APPELLATE CRIMINAL.

Before Mr. Justice Ayling and Mr. Justice Napier.

Re SELLAMANI (PRISONER), APPELLANT.* 1916, March, 14 and 15.

Criminal Tribes Act (III of 1911), sec. 23 (1), (a) and (b)—First conviction for scheduled offence after the Act—Conviction for such offences prior to the Act—Punishment.

An accused person who belongs to a tribe notified to come under the Criminal Tribes Act (III of 1911) and who is for the first time after the enactment of that Act convicted of an offence specified in the schedule to that Act, is liable to be punished under clause (a) and not clause (b) of section 23 (1) of the Act, though he may have been convicted once or several times of such offence before the passing of the Act.

APPEAL against the order of S. G. ROBERTS, the Sessions Judge of South Arcot district, in Calendar Case No. 52 of 1915.

The accused who was charged with and convicted in 1915 of having committed in June 1915 the offences of house-breaking by night and causing hurt in committing robbery (sections 457 and 394, Indian Penal Code) pleaded guilty to three previous convictions under section 457, Indian Penal Code, in 1894 and 1899 and to three convictions under section 380, Indian Penal Code, in 1907. The Local Government notified in 1911 under section 3 of the Criminal Tribes Act (III of 1911) the tribe to which the accused belonged as a criminal tribe. The Sessions Judge punished the accused with transportation for life under section 23 (1) (*b*) of the Criminal Tribes Act. Section 23 (1) of the Act is as follows :—

"(1) Whoever, being a member of any criminal tribe, and having been convicted of any of the offences under the Indian Penal Code specified in the schedule, is hereafter convicted of the same or any other offence specified in the said schedule, shall, in the absence of special reasons to the contrary to be mentioned in the judgment of the Court, be punished,—

(*a*) on a second conviction, with imprisonment for a term of not less than seven years, and

(*b*) on a third conviction, with transportation for life."

The accused preferred this appeal.

* Criminal Appeal No. 21 of 1916.

Re SELLAMANI.

The accused was not represented.

E. R. Osborne, the acting Public Prosecutor, for the Crown.

AYLING, J.

The following Judgment of the Court was delivered by AYLING, J.—The conviction is by a jury and there is no misdirection.

As regards sentence, we observe that the case appears to fall under clause (*a*) and not under clause (*b*) of section 23 (1) of the Criminal Tribes Act, 1911. Accused's last conviction was in 1907: so that his present conviction is his first after the enactment of Act III of 1911 and the notification of his tribe as a criminal tribe. Section 23 (1) is not altogether easy of interpretation: but we think that the phrase "second conviction" has reference to the words in the sentence "is hereafter convicted" and not to the earlier words "having been convicted" as the Sessions Judge has read them. The section will thus read "whoever . . . having been convicted . . . is hereafter convicted . . . shall on a second conviction be punished, with imprisonment for a term of not less than seven years": and we must take the words "second conviction" to signify a first conviction for a scheduled offence after the coming into force of the Act, following upon either one or many convictions of scheduled offences prior to the Act: and a third conviction in clause (*b*) to signify a second conviction so following.

The construction put on the words by the Sessions Judge would entail a sentence of transportation for life on a member who had prior to the notification been twice convicted, for the first offence committed by him after the Act. We cannot think that the Legislature intended such a drastic provision. We notice a third alternative reading, namely, that 'on a second conviction' means second after the notification but we think that this cannot be accepted. The Legislature could not have intended to omit reference to the case of a first conviction after the notification. If it had wished that no special punishment should be attached to such a conviction it would have used some such words as "shall on such conviction be punished with the punishment provided by the Penal Code but on the next conviction, etc." It is also extremely improbable that the Legislature would have intended to omit such fresh convictions from the mischief of the Act.

On the view we have taken the Sessions Judge was not bound as regards sentence by the limitations imposed by clause (*b*) and should have dealt with it under clause (*a*); and on the merits of the case we think the ends of justice will be met by a sentence of ten years' rigorous imprisonment to which the sentence is hereby commuted, the conviction being affirmed.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Sadasiva Ayyar.

K. SATTIRAJU (SECOND DEFENDANT), APPELLANT,

v.

P. VENKATASWAMI AND TWO OTHERS (PLAINTIFF, FIRST DEFENDANT AND SUPPLEMENTAL RESPONDENT), RESPONDENTS.*

1916. September, 22 and October, 11.

Hindu Law—Adoption by a minor widow—Want of independent, disinterested advice—Validity of adoption—Ratification by widow after attaining majority, effect of.

A widow, authorized by her husband to adopt a boy *if* and *when* she chose, adopted her own brother, when she was eleven years of age on the interested advice of her father,

Held, that the adoption made by the widow while a minor and without independent advice, was void *ab initio* and could not be therefore validated by subsequent ratification.

Sri Rajah Venkata Narasimha Appa Row v. *Sri Rajah Rangayya Appa Row* (1906) I.L.R., 29 Mad., 437, dissented from.

APPEAL against the order of A. RAGHUNATHA RAO, the Subordinate Judge of Cocanada, in Appeal No. 119 of 1914, preferred against the decree of E. J. S. WHITE, the District Munsif of Cocanada, in Original Suit No. 624 of 1912.

The facts of the case appear from the judgment of OLDFIELD, J.

B. Narasimha Rao for the appellant.

S. K. Parthasarathi Ayyangar for *V. Ramesam* for the respondent.

* Civil Miscellaneous Appeal No. 104 of 1915.