cases in which the mortgagee had come into court asking for a decree for possession, or a decree declaring his proprietary title, after he had taken the requisite proceedings under Regulation XVII of 1806. There is, however, a Bench decision of this Court in which the same principles have been applied to a suit for redemption exactly on all fours with the suit now before us. We refer to the case of *Badal Ram* v. *Taj Ali* (1). We have been asked to consider the decision in that case; but we do not ourselves see any adequate reason to dissent from it, and in any case we prefer to follow it on the principle of *stare decisis*. The evidence relied upon by the learned District Judge as proving that the equity of redemption was extinguished by reason of the proceedings taken in 1876 was not evidence which could be accepted as establishing the facts sought to be proved on behalf of the defendants, and the decision of the District Judge on this point is based upon an erroneous view of the law and is open to interference by this Court under section 100 of the Code of Civil Procedure. We may note that the Bench case to which reference has already been made was also decided in second appeal. These considerations are sufficient to dispose of the present appeal. We set aside the decrees of both the courts below, and in lieu thereof we give the plaintiffs a decree for redemption, to be drawn up in the form prescribed by order XXXIV, rule 7, of the Code of Civil Procedure, allowing redemption of the property in suit on payment of the sum of Rs. 393-1-0 (rupees three hundred and ninety-three and anna one only) on account of principal and interest, within three months from this date. The plaintiffs will be entitled to their costs in all three courts.

Appeal decreed.

APPELLATE CRIMINAL.

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February, 26

Before Justice Sir George Knox and Mr. Justice Walsh.

EMPEROR *v.* MAHA RAM AND OTHERS.*

Act No. XV of 1872, (*Indian Christian Marriage Act*), *sections* 3 *and* 68.—"*Persons professing the Christian religion*"—*Marriage between two bhangis celebrated according to caste rites by two* "*Christians*"

One Maha Ram, whose father was a Christian, but who himself was found not to be a Christian within the meaning of section 3 of the Indian Christian

* Criminal Appeal No. 873 of 1917, from an order of E. H. P. Rose, Additional Sessions Judge of Mainpuri, dated the 17th of September, 1917

(1) (1907) 4 A. L. J., 717.

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Marriage Act, 1872, although he had been baptized when an infant and used to attend a Christian school, was married to a *bhangi* girl according to the rites of the *bhangi* caste. This marriage was conducted by two persons, Bachhan and Mangli, who, although they were apparently Christians within the meaning of the Act, officiated as "*mans*", or priests, of the *bhangi* caste. All these persons were convicted, - Bachhan and Mangli of the substantive offence defined in section 68 of the Indian Christian Marriage Act, 1872, and Maha Ram of abetment of that offence.

Held that the convictions could not stand, both because Maha Ram, on the facts appearing in evidence, could not be held to be a Christian within the meaning of section 3 of the Indian Christian Marriage Act, 1872, and also, as *held* by WALSH, J., because the Act in question deals with Christian marriages and Christian marriages only. *Queen-Empress* v. *Paul* (1), *In re Kolandaivelu* (2) and *Muthusami Mudaliar* v. *Masilamani* (3) discussed by WALSH, J.

THE facts of the case were briefly as follows :—

One Maha Ram, alleged by the prosecution to be a Christian, was married to the daughter of one Shib Lal a *bhangi* (sweeper) according to the rites of the *bhangi* caste. At this marriage Bachchan and Mangli, who were also alleged to be professing Christianity, acted as *mans* (or priests).

Bachchan and Mangli were charged and convicted under section 68 of the Indian Christian Marriage Act (Act XV of 1872, as amended by Act XII of 1891) of the offence of solemnizing, in the absence of a Marriage Registrar of the district, the marriage of Maha Ram, a Christian, with a female sweeper according to *bhangi* rites. Maha Ram accused was convicted of the abetment of the aforesaid offence. The assessors gave it as their opinion that Maha Ram was not a Christian and therefore no offence under section 68 of Act XV of 1872 had been committed. The learned Sessions Judge was of a different opinion. He found the accused persons guilty and sentenced them each to undergo rigorous imprisonment for a term of one year. All three accused appealed to the High Court.

