

bearing on the point, although COLLINS, C.J., was of a different opinion. In an unreported case *Queen-Empress v. Perumal*(1) referred to therein WILKINSON, and MUTTUSWAMI AYYAR, JJ., took the same view as PARKER, J.

Re CHINA
VENKADU.
AYLING AND
OLDFIELD, JJ.

It is only in the Allahabad High Court that the opposite view has prevailed, *vide Queen-Empress v. Maru*(2). Both on a construction of section 13 and in view of the authorities above referred to, we are inclined to hold that section 13 applies to a case of this kind, and that the evidence is admissible.

We are, at the same time, constrained to point out that section 5 of the Oaths Act is imperative; and if a Court holds that a witness may lawfully be examined or give or be required to give evidence (in other words, is competent to testify) it is the duty of the Court to administer oath or affirmation to that person before recording his evidence. We see no reason for not acting on the evidence of the children.

Even if that evidence were left out of account there remains sufficient circumstantial evidence to warrant the inference that the appellant murdered his wife. [The Court then proceeded to deal with the facts.]

APPELLATE CRIMINAL.

Before Mr. Justice Miller.

Re ROSARIO QUADROS, ACCUSED IN CALENDAR CASE NO. 210 OF 1913 ON THE FILE OF THE COURT OF THE SECOND-CLASS MAGISTRATE OF MANGALORE TOWN.*

1913.
November 20.

Workman's Breach of Contract Act (XIII of 1859)—Bandsman not an artificer, labourer or workman.

A bandsman is not an artificer, labourer or a workman within the meaning of those words in the Workman's Breach of Contract Act (XIII of 1859).

CASE referred for the orders of the High Court under section 438, Criminal Procedure Code, by M. E. COUCHMAN, the District Magistrate of South Canara, in his Reference 2nd of August, 1912.

The two counter-petitioners entered into a contract under the Workman's Breach of Contract Act (XIII of 1859) on the

(1) (1893) I.L.R., 16 Mad., 105 at p. 111. (2) (1888) I.L.R., 10 All., 207.

* Referred Case No. 77 of 1913 (Criminal Revision Case No. 530 of 1913).

Re ROSARIO QUADROS. 9th October 1912, to play in petitioner's band for one year. They received an advance of Rs. 15 and Rs. 10 and bound themselves to go with the petitioner to any place at which he might have an engagement, to play in his band.

The counter-petitioners admitted the contract and receipt of the money and agreed to perform the work in accordance with the contract and were accordingly ordered by the Second Class Magistrate "to perform the labour according to the terms of the contract from tomorrow." The contract would have terminated on the 8th October 1913.

The District Magistrate referred the case to the High Court. None represented the accused.

The Public Prosecutor for the Crown.

MILLER, J.

ORDER.—A Musician in a band is clearly not an artificer or labourer, and is not, I think, a workman within the meaning of the Act (Act XIII of 1859). I agree with the District Magistrate and set aside the order of the Magistrate.

APPELLATE CRIMINAL.

Before Mr. Justice Miller.

1913. *Re* K. SELLANDI, ACCUSED IN SESSIONS CASE NO. 54 OF 1913 ON
November 20. THE FILE OF THE SESSIONS COURT OF SALEM (PUBLIC REPORTS CASE
NO. 11 OF 1913 ON THE FILE OF THE STATIONARY
SUB-MAGISTRATE OF SALEM).*

Criminal Procedure Code (Act V of 1898), sec. 348—Indian Penal Code (Act XLV of 1860), chaps. XII and XVII—Procedure of Magistrate who cannot adequately punish.

In this case the accused who had been previously convicted of an offence under section 394, Indian Penal Code, was charged before a Sub-Magistrate with an offence under section 411, Indian Penal Code. The Sub-Magistrate tried and convicted him of the offence and ordered his commitment to the Court of Sessions for the purpose of awarding him enhanced punishment.

Held, that the conviction and commitment were illegal. The correct procedure to be followed in such a case is for the Magistrate either as a preliminary matter or before framing a charge to determine whether he has power to pass a sufficient sentence. If he thinks he has not such power he should frame a charge and commit the accused.

CASE referred for the orders of the High Court under section 438, Criminal Procedure Code (Act V of 1898), by J. T.

* Referred Case No. 94 of 1913 (Criminal Revision Case No. 670 of 1913).