatever in reply to these remonstrances.

"The native pastor of the church, the catechist in immediate "charge, and other attendants at the services and members of the

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"church depose that Simeon had up to 1st September been attend-
"ing the weekly worship and had taken part in the Lord's Supper
"and that he continued to do so after 1st September up to 15th
"September. The registers of the church and of attendance at
"the services are produced and corroborate these statements."

The Sessions Judge found that the defendant continued up to the date of his marriage to profess the Christian religion, but, acquitted him on the charge of abetment, and also acquitted defendants Nos. 1 and 2. He gave judgment as follows as regards the construction of the Act:—

"It appears to me that the word solemnization as used in the
"Act is different to the mere conducting of the marriage and that it
"involves the performance by some person possessing or claiming
"authority to do so of religious rites appropriate to the occasion.
"There are two cases in which a marriage without religious rites
"is permissible, viz., in the case of a marriage in the presence
"of a Marriage Registrar and in the case of marriage between
"Native Christians certified by a person licensed under the Act to
"certify marriages of Native Christians; the second case is hardly
"an exception since by section 60, clause (3), a solemn appeal to
"the Deity is made a necessary part of the ceremonial. But the
"marriage in this case is not spoken of as being solemnized by
"the person licensed to give a certificate, but as solemnized by the
"parties in his presence (see sections 61 and 62).

"So also in the case of marriages before a Marriage Registrar,
"the parties to the marriage are left free to solemnize the marriage
"between them 'according to such form and ceremony as they
"'think fit to adopt' (section 51) and such a marriage is spoken of
"in section 51 as solemnized 'in the presence of some Marriage
"'Registrar' and in section 53, as solemnized before a Marriage
"Registrar. In all other cases, the Minister of Religion is spoken
"of as solemnizing the marriage.

"It is true that in section 5 and in the heading to Part V the
"phrase is used 'marriages solemnized by or in the presence of a
"'Marriage Registrar.'

"But it is doubtful whether this means that there are two
"different kinds of marriage, one solemnized by the Marriage
"Registrar and the other solemnized in his presence. There is in
"Part V only one procedure laid down and that is in Part V itself

"spoken of as solemnized by the parties in the presence of the "Registrar.

"I think, therefore, that it is most consistent with the whole "tenor of the Act to confine the description of a person solemniz- "ing the marriage to some person having or claiming authority "recognised by the parties to conduct the religious or ceremonial "rites prescribed by his ecclesiastical authority (section 5, clauses "1 and 2) or chosen by himself (Part III, section 25).

"In the cases where there is no such person, the marriage is "solemnized between the parties but not solemnized by any one.

"If there be an exception to this, it is the case of a Marriage "Registrar, and it exists because he is authorized to require a "'solemn' declaration from the parties (section 51).

"If in the case now under consideration the recognised priest "of Pariahs, a Valluvan, had conducted the ceremonial usual in "such cases, he would, no doubt, come under the description of a "person solemnizing or professing to solemnize a marriage given "in section 68.

"But in the absence of any such person, I do not think that "any person taking a part, even a leading part, in the ceremonies "adopted, but neither claiming nor having any authority recognised "by the parties, to do so, can be said to have solemnized the "marriage.

"In such a case, I hold the marriage to have been, in the "language adopted in the Act, solemnized between the parties, but "not solemnized by any one.

"In the only reported case, the person held liable was a 'Hindu "'priest' (see Weir, 3rd edition, page 565(1)).

"I find therefore that the acts attributed to the first and "second defendants did not amount to a solemnization of the "marriage by them so that they are not liable under section 68.

"It is therefore needless to go at length into the evidence "whether they were present or not. I think that there is room "for reasonable doubt whether first defendant was present."

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

Sundara Ayyar for the accused.

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(1) S.C., 6 M.H.C.R., App. XX.

[REPORTER'S NOTE.—Compare Queen-Empress v. Yohan and others. I.L.R., 17 Mad., 391.]

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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.

1896. September 29.

QUEEN-EMPRESS

v.

KUTTI ALI.*

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.