Mr. *Nihal Chand* with him (Munshi *Baleshwari Prasad*), for the appellant :—

Act No. XV of 1872 is an Act to consolidate and amend the law relating to the solemnization in India of the marriages of persons professing the Christian religion. This Act is based on 14 and 15 Vic., Ch. 40; and 58 Geo. III, Ch. 84 (both Statutes

(1) (1896) I. L. R., 20 Mad., 12. (2) (1916) I. L. R., 40 Mad., 1030.
(3) (1910) I. L. R., 33 Mad., 342.

relating to marriages in India, but now no longer in force) and Act V of 1852 and V of 1865, which last two Acts were repealed by this Act.

For the scope of the Act, the *Gazette of India*, 1872, Supp., p. 805, was referred to:—"There was little doubt that the intention of the Bill, as introduced, was simply to deal with the forms and ceremonies of marriage; it was to be what it called itself—A Bill to regulate the law for the *solemnization of marriage*, not a Bill to regulate the *Marriage Law*." The history of the Legislation thus clearly shows that doubts had arisen as to the validity of certain marriages and it was clearly intended to facilitate such marriages and validate them. The object of the Act was not to prevent people marrying as they wished but to provide certain forms and ceremonies if they wanted to be married as Christians and at the same time to guard them by providing strict penalties for non-compliance with those ceremonies. The whole Act shows that it deals with Christian marriages alone. If they are not solemnized by one of the persons mentioned in section 5, they are made void by section 4. It is submitted that the Act does not prohibit even a Christian from marrying otherwise than under the Act, if he wishes to do so. The offence charged here is that the accused "solemnized" a marriage in the absence of the Marriage Registrar. Now it is not suggested that the Marriage Registrar is authorized to attend Hindu marriages, and it is to be noted that no person other than a Christian can be appointed a Marriage Registrar (*Vide* section 7). If, therefore, a Hindu does marry a Christian girl according to the custom of the caste both he and the officiating priest render themselves liable to imprisonment or transportation for ten years. Again a *Sunni* Musalman can validly marry a *kitabia* (*i. e.*, a Jew or a Christian), according to his law in the permanent form and with Muhammadan rites. If section 68 of the Christian Marriage Act be interpreted as widely as has been done by the Madras High Court, a *Kazi* who performs a marriage between a Musalman male and a Christian female according to Musalman rites is liable to the punishment of transportation for ten years, whereas a Christian Minister or Marriage Registrar who performs a marriage with Christian rites between a Musalman male

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and a Christian female is not subjected to any such penalty and performs a perfectly valid act. The Act cannot be said to violate the principle of religious neutrality followed almost without exception by the Indian Legislature. A construction, which credits the Legislature with such violation should, if possible, be avoided. The Madras High Court has consistently held against me ; *Queen-Empress* v. *Fischer* (1), *Queen-Empress* v. *Yohan* (2), *Queen-Empress* v. *Paul* (3) and *In re Kolandaivelu* (4).

In the last mentioned case the order referring the case to the Full Bench supports the appellant's contention, and is adopted as part of the argument for the appellant. It is submitted that section 68 provides penalties for a person, who not being authorized by section 5 of the Act to solemnize marriages, solemnizes or professes to solemnize in the absence of a Marriage Registrar, a marriage (purporting to be a Christian marriage under the Act) between persons one or both of whom is or are a Christian or Christians.

