

fairly be given. There was not then any right to immovable property directly and specifically in question, and consequently the doctrine of *lis pendens* has no application.

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It would obviously be most inconvenient, if a man, no matter what his wealth might be, should be debarred from dealing with any of his immovable property, merely because a suit for a petty sum as maintenance, not sought to be charged on any specific part of his property, were pending at the time.

We concur in the findings of the Lower Court and dismiss this appeal with costs.

APPELLATE CRIMINAL.

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

REV. FATHER CAUSSAVEL,

v.

REV. SAUREZ.*

1896.
March 20.
April 16.

*Indian Christian Marriage Act—Act XV of 1872, ss. 5, 10, 12, 13, 33,
38, 70, and 73.*

S., an Episcopally-ordained Priest of the Syrian Church, under the jurisdiction of the Patriarch of Antioch, solemnized two marriages according to Roman ritual without publishing or causing to be affixed the notices of such marriages required by Part III of the Act. It was proved that S. used the Roman ritual with the sanction of his Bishop who was appointed by the Patriarch :

Held, that S. having received Episcopal ordination was authorized to solemnize the marriages according to the rules, rites, ceremonies and customs of his church and that it was not shown that a marriage solemnized with the Roman ritual under the sanction of the Bishop of the Syrian Church was not solemnized according to the rules, rites, ceremonies and customs of the Syrian Church :

Held, further that Part III of the Act only applies to ministers of religion licensed under the Act and not to Episcopally-ordained persons.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the order of A. W. B. Higgins, District Magistrate of Tinnevely, discharging the accused under section 253 in calendar case No. 6 of 1895.

* Criminal Revision Petition No. 62 of 1896,

REV. FATHER CAUSSAVEL v. REV. SAUREZ. The material sections of the Act XV of 1872 are printed in the foot-note.

REV. SAUREZ. The order of the District Magistrate discharging the accused was as follows :--

“The complaint in this case was lodged on the 4th March 1895 by the Rev. A. Caussavel, S.J., Superior of the Roman Catholic Church, Palamootta, against the Rev. L. M. Saurez, charging the latter with having performed two marriages between Roman Catholic Christians at a chapel at Vellapati not being authorized to solemnize such marriages, and with having in consequence committed offences under several sections of the Christian Marriage Act XV of 1872. The complainant was examined, and he confirmed his complaint. As the complaint was laid upon information received by the complainant and not on facts known to him personally, I referred it to the Superintendent of Police for investigation.

“The chief point raised in the complaint was that Father Saurez had not received Episcopal ordination as required by section 5 (1) of the Act, and could not claim the right to perform marriages

Section 5.—Marriages may be solemnized in India--

- (i) by any person who has received Episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the church of which he is a minister ;
- (ii) by any clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites ceremonies and customs of the Church of Scotland ;
- (iii) by any minister of religion licensed under this Act to solemnize marriages ;
- (iv) by, or in the presence of, a Marriage Registrar appointed under this Act ;
- (v) by any person licensed under this Act to grant certificates of marriage between Native Christians.

Section 10.—Every marriage under this Act shall be solemnized between the hours of six in the morning and seven in the evening ; provided that nothing in this section shall apply to--

- (i) a clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening under the hand and seal of the Anglican Bishop of the Diocese or his Commissary ; or
- (ii) a clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning, when he has received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is so solemnized, or from such person as the same Bishop has authorized to grant such license.

under any other clause of that section and had therefore committed an offence under section 68 of the Act. The Superintendent of Police accordingly directed his attention to the question whether Father Saurez had received Episcopal ordination. He received information by means of the following letters A, dated 13th April 1895 from the Most Rev. Mar Dionysius, Syrian Metropolitan of Malabar, Travancore and Cochin : B, dated 27th May 1895, from the Right Rev. Mar. George Gregorius, Syrian Metropolitan of Niranam and C., dated 13th June 1895 from the author of A. This information showed that the writer of A was in 1875 made Metropolitan over six Bishoprics in the Jacobite Syrian Church in Malabar by the Patriarch of Antioch, and that the writer of B. was one of the Bishops under him and that in May 1889 the writer of B. ordained Father L. M. Saurez first as Deacon and then as Priest under the orders of the writer of A. The Superintendent accordingly reported that Father Saurez had received Episcopal ordination and was consequently entitled to solemnize marriages in India under section 5 (1) of the Act. I agreed with him and considered that it would not be right to issue process for the appearance of Father Saurez to answer a charge under section 68 of the Act.

