

## REVISIONAL CRIMINAL.

*Before Justice Sir George Knox.*

EMPEROR v. BUDDHU AND ANOTHER\*.

*Act No. XLV of 1860 (Indian Penal Code), section 498—Enticing away a married woman—Evidence of marriage—Mere statement of complainant not sufficient.*

1920  
March, 12.

To support a conviction under section 498 of the Indian Penal Code, strict proof of the marriage between the complainant and the woman said to have been enticed away is necessary. The mere statement of the complainant that he was married to her is not sufficient. *Queen-Empress v. Dal Singh* (1) referred to.

In this case the accused persons were convicted under section 498 of the Indian Penal Code, of having enticed away a married woman. The only evidence on the record with regard to the marriage was the statement of the complainant. The trial court on this evidence held that the marriage was proved and convicted the accused of the offence. The learned Sessions Judge upheld the conviction on appeal. The accused applied in revision.

Mr. *Nihal Chand*, for the applicants :—

The conviction under section 498 of the Indian Penal Code cannot be sustained, inasmuch as it has not strictly been proved that the marriage with all the necessary rites was duly celebrated between the complainant and the woman in question. The mere statement of the complainant that the woman was his wife was not sufficient. The court should require some better evidence before recording a conviction under that section. I rely on the cases of *Queen-Empress v. Dal Singh*, (1) and *Queen-Empress v. Santok Singh* (2). Even the statements of a number of witnesses who might vaguely speak of the woman as the wife of the complainant would not be sufficient to prove a marriage in proceedings under section 498 of the Indian Penal Code. I rely on the proviso to section 50 of the Evidence Act. The performance of the marriage ceremony with all necessary rites must be proved.

The Assistant Government Advocate (Mr. *R. Malcomson*), for the Crown :—

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\* Criminal Revision No. 12 of 1920, from an order of J. H. Cuming, Sessions Judge of Saharanpur, dated the 5th of December, 1919.

(1) (1897) I. L. R., 20 All., 166. (2) Weekly Notes, 1898, p.186.

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Both the courts below have held it as a matter of fact that the woman was the wife of the complainant, and that finding of fact is binding on this Court in revision. In the case reported in *Queen Empress v. Dal Singh* (1) the case was sent back to the court below for further inquiry.

KNOX, J. :—Buddhu and Juggan, who have been convicted of an offence under section 498 of the Indian Penal Code, have put in an application praying for revision of their sentences. In their application they have called particular attention to the fact that the conviction under section 498 of the Indian Penal Code cannot be sustained inasmuch as it has not been strictly proved that marriage and all necessary rites were duly celebrated between the complainant and the woman in question. They have also pointed out that the mere statement of the husband that he is married to the woman is not sufficient to sustain a conviction. This Court, in *Queen-Empress v. Dal Singh* (1), has laid down that a court trying a case under section 498 of the Indian Penal Code should require some better evidence of the marriage than the mere statement of the complainant and the woman. There appears to be no evidence of a better kind in this case. I set aside the conviction and sentence and direct that Buddhu and Juggan, if in custody, be released, if on bail, their bail bonds be discharged.

*Conviction set aside.*

## APPELLATE CIVIL.

*Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.*

GHULAM MOHI-UD-DIN KHAN AND ANOTHER (DEFENDANTS) v. HARDEO SAHAI (PLAINTIFF) AND SHEOBARAN SINGH (DEFENDANT)\*.

*Pre-emption—Wajib-ul-arz—Involuntary sale—Owner declared insolvent on application by a creditor—Sale of property by official assignee—Omission of pre-emptor to bid at auction sale.*

On an application made by a creditor *in invitum* one Rai Sri Kishan Das Bahadur was adjudged an insolvent and his property was placed in charge of an official assignee. Some of this, consisting of zamindari, was sold by the official assignee at public auction. *Held* that, the sale not being voluntary,

\* First Appeal No. 26 of 1917, from a decree of Shimbhu Nath Dube, First Additional Subordinate Judge of Aligarh, dated the 26th of September, 1916.

(1) (1897) I. L. R., 20 All., 166.

1920  
March, 13.