The next question is whether Maha Ram was a Christian at the time of his marriage. Under section 3 of the Act the expression " Christian " means persons professing the Christian religion. As regards the meaning of the word " profession " *Murray's Oxford Dictionary*, Vol. VII, was referred to, the expression being explained in these words :—" To affirm or declare one's faith in or an allegiance to; to acknowledge or formally recognize as an object of faith or belief (a religion, principles, rule of action, God, Christ, a saint, *etc.*) " After discussing the evidence it was contended that merely because a person had been baptized when three years old, or that he had attended a Christian school would not make him a person professing the Christian religion. In the case of Maha Ram there was no evidence if at any time he acknowledged or formally recognized Christianity as his religion. On the contrary, on the eve of his marriage, he resisted all pressure and persuasion to be married as a Christian by a Christian ceremony, and he actually performed " *Devi ka Puja* " at the time of his marriage.

(1) (1891) I. L. R., 14 Mad., 342.
(2) (1892) I. L. R., 17 Mad., 391.
(3) (1896) I. L. R., 20 Mad., 12.
(4) (1916) I. L. R., 40 Mad., 1030.

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Mr. *R. K. Sorabji* (with the Government Advocate, Mr. *A. E. Ryves*), for the Crown :—

The intention of the Legislature was clear. Section 4 expressly says that "any marriage between persons, one or both of whom is or are a Christian or Christians shall be solemnized in accordance with the provisions of the next following section, and any such marriage solemnized otherwise than in accordance with such provisions shall be void," and section 68 merely provides a penalty for solemnizing or professing to solemnize such a marriage contrary to the provisions of the Act. The intention of the Legislature was that the country should not be flooded with void marriages with all the incidental evils as to illegitimate children and questions of property and inheritance. This result would be equally produced by a state of concubinage; the interpretation sought to be put on the section on behalf of the accused would tend to encourage concubinage. Upon the evidence as regards Maha Ram's profession of Christianity great stress was laid on the fact that Maha Ram accused who took all the advantages supplied by a Christian school was estopped by his conduct from asserting that he was not a Christian.

KNOX, J.—Maha Ram who described himself as son of Kallu by caste a sweeper, Mangli, son of Sundar, sweeper, and Bachhan, son of Laiq, sweeper, have been convicted of an offence under section 68 of Act No. XV of 1872. In the case of Maha Ram section 109 of the Indian Penal Code is to be read with section 68 of Act No. XV of 1872.

The case for the prosecution is that Maha Ram is a Christian; that on the 3rd of June, 1917, he was married to the daughter of one Shib Lal *bhangi*, and that Bachhan and Mangli were *mans*, or so-called priests of the sweeper class, who solemnized the marriage according to *bhangi* rites. The assessors gave it as their opinion that Maha Ram was not a Christian and that therefore no offence under section 68 of Act No. XV of 1872 had been committed. The learned Sessions Judge, however, was of a different opinion. He found the accused persons guilty and sentenced them each to undergo rigorous imprisonment for a term of one year. The appellants have been represented in this

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Court by learned counsel. The contention on behalf of the appellants is that section 68 of the Christian Marriage Act does not apply; that Maha Ram was not a Christian at the time of his marriage; and that it is not proved that Bachhan and Mangli solemnized the marriage. The first point, therefore, that arises for consideration is whether Maha Ram was at the time of the marriage a Christian.

Act No. XV of 1872, and specially the section concerned, which is a section imposing what may amount to a very severe punishment, has, under the well-known rules for construction in such cases, to be so construed that no cases be held to fall within it which do not fall both within the reasonable meaning of its terms and within the spirit and scope of the enactment. No violence must be done to its language in order to bring people within it, but rather care must be taken that no one is brought within it who is not within its express language: *The London County Council* v. *Aylesbury Dairy Company* (1). As ABBOTT, C. J., pointed out in *Proctor* v. *Manwaring* (2), it is not competent to a court to extend the words by construction.

Now Act No. XV of 1872 was an Act to consolidate and amend the law relating to the solemnization in India of the marriages of Christians. This was the legislative intent, and it will have to be seen that the interpretation placed upon the words in this section is one which harmonizes with the context and promotes in the fullest manner the policy and object of the Legislature.