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Section 12.—Whenever a marriage is intended to be solemnized by a minister of religion licensed to solemnize marriages under this Act, one of the persons intending marriage shall give notice in writing, according to the form contained in the first schedule hereto annexed, or to the like effect, to the minister of religion whom he or she desires to solemnize the marriage, and shall state therein—

- (i) the name and surname, and the profession or condition of each of the persons intending marriage ;
- (ii) the dwelling place of each of them ;
- (iii) the time during which each has dwelt there, and
- (iv) the church or private dwelling in which the marriage is to be solemnized.

Provided that, if either of such persons has dwelt in the place mentioned in the notice during more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

Section 13.—If the persons intending marriage desire it to be solemnized in a particular church, and if the minister of religion to whom such notice has been delivered be entitled to officiate therein, he shall cause the notice to be affixed in some conspicuous part of such church.

But if he is not entitled to officiate as a minister in such church, he shall, at his option, either return the notice to the person who delivered it to him or deliver it to some other minister entitled to officiate therein, who shall thereupon cause the notice to be affixed as aforesaid.

Section 38.—When a marriage is intended to be solemnized by, or in the presence of, a Marriage Registrar, one of the parties to such marriage shall give notice in writing, in the form contained in the first schedule hereto annexed, or to the like effect, to any Marriage Registrar of the district within which the parties have dwelt or, if the parties dwell in different district shall give the like

REV. FATHER CAUSSAYE, v. REV. SAUREZ. "In regard to the ritual employed by Father Saurez in the marriages in question, he admitted that it was the Roman ritual; but pleaded that he was authorized by the Patriarch of Antioch to use such ritual. There is nothing to show that this is not the case. In regard to his position in India he produced a commission extending from Trichinopoly to Cape Comorin granted to him by Dom Antonio Francisco Xavier Alvares Julio I. Archbishop under the See of Antioch. The Jesuit Mission very naturally repudiates any such commission, but it has apparently no ground for the objection which can be recognised by the law other than the ecclesiastical law of the Roman Church to which Father Saurez is not amenable.

"Though on the principal point urged against Father Saurez his admitted conduct in marrying two couples at Vellapatti did not appear to render him liable to punishment under section 68 of the Act, yet it appeared to me on what was apparently a too hasty reading of section 73 coupled with Part III of the Act, that under those sections he might have rendered himself liable to prosecution, if he had not, before performing the marriages, posted up a notice on the church at Vellapatti as required by section 13 of the Act. I accordingly directed enquiries to be made on this point, and it

notice to a Marriage Registrar of each district, and shall state therein the name and surname, and the profession or condition, of each of the parties intending marriage, the dwelling place of each of them, the time during which each has dwelt therein, and the place at which the marriage is to be solemnized:

Provided that, if either party has dwelt in the place stated in the notice for more than one month, it may be stated therein, that he or she has dwelt there one month and upwards.

Section 68.—Whoever, not being authorized under this Act to solemnize a marriage in the absence of a Marriage Registrar of the district in which such marriage is solemnized, knowingly solemnizes a marriage between persons, one or both of whom is or are a Christian or Christians, shall be punished with imprisonment which may extend to ten years, or (in lieu of a sentence of imprisonment for seven years or upwards, with transportation for a term of not less than seven years, and not exceeding ten years, or, if the offender be a European or American, with penal servitude according to the provisions of Act No. XXIV of 1855 (*to substitute penal servitude for the punishment of transportation in respect of European and American convicts, and to amend the law relating to the removal of such convicts*), and shall also be liable to fine.

Section 70.—Any minister of religion licensed to solemnize marriages under this Act, who, without a notice in writing, or, when one of the parties to the marriage is a minor and the required consent of the parents or guardians to such marriage has not been obtained within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part III, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

was ascertained by the Superintendent that no such notice was posted up on the Vellapatti chapel in reference to the marriages in question. The fact of the marriages and the failure to post up a notice or publish banns was not denied by Father Saurez. I then summoned Father Saurez, in view to enquire into his conduct in this particular. He had in the meanwhile gone away to Ceylon and it was not until the 28th January 1896 that I was able to procure his attendance.

