1889 JULY 25. REVISIONAL CRIMINAL. 14 B. 165.

its substance and in its manner of publication was illegal, as being beyond the powers conferred by s. 144 of the Code of Criminal Procedure. It is not directed to a particular person, nor to the public when frequenting a particular place, nor was it served on any person individually. The conviction and sentence must be reversed, and the fine returned. (See Criminal Ruling dated 3rd March 1870).

Conviction and sentence reversed.

---

14 B. 167.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

WAMAN JAGANNATH JOSHI AND OTHERS (*Original Plaintiffs*), *Appellants v.* BALAJI KUSAJI PATIL (*Original Defendant*), *Respondent.**

[30th July, 1889.]

Joshi—*Right to officiate at a marriage*—Yajman, *liability of*—*Cause of action*—*Invasion of privileges.*

A village *joshi*, who is entitled by hereditary right to perform religious ceremonies at his *yajman's* house, can recover his fees if the ceremonies are performed, no matter by whom they may be performed.

[**Diss.**, 12 C.L.J. 74=14 C.W.N. 1057=6 Ind. Cas. 864; **R.**, 11 Ind. Cas. 231=96 P. R. 1911=216 P.L.R. 1911=143 P.W.R. 1911; 3 N.L.R. 47.]

THIS was a second appeal from a decision of Khan Bahadur M. N. Nanavati, First Class Subordinate Judge (A. P.) at Poona.

The plaintiffs, who were the hereditary *joshis* of the village of Otur, in the Poona District, complained that at the marriages of the daughters of the defendant their services were not employed, although as such *joshis*, they had a right to officiate on such occasions, and were ready and willing to conduct the ceremonies. They claimed to recover damages, no fees having been paid to them, from the defendant.

The defendant Balaji (a *sudra*) denied that the plaintiffs had a right to the office of *joshi*, and alleged that he employed his own [168] caste fellows to perform the religious ceremonies, as did his ancestors.

The Subordinate Judge, who tried the suit, awarded the plaintiffs' claim. The defendant appealed to the Subordinate Judge with appellate powers, who reversed the decree of the lower Court.

The plaintiffs preferred a second appeal to the High Court.

Mahadev Chimnaji Apte, for the appellants.—The appellants are the hereditary *joshis*, and as such are entitled to officiate at the marriage ceremonies at the defendant's house. There was an invasion of their privilege by the person who performed the ceremonies. They were entitled to whatever was paid to the Kunbi priest employed by the defendant—*Krishnumbhut* v. *Anunt Gangadhurbhut* (1); *Vithal Krishnaji Joshi* v. *Anant Ramchandra* (2). The priest, who had a right to perform the ceremonies, is entitled to his fees.

* Second Appeal No. 55 of 1888.

(1) 4 Morris 111. (2) 11 B. H. C. R. 6.

Ghanasham Nilkanth Nadkarni, for the respondent.—The marriages were performed without any prescribed ceremonies, and no priest, as such, was employed. There was no *ganeshpujan*, the initial ceremony of the marriage. There was nothing beyond the placing of garlands on the necks of the bride and the bridegroom. There was no distribution of fees (*dakshana*): therefore the village *joshis* cannot claim any fees. There is a separate ritual of the *Sudras* of the defendant's caste. That ritual was not performed.

JUDGMENT.

SARGENT, C. J.—The plaintiffs in this suit claim the right to officiate as *joshis* in the village of Otur, in the Poona Collectorate, and seek to recover damages from the first defendant as residing in the said village, on the ground that on the occasion of the marriages of his two daughters they were ready to conduct the usual ceremonies, but were not allowed to do so, nor were the fees paid them The first defendant replied that he knew nothing of the plaintiffs' claim to the office of *joshis* of Otur; that he employed his own caste-fellows to conduct religious ceremonies, and that his ancestors had done the same. The Subordinate Judge held that the plaintiffs were the hereditary *joshis* of the village and [169] as such entitled to be employed in the performance of such ceremonies and functions of his office as are usual amongst Sudras. The Subordinate Judge with A. P. was of opinion that the plaintiffs were only entitled to recover in case a marriage was performed in any of the modes known to the Hindu law, or in the mode described by Mr. Mandlik with respect to castes other than the Brahmin caste, and that the marriages in dispute being not performed in any such way, they were not such marriages as they were entitled to recover fees for in virtue of any right acquired by grant or prescription.

We agree with the lower appellate Court that, under such circumstances as he thinks existed here, there would have been no intrusion on the plaintiffs' privileges which would give them a right to recover their fees from the *yajman* as laid down in the decisions of this Presidency—*Vithal Krishna Joshi* v. *Anant Ramchandra* (1), *Dinanath Abaji* v. *Sadashiv Hari Madhave* (2), and *Raja valad Shivapa* v. *Krishnabhat* (3). But no issue was expressly raised as to the manner in which the marriages in question were performed; and although in the course of the hearing some evidence was given on the subject, neither party, we think, clearly understood what was the real issue between them on that part of the case.