The term "Christian" is interpreted in section 3 of the Act and runs as follows:—"The expression *Christian* means—persons professing the Christian religion." The use of the word "means" in this passage shows that the definition is a hard and fast definition and that no other meaning can be assigned to the expression than is put down in the definition: *Gough* v. *Gough* (3) and *Bristol Trams Coy.* v. *Mayor &c. of Bristol* (4).

In several sections of the Act, as for instance, sections 23, 37 *etc.* another term is used, namely, "*Native Christian.*" Also there is a part of the Act which is entitled "Marriage of Native Christians" and which extends from section 60 to section 65 of Act No. XV of 1872.

(1) (1898) 1 Q. B., 106.
(2) (1819) 8 Barn and Ald., 145.
(3) (1891) 2 Q. B., 665.
(4) (1890) 59 L. J., Q. B., 441.

Section 3 interprets the expression "Native Christian." The meaning given to this latter expression is different from the meaning given by the Act to the expression "Christian." It includes the Christian descendants of natives of India converted to Christianity as well as such converts. If the Legislature had contemplated applying section 68 to a Christian, i.e., a person professing the Christian religion, and had wished to comprehend within it a Christian descendant of a native of India, it would have been easy to provide for this in section 68. That no such provision was made confines section 68 strictly to persons who at the time of marriage were persons professing the Christian religion. It is important to notice this, as occasionally in the argument on behalf of the prosecution attempt was made to contend that section 68 applied not only to a Christian but also to a Native Christian. I am unable to accept this contention, and I hold that the issue which I have to decide is whether Maha Ram at the time when he was married to the daughter of Shib Lal was or was not a person professing the Christian religion. Again I repeat the word "means" which is to be found in section 3 is an inclusive term and therefore no one except a person who professes the Christian religion comes within the purview of section 68.

This drives me back upon the necessity of deciding who is a person who professes the Christian religion.

I have not been referred to nor have I been able to find any precedent which lays down clearly what meaning is to be attached to the words "profession of Christianity."

Murray in the Oxford Dictionary, (Volume VII, 1909), interprets the word "profess" thus:—"To affirm or declare one's faith in or an allegiance to; to acknowledge or formally recognize as an object of faith or belief (a religion, principle, rule of action, God, Christ, a saint, etc.)"

In the case before us we have not to deal with a person of an immature age or one who for any reason is unable to give a reasonable account of the faith that he holds, e.g., an orphan of tender years in a school, etc. For several years Maha Ram has been a grown up lad mixing in village and school life. There must have been many opportunities for observing and noting

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what he aknowledged or formally recognized as an object of faith or belief, and I should expect to have been referred to abundant evidence on this point. He is the son of one Kallus. Regarding Kallu the evidence is that he was elected to the position of elder in the Presbyterian Church; that he was ordained by the Presbytery; that he can under certain circumstances administer sacraments; that he is a moderator every year; that he has been confirmed, that he sits upon session as *sirpanch* of a local Church; that he was an officiating elder up to and after the marriage of Maha Ram; that he was an outspoken preacher; that he prayed and preached Christianity; that he taught Christianity in his own village and in adjoining villages; that on one occasion when a *thanadar* said he would not believe Kallu to be a Christian unless he prayed, Kallu offered up prayers in public. All this is strong *primâ facie* evidence of his having been a person who professed the Christian religion.

The same might be said of the evidence given regarding Bachhan and Mangli. It does not go into as many details, but it gives specific instances where these men "professed" the Christian religion. I have searched in vain for similar definite and specific information in the case of Maha Ram. There is evidence which points the other way for whatever it is worth. It seems to me of very little value and so I do not go into it.

The evidence upon this point given by the Crown consists of the evidence of—

(1) The Rev. A. W. Moore, a minister of the Presbyterian Church and a Missionary in charge of the Mission at Mainpuri;

(2) Isa Das, the own brother of Maha Ram;

(3) Sundar, who says that he became a Christian some five years ago;

(4) Behari;

(5) The Rev. W. T. Mitchell, Missionary at Mainpuri;

(6) Madan Lal, a petition-writer.