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“On his appearance a preliminary question was raised as to whether admitting that no notice was posted up on the chapel as required by section 13 of the Act, which is the portion of Part III, which had been assumed to govern his conduct, he could as a fact be charged on that account with an offence under section 73.

“Now Father Saurez is, as has been found, ‘a person authorized under this Act to solemnize a marriage,’ in that he has the qualification of Episcopal ordination required by section 5 (1), and he is not a clergyman of the Church of England, Scotland or Rome and it would, therefore, appear that he should, before solemnizing a marriage, publish or affix the notice as directed in Part III. But, when Part III of the Act is more closely examined, it appears, both from the heading of the part and from the opening sentence of section 12, that it applies exclusively to ministers of religion

Section 73.—Whoever, being authorized under this Act to solemnize a marriage, and not being a clergyman of the Church of England solemnizing a marriage after due publication of banns or under a license from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf, or, not being a clergyman of the Church of Scotland, solemnizing a marriage according to the rules, rites, ceremonies and customs of that church, or, not being a clergyman of the Church of Rome, solemnizing a marriage according to the rites, rules, ceremonies and customs of that church, knowingly and wilfully issues any certificate for marriage under this Act, or solemnizes any marriage between such persons as aforesaid, without publishing, or causing to be affixed, the notice of such marriage as directed in Part III of this Act, or after the expiration of two months after the certificate has been issued by him;

or knowingly and wilfully issues any certificate for marriage, or solemnizes a marriage between such persons when one of the persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Marriage Registrar, or, if there be more Marriage Registrars than one, to the senior Marriage Registrar of the district;

or knowingly and wilfully issues any certificate, the issue of which has been forbidden, under this Act, by any person authorized to forbid the issue;

or knowingly and wilfully solemnizes any marriage forbidden by any person authorized to forbid the same;

shall be punished with imprisonment for a term which may extend to four years and shall also be liable to fine.

REV. FATHER CAUSSAVEL v. REV. SAUREZ licensed under the Act, and I take it that the minister of religion mentioned in section 13 is also a minister of religion licensed under this Act, because the notice which should be delivered to him and which he should cause to be affixed on the church is evidently the notice delivered to the minister of religion mentioned in section 12, who is a minister of religion licensed under this Act. Father Saurez is not a minister of religion licensed under this Act, but has obtained his authority to marry from the fact of his ordination. It follows that Part III (and its constituent sections 12, 13 and others) does not apply to him. He is accordingly not liable to punishment under section 73 for a breach of the directions given in Part III regarding the affixing of the notice.

“According to the commission under which he worked in India Father Saurez was empowered to dispense with all ecclesiastical impediments to matrimony and to dispense with the banns, and if he pleads this in view to excuse the apparent informality of his action in regard to these two marriages, whether from an ecclesiastical point of view he is justified in this plea I cannot say, but the informality, *i.e.*, the want of publication of banns does not appear to make him liable to punishment under the Indian Christian Marriage Act any more than the failure to affix a notice on the church.

“I am not in a position to say whether the conclusion now arrived at was that intended by the legislature. The very general terms of the opening portion of section 73 appear to indicate the contrary and the existence of these general terms is strongly urged on behalf of Father Caussavel as an argument for proceeding with the case. On mature consideration however I hold that the terms of Part III limiting the directions therein given to ministers of religion licensed under the Act, must be read in their literal and exclusive sense, and cannot be taken to include directions to a minister of religion who is not licensed but is episcopally ordained. It is therefore of no avail to examine witnesses.

“No case has been made out against Father L. M. Saurez, and he is discharged under section 253, Criminal Procedure Code.”

Mr. *Wedderburn* and *Rangachariar* for complainant.

Mr. *K. Brown* for accused.

COLLINS, C.J.—This is a revision petition presented by the Rev. Father A. Caussavel, S.J., against the decision of the District Magistrate of Tinnevely, discharging an accused person, the Rev. L. M. Saurez, under section 253, Criminal Procedure Code.

