But the appeal may be disposed of on another ground which is fatal to the appellants. Section 9 refers to a tenant against whom a suit in ejectment has been instituted. The words "has been" are material. I do not think a tenant, against whom a decree for ejectment was passed prior to the coming into force of the Act, can apply under section 9. Section 10 places the matter beyond doubt. It refers to suits "which are pending" or "in which decrees for ejectment have been passed but have not been executed before the coming into force of this Act." A distinction is made between suits which are merely pending and those in which decrees in ejectment have been passed. Section 10, while stating that sections 4, 5, 6 and 8 shall apply to suits which are pending or in which decrees for ejectment have been passed, makes no reference to section 9.

I therefore hold that the appellants are not entitled to make an application under section 9.

N.R.

APPELLATE CIVIL.

Before Sir Walter Salis Schwabe, Kt., K.C., Chief Justice, Mr. Justice Oldfield and Mr. Justice Ramesam.

PAKKIAM (PLAINTIFF),

1923, April 6.

v.

CHELLIAH PILLAI (DEFENDANT).*

Indian Divorce Act (IV of 1869), sec. 2—"Professes Christian faith", meaning of—Conversion to Christianity of one of a Hindu couple, effect of, on marriage—Dissolution of Native Converts' Marriages Act (XXI of 1866)—Means of obtaining dissolution of marriage, under.

A person who was born a Christian and who was baptized a Christian and who professes some form of Christian faith does

* Referred Case No. 14 of 1922.

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not cease to "profess the Christian religion" within section 2 of the Indian Divorce Act (IV of 1869), because the particular church to which she belonged disapproving of her conduct excommunicated her.

Under the Dissolution of Native Converts' Marriages Act (XXI of 1866), conversion to Christianity of one of two married Hindu spouses does not by itself dissolve the marriage. The dissolution is effected under the Act only after a year's refusal to comply with an order for restitution of conjugal rights.

CASE referred by H. R. BARDSWELL, District Judge of Madura, in his letter, dated 9th September 1922, No. 5130, for confirmation by the High Court under section 17 of the Indian Divorce Act (IV of 1869) of the decree *nisi* passed in Original Suit No. 5 of 1921 on the file of the District Court of Madura.

This was a suit for a declaration of nullity of marriage under the following circumstances and the following facts are taken from the judgment of the District Court:—

1. "The petitioner, a Christian, was married to the respondent in the Registrar's office at Palamcottah on 2nd November 1919; she thereafter lived with the defendant, chiefly at Madura till 16th January 1921 when she learned that the respondent had a wife alive to whom he was already married at the time of his marriage to the plaintiff. She also represents that she was induced to marry the respondent, because of false representations as to his status.

2. "The respondent admits that he married the petitioner when he was already married to a woman under Hindu rites, but he says that this woman voluntarily separated from him and that he afterwards became a Christian and married the petitioner who knew all about his previous marriage. He also says that the petitioner, who was a member of the Swedish Lutheran Mission Church of Madura, was excommunicated on 27th December 1921 on account of immorality, that she is not now in touch with any church, does not profess the Christian religion and has become practically a Hindu, being kept by one Chinnia Nayudu (a Hindu)."

The District Judge found that the petitioner was once admitted a member of the Church and that she professed the Christian religion at the time of her

petition, i.e., on 24th September 1921, in spite of the fact that her church excommunicated her for living with a Hindu, inasmuch as she never renounced Christianity and adopted Hinduism. He also held that the respondent's marriage with a Hindu wife was not dissolved in law as soon as he became a Christian inasmuch as the procedure prescribed by the Dissolution of Native Converts' Marriages Act (XXI of 1866) for dissolving that marriage was never availed of by the respondent. Hence he passed a decree for the nullity of the petitioner's marriage.

On reference to the High Court for confirmation of the decree—

T. M. Ramaswami Ayyar for petitioner.—The decree declaring the marriage to be a nullity has to be confirmed. The petitioner must be held to "profess the Christian religion" in spite of the fact that her church excommunicated her. Profession of a religion is a matter of one's own volition and not of any outside authority. By reason of the conversion to Christianity of one of two married Hindu spouses there is automatically no dissolution of the Hindu marriage. Under sections 4 to 18 of the Dissolution of Native Converts' Marriages Act (XXI of 1866) an elaborate procedure is prescribed for the dissolution of the Hindu marriage in such cases. In this case such a procedure was not availed of. Hence the previous marriage subsists.

No one appeared for the respondent.