The evidence of the Rev. A. W. Moore is to the effect that Maha Ram is a Christian and that Bachhan and Mangli are also Christians. When cross-examined as to the meaning of this word Mr. Moore says:—"We call a man Christian though not confirmed or professing the Christian religion," further on, while saying that Bachhan and Mangli had both to his knowledge professed

Christianity, he does not make the same statement regarding Maha Ram. All that he says about Maha Ram is that his name was entered in the Baptismal Register, which sacrament was apparently administered at the time when Maha Ram was a babe 3 years old; that he never up to the time of his marriage told the witness that he was not a Christian, and that though he has seen him since his marriage he has not denied that he is a Christian. When the witness on one occasion said to him that judging by the clothes he wore no one would take him for a Hindu he laughed and said "no." The witness got Maha Ram entered in the Industrial School at Farrukhabad to learn carpentry. He was at the school up to within 2 or 3 days of the wedding. The school is for Christian boys only and witness sent him there as a Christian. This is all upon the point. It does not appear then from the evidence of this witness that Maha Ram ever took part in Church ceremonies such as prayers and the like.

The next evidence in point of importance is that of Rev. W. T. Mitchell. He baptized Maha Ram when he was 3 years old. In his examination-in-chief this witness says that Maha Ram, when he was in the school at Mainpuri, professed to be a Christian; that he took part in Church ritual a little before March, 1915, but the witness does not specify what part or what particular ritual. In cross-examination this witness says that while all the brothers and sisters of Maha Ram had been baptized, they have, with the exception of one brother the witness Isa Das, been married according to *bhangi* rites. They have not strictly adhered to the tenets of Christianity.

Isa Das, the brother of Maha Ram, gave it as his deposition that Maha Ram is a Christian. He never knew that Maha Ram had renounced Christianity. In cross-examination he had to admit that he lived apart from Maha Ram and that one of his sisters was married according to *bhangi* rites.

The rest of the evidence for the Crown is of little importance. It is, however, abundantly apparent from it that Maha Ram had given it out that he intended to have his marriage solemnized according to *bhangi* rites. Much attempt was made to dissuade him and his father from doing this, but the persuasions were in vain, and it appears from the evidence of Mr. Moore that in a

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marriage solemnized according to *bhangi* rites idolatry takes place and *Devi ka puja* or the worship of the goddess *Devi* is gone through.

In brief, then, it would appear from the above evidence that no distinct "profession" of the Christian religion is attributed to Maha Ram beyond the fact that he dressed as a Christian, that when he was at the school at Fatehgarh he wrote one or more letters in which he called himself *Mahbub Masih*. He had never been admitted to sacrament, and, according to the witness Moore, such admission depends upon a confession of faith. This Maha Ram has never been shown to have made. His brothers and sisters, with the exception of Isa Das, are all persons who have been married with *bhangi* rites and at such a marriage an open profession of idolatry is made before witnesses.

I am not prepared to hold that a person is a person professing the Christian religion within the meaning of Act No. XV of 1872 simply because he is baptized as an infant when he has no possibility of saying to the world what is the faith to which he belongs, nor do I attach any particular value to the fact that he attends a Christian school. The learned counsel for the Crown wished me to hold that a person who took the advantage supplied by a Christian school was estopped by his conduct from professing that he was not a Christian. The dressing as a Christian seems also to me very far from being conclusive on this point, especially in the case of persons who belong to the *bhangi* class. The furthest point urged in this direction by the prosecution is perhaps the writing of letters under the title of Mahbub Masih; but no letter was produced nor was it shown that letters so written were at all of a public nature. On the other hand, we have undoubtedly a profession in the case of his performing *Devi ka puja* at the time of his marriage. That act was undoubtedly a profession, an act entirely inconsistent with, I might add repugnant to, the view that the person performing it was a person professing the Christian religion. I am not satisfied therefore that at the time when this marriage was solemnized Maha Ram was a Christian.