The accused was charged under the Indian Christian Marriage Act with solemnizing marriages without authority and without publishing or causing to be affixed notices of such marriage, and thereby committing offences under the said Act. REV. FATHER
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It appears to be admitted that the accused did solemnize two marriages between Roman Catholic Christians according to the Roman Catholic ritual at a chapel at Vellapatti, and did not comply with the provisions of Part III of the Indian Christian Marriage Act. The District Magistrate has found that the accused has received Episcopal ordination, and that he is a Priest of the Syrian Church under the jurisdiction of the Patriarch of Antioch, and he is also satisfied that the accused is authorized by the Patriarch of Antioch to use the ritual of the Roman Catholic Church. The District Magistrate, therefore, held that the accused was not guilty of an offence under section 73 of the Act, although he had not given the notices as directed by Part III of the Act.

The only question that has to be decided in revision is—was the accused bound to publish the notices provided for in Part III of the Act?

The Indian Christian Marriage Act of 1872 modified by Act XII of 1891 enacts (section 5) that marriages may be solemnized in India—

(i) by any person who has received Episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the church of which he is a minister.

(ii) by any clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies, and customs of the Church of Scotland;

(iii) by any minister of religion licensed under this Act to solemnize marriages;

(iv) by, or in presence of, a Marriage Registrar appointed under the Act;

(v) by any person licensed under this Act to grant certificates of marriage between Native Christians.

Part II of the Act enacts the time and place at which marriages may be solemnized, with special provisos relating to clergymen of the Church of England, Rome, and Scotland.

Part III relates to marriages solemnized by ministers of religion licensed under this Act and, as I read the sections, does not apply to marriages solemnized by persons who have received

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Episcopal ordination. It enacts, *inter alia*, that one of the persons intending marriage shall give notice in writing according to a certain form to the minister, and that such minister shall cause the notice to be affixed in some conspicuous part of the church, if the marriage is intended to be solemnized in a church, or if the marriage is intended to be solemnized in a private dwelling, the notice shall be forwarded to the Marriage Registrar of the district.

Part IV directs registration of marriages solemnized by ministers of religion, and points out how such registration shall be carried out by clergymen of the Church of England, Rome, and Scotland, respectively, and in section 32 refers to the case of a marriage solemnized by a person who has received Episcopal ordination, but who is not a clergyman of the Church of England, Rome, or Scotland.

Parts V and VI do not relate to the matter in question.

Part VII is headed 'Penalties' and section 70 provides a penalty, if any minister of religion licensed to solemnize marriages under the Act wilfully solemnizes a marriage under Part III of the Act without a notice in writing * * * and section 73 enacts that "whoever being authorized under this Act to solemnize a marriage,

"and not being a clergyman of the Church of England solemnizing a marriage after due publication of banns, or under a license from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf,

"or, not being a clergyman of the Church of Scotland solemnizing a marriage according to the rules, rites, ceremonies and customs of that church,

"or, not being a clergyman of the Church of Rome solemnizing a marriage according to the rites, rules ceremonies and customs of that church,

"knowingly and wilfully issues any certificate for marriage under this Act, or solemnizes any marriage between such persons as aforesaid, without publishing or causing to be affixed, the notice of such marriage as directed in Part III of this Act, or after the expiration of two months after the certificate has been issued by him :

"or knowingly and wilfully issues any certificate for marriage, or solemnizes a marriage between such persons when one of the

persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Marriage Registrar, or, if there be more Marriage Registrars than one, to the senior Marriage Registrar of the district :

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“ or knowingly and wilfully issues any certificate, the issue of which has been forbidden, under this Act, by any person authorized to forbid the issue :

“ or knowingly and wilfully solemnizes any marriage forbidden by any person authorized to forbid the same, shall be punished with imprisonment for a term which may extend to four years and shall also be liable to fine. ”

It is contended by the counsel for the petitioner, that the accused has brought himself under this section, by neglecting to publish and causing to be affixed *the* notice of such marriage as directed by Part III of the Act, and consequently is liable to imprisonment for four years and also fine.