JUDGMENT.

SCHWABE, C.J.

SCHWABE, C.J.—This is a suit for nullity of a marriage under the following circumstances. The respondent, when a Hindu, was married to a Hindu. The respondent changed his religion, being converted to Christianity. No steps were taken by him to dissolve

PAKKIAM v. CHELLIAH PILLAI. — SCHWABE, C.J.

his marriage, but he then went through a form of marriage with the petitioner, also a Christian. The petitioner now brings this suit on the ground of bigamy of her husband, he having a wife alive at the time he went through the form of marriage with her.

The first defence raised is that the petitioner has no rights under the Indian Divorce Act, because it is alleged that she does not profess the Christian religion. This is based on a resolution of the particular sect to which she belongs, in effect excommunicating her. In my judgment although she may be excommunicated by the sect or the church to which she belongs, she does not thereby cease to profess Christianity. The question of profession of Christianity is a question of her own action and not of the action of her church. It is to be observed that the petitioner was the daughter of a Christian and no doubt was baptized as a Christian. I cannot see how it can be said that she ceases to profess the Christian religion, because her church disapproving of her conduct has excommunicated her.

The second defence raised is that at the time of this marriage there was no existing marriage of the respondent, it being alleged that by reason of his conversion his then existing marriage became dissolved. That is not the law. It is quite clear from the Dissolution of Native Converts' Marriages Act (XXI of 1866) that the conversion to Christianity of one of two married Hindus does not dissolve the marriage. That Act provides for means to obtain dissolution of the marriage by application to the Court first of all for restitution of conjugal rights and then after the lapse of a year for dissolution of the marriage if conjugal rights are refused. Otherwise the conversion to Christianity of one of two spouses has no effect on the existing marriage.

It follows that the decree that it is a nullity is correct and must be confirmed with costs.

OLDFIELD, J.—I have felt some doubt with regard to the first question raised by this petition, whether the petitioner can be said to have been professing the Christian religion at the time she presented it, within the meaning of section 2 of the Indian Divorce Act. My hesitation arises from the facts, evidenced by the resolution of excommunication referred to by my Lord that she had repudiated the authority of the governing body of the Christian denomination to which she belonged and that she was by the resolution deprived of the spiritual privileges of the Christian faith in the only form in which, so far as appears, she has ever possessed them. The reply suggested is that, notwithstanding her withdrawal or expulsion from a particular denomination, she can still be heard to say that she professes an unsectarian Christianity. These words of the Act have always been difficult of interpretation; and it is with some hesitation that I accept the suggestion made on her behalf. It is some justification for doing so that there is nothing before us as to her admission or readmission to Hinduism, which presumably was originally her faith or that of her parents and nothing to show whether such readmission or admission is possible; and there is further the fact that the policy of the law appears to require the application of the words of section 2 to what may be a substantial class of persons in this country, those who have abandoned a particular sect but who still remain unattached to any religion other than Christianity. OLDFIELD, J.

In these circumstances I do not feel justified in dissenting from the judgment just delivered.

RAMESAM, J.—I agree with the judgment of the learned Chief Justice. In my opinion the religion of a RAMESAM, J.

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person is what the person professes and does not require recognition by the other persons belonging to that religion. A Hindu who professes to be a Hindu, though he may be excommunicated by all the existing Hindu castes, is still a Hindu, though probably he is subject to great social inconvenience. In this respect I do not think that there is anything peculiar to Christianity. If a person says that he is a Christian, though he does not belong to the existing Christian churches, he is still a Christian. Probably his creed is different from the existing creeds and he is subject to social inconvenience in respect of the performance of marriages and burials. Still he would be a Christian.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Devadoss.

1923, April 11.

PAKKIRI KANNI (PLAINTIFF), APPELLANT,

v.

HAJI MAHAMMAD MANJOOR SAHIB (DEFENDANT), RESPONDENT.*

Suit for partition of common properties—Exclusion of some common properties from suit—Maintainability of suit.

A suit for partition of common properties, and not joint properties, is not liable to be dismissed on the ground that the suit did not include all the common properties available for partition.

APPEAL against the order of K. S. GOPALARATNAM AYYAR, Additional Subordinate Judge of Tanjore, in Appeal Suit No. 59 of 1921 (A.S. No. 332 of 1920 on the file of the District Court, Tanjore), preferred against the decree of K. PARTHASARATHI AYYANGAR, District Munsif of

* Civil Miscellaneous Appeal No 60 of 1922.