Holding as I do that Maha Ram was not a Christian at the time of this marriage, it follows that no offence under the Act

was committed on the 3rd of June, 1917, either by the so-called principals Mangli and Bachhan or by the abettor Maha Ram.

I do not consider it necessary to go into the question whether section 68 of Act No. XV of 1872 was intended to penalize marriages other than those intended to be or purporting to be marriages under the Indian Christian Marriage Act, 1872. It seems extremely doubtful whether it was so, but, as I have said before, the question does not arise for decision in this case.

WALSH, J.—I entirely agree. I should hold, apart altogether from the general history of Maha Ram, to which my brother has referred, that when a person on the eve of his marriage resists all pressure and persuasion to be married as a Christian by a Christian ceremony, and, having by birth and connection other religious associations, deliberately decides to marry a sweeper, according to sweeper rites, and does public worship to Hindu gods in the presence of his relations and friends, he is not "a person professing the Christian religion."

Mr. *Sorabji* contended that Maha Ram was "estopped" from denying his Christianity. Apart from the fact that the principle of estoppel has no place in the criminal law, the idea of a "Christian by estoppel" is a contradiction in terms.

The wider question, as to the real ambit of section 68 of the Indian Christian Marriage Act of 1872, is really involved in what we have decided and I propose to state my views about it for the following reasons. The case for the prosecution was argued mainly upon that ground; the learned Sessions Judge who decided this case obviously did not like it, but felt himself bound to follow the decision in 40 Madras; there has already been a division of judicial opinion on the subject; the question is one of public importance; I entertain no doubt upon it, and I think that prosecutions like the present should be discouraged.

It is important to consider the scope and object of the legislation. It is a consolidating and amending Act, replacing the English Acts of 1818 and 1851, relating to marriage in India, and the Indian Acts of 1852, 1865 and 1866, dealing with the same subject. These were enabling statutes providing special conditions appropriate to the special circumstances and difficulties which are likely from time to time to confront those in India who wish to be married by Christian marriage. The history of the legislation shows that doubts had arisen as to the validity

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of certain marriages, and it was clearly intended to facilitate such marriages and to validate them and at the same time to guard them by strict requirements. The legislation is not unlike the Foreign Marriages Act in England. The object of the Act is not to prevent people marrying as they wish, but to enable them to protect themselves and their posterity by a lawful and binding marriage if they wish to be married as Christians. The Act is to be called the Indian Christian Marriage Act, and in my opinion it deals with Christian marriages, and Christian marriages alone. In future such marriages can only be lawfully effected under this Act. If they are not solemnized by one of the persons described in section 5, they are made void by section 4. The Act does not prohibit even a professing Christian from marrying otherwise than under the Act if he wishes to do so.

We therefore start with this that there is no express prohibition preventing a professing Christian from doing violence to his faith and marrying a non-Christian by a non-Christian ceremony. His marriage may not be valid by English Law as a Christian marriage in India, but it is not forbidden to him. It would be a startling result of this Act, if such a person being free to choose, and not prohibited from marrying otherwise than by a Christian marriage, should find himself liable to transportation for abetting the person who marries him.

An analysis of Part VII of the Act, which deals with penalties, shows that such penalties are in the main directed against the offence of either one party or the other, or the officiating celebrant, or the official who may lawfully authorize the celebrant, wilfully and falsely doing some act in pretended pursuance of the Statute which probably would, and certainly might, render the whole proceeding invalid. Omitting section 68 for the moment, every other offence dealt with is an act done which the Act requires to be done, and which is done either by a person lawfully authorized but by unlawful means, or by lawful means by an unauthorized person.