It has been indeed argued before us for the defendant that there could be no intrusion of the plaintiffs' office if, as appears to have been the case, no priest of the Kunbi caste was employed on the occasion. But, as said in *Krishnumbhut* v. *Anant Gungadhurbhut* (4), "if the ceremonies, whether optional or obligatory, have been performed, the person entitled by hereditary right to perform is entitled to his fee,"—it cannot matter whether they are performed by another Brahmin or by a person who calls himself a Kunbi priest, or any one else in the caste—there is equally, we think, an invasion of his privileges against which the village priest is entitled to be protected—*Vithal Krishna Joshi* v. *Anant Ramchandra* (1). We must, therefore, send down the following issue for a finding by the District Court :—

(1) 11 B.H.C.R. 6 (8). (2) 3 B. 9. (3) 3 B. 232.
(4) 4 Morris. 111.

1889
JULY 30.

APPELLATE CIVIL.

14 B. 167.

[170] What ceremonies were performed on the occasions of the marriages, or either of them, and by whom?

Parties to be allowed to give fresh evidence. The finding to be returned to this Court within two months.

---

14 B. 170.

REVISIONAL CRIMINAL.

Before Mr. Justice Scott and Mr. Justice Jardine.

QUEEN-EMPRESS *v.* JAMUDIN VALAD MAHOMED.* [30th July, 1889.]

Shipping—Merchant Shipping Act (17 *and* 18 *Vic., c.* 104), *ss.* 24 *and* 26—*Its applicability to India as regards the rules of measurement—Act* XIX *of* 1838, *ss.* 4 *and* 13—*Act* X *of* 1841—*Temporary additions to open vessels—Strake—Meaning of the term—Rules of measurement made by the Marine Department in* 1873.

The Merchant Shipping Act of 1854 (17 and 18 Vict., c. 104), applies, as regards the rules of measurement, to the whole of Her Majesty's dominions, and is law in India so far as it is not superseded by local legislation; Acts XIX of 1838 and X of 1841 do not conflict with it.

The accused was the owner of a vessel registered under Act XIX of 1838 as being of $163\frac{60}{100}$ tons. In the course of a voyage the vessel's bulwarks were raised by an additional structure of a temporary character for the purpose of protecting the cargo from the sea. During this voyage the vessel was measured by a coast-guard inspector, who, following the rules of measurement issued by the Marine Department in 1873, which provide that the measurements must be taken from the top of the highest strake, temporary or otherwise, found an increase of 27 tons in the burthen of the vessel by reason of the temporary structure.

This change in the burthen of the vessel having been made, the accused was prosecuted, under s. 13 (1) of Act XIX of 1838, for omitting to register the [171] vessel anew, and obtain a fresh certificate of registry under s. 4 (2) of the Act. The accused was convicted, and sentenced to pay a fine of Rs. 33-12.

---

* Criminal Revision Petition No. 159 of 1889.

(1) Section 13 of Act XIX of 1838 provides as follows:—

13. And it is hereby enacted that in case any such vessel employed as aforesaid, fishing vessel, or harbour craft, shall not be so marked or branded in all respects as hereinbefore directed: or in case the name and number of any such vessel employed as aforesaid, fishing vessel, or harbour craft, shall not be so painted, or shall not continue so painted on such vessel, employed as aforesaid, fishing vessel or harbour craft, in all respects as hereinbefore directed; or in case any such vessel employed as aforesaid, fishing vessel, or harbour craft, shall not be furnished with such certificate as herein before specified; or in case the owner or owners or commander of any such vessel, employed as aforesaid, fishing vessel, or harbour craft, shall not produce such certificate on demand thereof as hereinbefore directed—the owner or owners of every such vessel employed as aforesaid shall be [171] subjected to a fine ten times the amount of the fees payable in respect of the certificate of registry of such vessel, the same being a vessel for the certificate of the registration of which any fee is payable, and the owner or owners of any such fishing vessel or harbour craft shall be subject to a fine of ten rupees, which fine may be recovered on conviction before any Magistrate, Justice of the Peace, or person exercising the powers of a Magistrate having jurisdiction within the said territories by sale of such vessel, fishing vessel, or harbour craft, her furniture, ammunition, tackle and apparel, and such fines shall be payable as often as the owner or owners or commander of any such vessel employed as aforesaid, fishing vessel, or harbour craft, shall make such default as aforesaid: Provided every such subsequent default be made after the expiration of one month from the date of the last conviction.

(2) Section 4 of Act XIX of 1838 provides as follows:—

4. And it is hereby enacted that the name and number of every such vessel employed as aforesaid, fishing vessel, and harbour craft, and her burthen, and also the name