

APPELLATE CRIMINAL.

Before Mr. Justice Benson and Mr. Justice Abdur Rahim.

1910.
January 7.

ELAMATHAN

v.

EMPEROR.*

Evidence Act I of 1872, s. 91—Oral evidence admissible to prove what took place at time of search.

Where a search has been conducted under the Criminal Procedure Code, the search-list is not the only evidence admissible as to the matters dealt with therein.

Section 91 of the Evidence Act does not exclude oral evidence of what took place at the time of search.

Abdul Khadir and others v. Queen-Empress. (Weir's "Criminal Rulings," 4th edn., vol. 2, p. 515), dissented from.

The Public Prosecutor v. Sarabu Chennayya, [(1910) I.L.R., 33 Mad. 413], followed.

PETITION, under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the judgment of V. Sreenivasachariar, Sub-Divisional Magistrate of Madura Division in Criminal Appeal No. 59 of 1909, confirming the conviction and sentence of the lower Court.

The case for the prosecution was that there was a theft of clothes from the complainant's house, and that the matter was reported to the police. The house of the accused was searched. The search-list stated that some of the articles missing were found *in the house*. At the trial the prosecution adduced oral evidence to show that they were found *in a locked box*. The accused was convicted of theft on the presumption raised by the possession of stolen articles. On appeal against this conviction it was contended that section 91 of the Evidence Act excluded all evidence but the search-list to prove what took place at the time of search and the oral evidence that the articles were found in a locked box was inadmissible. This plea was over-ruled and the conviction was confirmed.

The accused moved the High Court under sections 435 and 439 of the Criminal Procedure Code.

* Criminal Revision Case No. 498 of 1909.

K. Narayana Rao for petitioner.

The Public Prosecutor, *contra*.

ORDER.—The petitioner's pleader contends that the search-list is the only evidence admissible as to the matters dealt with therein and relies on the case of *Abdul Khadir and others v. Queen-Empress*(1). We are unable to accept that ruling as correct. If it were adopted it would lead to results most prejudicial to the proper trial of accused persons. And we observe that a directly contrary view was taken in the case of *The Public Prosecutor v. Sarabu Chennayya*(2). We think this latter view is correct. We do not think the sentence excessive.

We dismiss the petition

BENSON
AND
ABDUR
RAHIM, JJ.

ELAMATHAN
v.
EMPEROR.

APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and
Mr. Justice Krishnaswami Ayyar*

IRENE FANNY COLQUHOUN (PLAINTIFF), APPELLANT,

v.

FANNY SMITHER (DEFENDANT), RESPONDENT.*

1909.
December 18.

Contract of marriage, action for procuring breach of—Parent or guardian procuring breach maliciously or by false representations liable.

An action is maintainable against a person for inducing a party to break a contract of marriage entered into by such party.

A parent or guardian inducing a child or ward to break such a contract is liable when such parent or guardian does so maliciously or by false representations.

Although malice is not the gist of the action in such cases, it may, if alleged and proved, displace the protection or privilege which arises from the relation between the party procuring the breaking of the contract and the party breaking it.

APPEAL against the judgment of Wallis, J., dated 16th February 1909, made in the exercise of the ordinary original jurisdiction of this Court in Civil Suit No. 369 of 1908.

(1) Weir's Cril. Bullings, 4th Ed., Vol. II, p. 515

(2) (1910) I.L.R., 33 Mad., 413.

* Original Side Appeal No. 6 of 1909.