Turning to section 68, it is to be noted that the section does not make it criminal for a professing Christian to marry by a ceremony which is void under section 4. It is confined solely to the persons who solemnize the marriage, and the Act makes it criminal for a person to solemnize a marriage who is not

authorized by section 5 to do so. But section 5 only authorizes a person to solemnize Christian marriages, and no body can solemnize Christian marriages in India who is not authorized by that section. Section 5 itself appears to employ the word "marriages" in the widest possible sense. "Marriages," it enacts, "may be solemnized in India," by certain specified persons. But this does not mean that no other marriages may be solemnized in India. That would be an impossible contention. It must, therefore, mean "marriages under this Act," or in other words "Christian marriages." I read section 68, therefore, as referring to a class of persons, namely, those who solemnize, or profess to solemnize a Christian marriage under this Act, not being authorized by section 5 to do so. I cannot believe that the Legislature could have intended to sweep into the net of the criminal law, through an indirect piece of legislation by reference, not only every professing Christian who chooses not to be married as a Christian, but every non-Christian whom such persons might marry, and every non-Christian who took part in the solemnization or celebration. This would be contrary to the ordinary mode of interpretation of a statute, and would produce far reaching and almost ludicrous results. I do not think the question turns upon the word "solemnize" so much as upon the object and scope of the Act. The case of *Queen Empress* v. *Paul* (1), decided in 1896, turned on the word "solemnize." The Sessions Judge had acquitted on the ground that the part taken by the Hindu priest did not amount to solemnization. He seems to me to have been feeling for a way of evading the construction of the Act now contended for and to have seized on the word "solemnization." The appellate court disagreed, but I think their minds were diverted from the real difficulty. They went on to hold that the contracting parties themselves ought to have been convicted of abetment. As I have said, this is a startling result, and satisfies me that there must be a fallacy in the reasoning which reaches it. I have carefully considered the recent case *In re Kolandaivelu* (2), decided by the Chief Justice and two Judges on a reference by Napier, J. I cannot agree with it. I see no answer to the reasoning in Napier, J's, referring order, while the Chief Justice slips into an apparent error. "Section 68," he

(1) (1896) I. L. R., 20 Mad., 12. (2) (1916) I. L. R., 40 Mad., 1080.

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says, "merely provides a penalty for solemnizing or professing to solemnize such a marriage contrary to the provisions of the Act." This is not so. It imposes a penalty upon any person who does under section 5 what he is not authorized to do, namely solemnizes a Christian marriage.

Mr. *Sorabji* urged that the intention of the Legislature was clear. They did not want the country flooded with void marriages with all the incidental evils as to illegitimate children and questions of property and inheritance. This result would be equally produced by a state of concubinage not regularized by any form of marriage, and the interpretation contended for might be said rather to encourage concubinage. On the other hand, as was pointed out by the Government Advocate, who appeared at our request so that the view of Government might be presented to us, the Madras High Court in 1910 held that such a marriage as the present may be valid by Hindu law if a custom is established governing such marriages. See *Muthusami Mudaliar* v. *Masilamani* (1). In that case the bride was a Roman Catholic. She removed the cross from her neck, and her forehead was smeared with holy ashes by a Brahman priest. The trial court spoke of "the prevalence of the practice of Hindus marrying Christian girls according to Hindu rites and such girls after their marriage following the Hindu religion." The validity of the marriage was upheld by the Madras High Court. This seems to me an additional ground for differing from the decision of the so-called Madras Full Bench in 40 Madras. The result seems that, at present according to the law in Madras, a valid Hindu marriage may be a criminal offence, both on the part of the principals and on the part of those who celebrate it. I cannot accept this consequence, which illustrates very forcibly the importance of holding to the principle which my brother Knox has reiterated, of not straining a criminal enactment beyond what is included in its express terms.

BY THE COURT.—We allow this appeal. We find Mangli and Bachhan not guilty of the offence charged, i.e. an offence under section 68 of Act No. XV of 1872, and Maha Ram not guilty of abetment of the aforesaid act and direct that they be released. We understand they were permitted to give bail; if they did give bail, the bonds will be discharged.

Appeal allowed—Conviction quashed.

(1) (1910) I. L. R., 33 Mad., 342.