I cannot assent to this contention. The Act authorizes a person Episcopally ordained to solemnize a marriage according to the rules, rites, ceremonies and customs of the church of which he is a minister. It directs (section 10) with certain provisions, within what hours such marriages shall be solemnized. It directs (section 32) that if such person, although Episcopally ordained, is not a clergyman of the Church of England, Rome or Scotland, how he shall register such marriage. The Act is silent as to notices of marriage being given or published by such a person, and it would be contrary to the ordinary rules of construing a statute to hold, that although no obligation is imposed to publish notices of marriage, yet a penalty is incurred if such notices are not published—the penal section uses the words “ *the* notice ” and not “ a notice ” of such marriage as directed in Part III ; and holding, as I do, that Part III only applies to ministers of religion licensed under the Act, and not to Episcopally-ordained persons, I think the District Magistrate was right in discharging the accused and I would dismiss this revision petition.

BENSON, J.—I think that the order of the District Magistrate was right, and that it was so for the reasons stated by him.

The learned counsel for the petitioner does not, as I understand, now press the contention that the Rev. Father Saurez is guilty of an offence punishable under section 68 of the Indian

REV. FATHER CAUSSAVEL v. REV. SAUREZ. Christian Marriage Act, 1872, (as amended by Act II of 1891).
 The question, as I understand it, that we have to decide is this :—
 Assuming that Father Saurez has received Episcopal ordination in the Græco-Syrian Church of Malabar, is he liable to a penalty under section 73 of the Act because he solemnized a marriage between Christians without having published a notice as directed in Part III of the Act? I think the answer to this question must be in the negative. Part I of the Act relates to the persons by whom marriages may be performed and section 5 enumerates them by classes. In some the right is recognized independently of appointment under the Act; in others the right is recognized as a consequence of license, or appointment, under the Act. Under the former head are the first two classes in section 5, viz.—

- “ (i) Any person who has received Episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the church of which he is a minister—” under this class would fall ordained clergymen of the English, Irish, Roman or Syrian Churches;
- “ (ii) Any clergyman of the Church of Scotland, provided &c.,” as before;
 under the second head fall the remaining three classes, viz.;
- “ (iii) Any minister of religion licensed under this Act to solemnize marriages;
- “ (iv) A Marriage Registrar appointed under this Act,” or any person in his presence (section 38);
- “ (v) any person licensed under this Act to grant certificates of marriage between Native Christians.”

Sections then follow authorizing Government to license or appoint persons of these last three classes.

Parts III to VI then deal with the three classes licensed or appointed under the Act.

Part III deals with class 3, viz., ministers of religion licensed under the Act.

Parts IV and V deal with marriages by, or in the presence of, Registrars, and Part VI deals with the marriages of Native Christians.

The Act proscribes (sections 12 and 38) that when a marriage is intended to be solemnized by a minister of religion licensed

under the Act, or by a Marriage Registrar appointed under the Act, due notice must be given and must be published in a formal manner, but there is no similar obligation imposed, when the marriage is intended to be solemnized by a person who has received Episcopal ordination, or by a minister of the Church of Scotland. Section 5 merely says that such person must solemnize the marriage "according to the rules, rites, ceremonies and customs" of the church to which he belongs. Part VII prescribes penalties in connection with the Act. Penalties are prescribed for solemnizing a marriage without being authorized to do so by the Act, and for solemnizing marriages at other than the hours prescribed, or in the absence of witnesses. Penalties are also prescribed if a minister of religion, licensed under the Act, solemnizes a marriage without having received a notice, and if a Marriage Registrar commits certain offences against the Act; and then follows section 73 which enacts that "whoever being authorized under this Act "to solemnize a marriage, and not being a clergyman of the Church "of England * * * * or of Scotland * * * * or of "Rome * * * * solemnizes any marriage * * * * without "publishing or causing to be affixed, the notice of such marriage as "directed in Part III of this Act" * * * * shall be liable, &c. It is urged for the prosecution that Father Saurez is liable under this section, inasmuch as he has solemnized a marriage without notice, and is not one of the persons excepted. I do not think that this is so. As already observed, the Act nowhere imposes on a person who has received Episcopal ordination the duty of receiving, or of publishing a notice of an intended marriage, though this duty is expressly imposed on ministers of religion licensed under the Act, and on Marriage Registrars appointed under the Act. The imposition of a penalty is correlative to the imposition of a duty, and if no obligation exists there can be no penalty for its breach. But it is argued that the section itself, by prescribing the penalty, impliedly imposes the obligation. In order that the section should be so construed its terms should be such as to convey the intention in a clear and unambiguous manner, but it cannot be said that this is so in the present case. The words "as directed in Part III" refer, on their face, to Part III, but that part deals only with the procedure to be adopted by "ministers of religion licensed under the Act." There is no ground whatever for supposing that section 13 refers to a larger class than section 12, for it expressly

