ZAMINDAR OF SANIVARAPPET v. ZAMINDAR OF SOUTH VALLUR.

WALLIS, C.J., AND SESHAGIRI AYYAR, J.

therefore he did not by the terms of the explanation lose such occupancy right by becoming interested in the land as landholder, that is, by the land becoming part of his estate.

It is then said that this is opposed to the plain provisions of section 8 (1) which provide that in such a case the owner shall hold the land as a landowner and not as a ryot. The language of section 8 (1) is no doubt wide enough to cover such a case, but the rest of the section rather indicates that in framing it the legislature was thinking of the acquisition of occupancy rights by landholders and not of the acquisition of landholders' rights by ryots. But, however this may be, the general provisions of section 8 (1) must, we think, yield to the special provisions of the explanation as to this particular, on the principle *generalia specialibus non derogant*. For this reason, we think that the appeal fails and must be dismissed with costs.

K.R.

APPELLATE CRIMINAL.

1915 November 17.

Before Mr. Justice Abdur Rahim and Mr. Justice Ayling.

MAHOMED KANNI ROWTHER (COMPLAINANT), PETITIONER,

v.

PATTANI INAYATHALLA SAHIB AND FIVE OTHERS (ACCUSED NOS. 4 TO 7, 9 AND 10), RESPONDENTS.*

Criminal Procedure Code (Act V of 1898), sec. 345—Compounding an offence—Complainant resiling before hearing, effect of.

Per ABDUR RAHIM, J. (AYLING, J. *dubitante*).—A composition arrived at between the parties of a compoundable offence is complete as soon as it is made; and it has the effect of an acquittal of the accused under section 345, Criminal Procedure Code in respect of that offence, though one of the parties, later on, resiles from the compromise and no statement or petition recording the compromise is filed in Court by the parties.

Murray v. *Queen Empress* (1894) I.L.R., 21 Calc., 103, referred to.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of J. R. KRISHNAMMA, the First-class Sub-Divisional Magistrate of Kumbakonam, in Criminal Appeal No. 38 of 1915, preferred

* Criminal Revison Case No. 448 of 1915 (Criminal Revision Petition No. 61 of 1915).

against the judgment of C. R. CHAKRAPANI AYYAR, the Stationary Second-class Sub-Magistrate of Papanasam, in Calendar Case No. 249 of 1914.

The facts appear from the judgment of ABDUR RAHIM, J.

Mir Sultan Muhi-ud-din for the petitioner.

T. Ranga Achariyar for the accused-respondents.

P. R. Grant for the *Public Prosecutor* for the Crown.

ABDUR RAHIM, J.

ABDUR RAHIM, J.—In this case, it has been found upon the evidence that the parties compounded their disputes out of Court. There were three cases which arose out of the disputes between the petitioner and the respondents. In the first of these cases, the petitioner was the accused and in the second case, which was a counter-case to the first, the petitioner was the complainant. In the third case, that is the one in question, the petitioner was the complainant. In the other two cases, the accused were convicted and sentenced to three months' rigorous imprisonment each. Then they appealed to the Joint Magistrate and while the appeals were pending, the parties entered into an arrangement that all the disputes between them should be settled. The Joint Magistrate has found that the arrangement settling the disputes extended to the case which was then pending in the Sub-Magistrate's Court. As a result of the compromise these two appeals in the Appellate Court were compounded with the permission of the Court and the accused acquitted. When, however, the accused in the present case submitted a petition to the Sub-Magistrate saying that this case also was the subject of the compromise, the complainant who is the present petitioner resiled from his former position and denied the composition. The Sub-Magistrate found that as a matter of fact the present case was not settled. The Appellate Court has however taken a different view and we have no doubt that this view so far as the finding of fact is concerned is correct. The question of law then arises whether the composition or arrangement which was arrived at outside the Sub-Magistrate's Court comes within the terms of section 345, Criminal Procedure Code. Clause (6) of that section says: "The composition of an offence under the section shall have the effect of an acquittal of the accused." It does not say as to what should be the procedure if one of the parties after they settled their disputes outside the Court refused to abide by it when the case comes on

KANNI ROWTHER v. INAYATHALLA SAHIB.

ABDUR RAHIM, J.

afterwards for hearing. There is only one precedent which covers this case. It is *Murray* v. *The Queen Empress*(1). There the learned Judges held or rather assumed as if the matter admitted of no doubt that it was competent for the Court in which the charge was pending to take evidence as to whether there was in fact a composition outside the Court. In that case, there was a dispute whether if there was a composition, it was valid one or not, having regard to the allegation whether the complainants acted freely and understood what they were doing. The section itself does not throw much light on the question raised before us. I am however inclined to take the same view as was taken in *Murray* v. *The Queen Empress*(1). Section 345, Criminal Procedure Code, lays down that certain offences, of which the offence of hurt is one, can be compounded by the parties and no leave of the Court is necessary for the purpose while of certain other offences such as grievous hurt, there can be no composition without the permission of the Court before which they are pending. Where the parties have actually composed their disputes in the four classes of cases it is not clear, on principle, why it should be necessary for the validity of composition that any petition should be presented by the parties admitting the fact or why any of the parties should afterwards be allowed to withdraw from it. The composition spoken of in section 345 is in the nature of a contract though I do not think it requires monetary consideration. I may point out however that in this case there was some consideration because there were other cases between the parties then pending and if there was an arrangement, the consideration was that each party should refrain from pursuing the case or cases in which the other party was the accused. It is true that if a Court is bound to take cognizance of a composition arrived at outside the Court but which has been resiled from by one of the parties when the case came to be tried, the Court will be obliged to take evidence and that will necessarily result in the prolongation of proceedings. But if the legislature contemplated that a composition should be made in Court or that a composition arrived at would not be considered to be complete until both parties have expressed their assent in Court whether by means of a

(1) (1894) I.L.R., 21 Calc., 103.

petition or otherwise, one would expect that they would have said so. In the absence of any such express provision, the natural interpretation is that the composition is not limited to acts done in Court nor to cases in which the parties continue to be of the same mind until the case comes on for further hearing before the Court.

I would hold that there was a valid composition in this case and it had the effect of acquittal.

AYLING, J.—The abstract question as to the effect of an agreement to compound come to by the parties out of Court from which one subsequently resiles is a somewhat difficult one on which my mind is not free from doubt. The wording of section 345, Criminal Procedure Code, throws little, if any, light on it and I should be loth to express a final opinion on the somewhat one-sided argument that has been addressed to us. The only authority quoted certainly supports the view contended for by Mr. Ranga Achariyar. But on the facts found by the Joint Magistrate, I am clearly of opinion that the case is one in which in the exercise of our discretion we may very properly decline to interfere. I concur in the order proposed by my learned brother.

AYLING, J.

S. V.

APPELLATE CIVIL.

Before Mr. Justice Abdur Rahim and Mr. Justice Ayling.

K. RANGAPPA AND TWO OTHERS (DEFENDANTS NOS. 1 to 3), APPELLANTS,

v.

KARNAM BHIMAPPA (PLAINTIFF), RESPONDENT.*

1915. November 24.

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Religious Endowments Act (XX of 1863)—Change of village, from one district to another for revenue purposes—Religious institution in the village—Power of original committee of the original district to control the institution—No power for the committee of the new district to appoint trustees.

The Religious Endowments Act (XX of 1863) contemplates the creation of division or district committees once for all, soon after the passing of the Act, to take the place of the Board of Revenue and the local agents referred to in Regulation VII of 1817. It is only the committee that is originally appointed in that behalf or its successor that can exercise jurisdiction over a particular

* Second Appeal No. 265 of 1915.