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REV. FATHER CAUSSAVEL v. REV. SAUREZ refers back to that section by the employment of the word "*such* notice," *i.e.*, the notices which under section 12 must be given by the candidate for marriage to the minister of religion licensed under the Act. If the words in section 73 had been "a notice of such marriage as directed in Part III" there might be some ground for contending that the words "as directed in Part III" merely mean "in accordance with a procedure similar to that directed in Part III," but the use of the word '*the*' before 'notice' precludes this construction, and refers us back to the notice prescribed in section 12, that is, the notice which the candidate for marriage presents to the minister of religion licensed under the Act. It was suggested that the words of section 73 could not refer to the latter class of minister, because a penalty was previously imposed by section 70 on such a minister solemnizing a marriage without notice. I observe, however, that section 70 provides a penalty for solemnizing a marriage "without notice" that is, without having *received* a notice, as required by section 12, whereas section 73 provides a penalty for solemnizing a marriage without *publishing* the notice. Thus section 73 finds an appropriate subject and application in the minister of religion licensed under the Act, and is, in fact, necessary as a supplement to section 70 in order to provide a complete sanction for the obligations imposed by Part III on such ministers.

It may be also observed that the words "*See sections 12 and 38*" after the heading in schedule I, which contains the form of notice under Part III, point to the fact that it was intended to apply to those sections only. Had it been intended to apply to section 73 also, I would have expected a reference to be made to that section, as well as to sections 12 and 38. In my opinion, then, section 73 does not require that a person who has received Episcopal ordination (and who is not one of the classes specially excepted by that section) should publish a notice of any marriage which he intends to solemnize. Section 73 is a highly penal section, and must be construed strictly, and in favour of the liberty of the subject. If it is asked why an exception is made in favour of such persons, it may, perhaps, be suggested that the legislature regarded the control which is exercised, or which is supposed to be exercised, by the Bishops in such churches, as a sufficient safe-guard. Under section 5 such a person is allowed to solemnize a marriage only provided he does so "according to the rules, rites, ceremonies and customs of the church of which he is a minister." Under section

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10 he can solemnize a marriage only during certain hours, and under section 32 he is bound to register the marriage in a prescribed manner. In the present case Father Saurez alleges that he has registered the marriage. It is admitted that he used the Roman ritual, but he says that he had the permission of his Bishop to do so. There is nothing to show that a marriage solemnized with this ritual under sanction of a Bishop of the Syrian Church is not solemnized according to the "rules, rites, ceremonies and customs" of the Syrian Church of which Father Saurez is an ordained minister. Father Saurez apparently had the approval of his own ecclesiastical superiors. The prosecution was instituted by a Priest of a rival church. In my opinion the District Magistrate was justified in refusing to proceed with the prosecution.

I would dismiss the petition.

APPELLATE CIVIL.

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

SOMASUNDARA MUDALIAR, PETITIONER,

v.

VYTHILINGA MUDALIAR AND ANOTHER, RESPONDENTS.*

1896.
March 9.

Religious Endowments Act—Act XX of 1863, s. 5.

Where a hereditary trustee of a temple died and application was made by the Collector as Agent of the Court of Wards, in whom the management of deceased's estates, during the minority of the sons of the deceased, had vested, to be appointed trustee on behalf of the said sons:

Held, that the case fell within s. 5 of Act XX of 1863, and that the Court had jurisdiction to make the appointment.

PETITION under section 622 of the Code of Civil Procedure praying the High Court to revise the order of T. M. Horsfall, District Judge of Tanjore, passed on civil miscellaneous petition No. 639 of 1895.

* Civil Revision Petition No. 34 of 1896.