

provisions of section 122 (3) repeal the provisions of section 27 of the Evidence Ordinance, or (b) whether the maxim *generalia specialibus non derogant* applies to save section 27 of the Evidence Ordinance in the event of there being repugnancy or a conflict between the provisions of section 122 (3) of the Criminal Procedure Code and section 27 of the Evidence Ordinance. Our brother Pulle, we understand, takes the view that the maxim applies in this case and preserves section 27 of the Evidence Ordinance. For the reasons given the majority of us are of the view that it is unnecessary to consider whether that maxim applies to this case.

We are, therefore, unanimously of the opinion that the conviction must be affirmed and the appeal dismissed.

Appeal dismissed.

1949

Present: Basnayake J. and Gratiaen J.

SINNALEBBE *et al.*, Appellants, and MUSTAPHA *et al.*,
Respondents

S. C. 52 Inty.—D. C., Batticaloa, 570

Muslim Intestate Succession and Wakfs Ordinance (Cap. 50)—Sections 15 and 16—Application by persons interested in mosque—Omission to make all trustees respondents—Fatal irregularity—Power of Court to add remaining trustees as parties—Civil Procedure Code, section 18.

A court has no jurisdiction to entertain an application made under sections 15 and 16 of the Muslim Intestate Succession and Wakfs Ordinance unless all the trustees of the charitable trust or place of worship in question are made respondents. Where the petitioners omit to name some of the trustees as respondents the court has no power to invoke the aid of section 18 of the Civil Procedure Code in order that the remaining trustees may be added as parties.

APPPEAL from an order of the District Court, Batticaloa.

H. V. Perera, K.C., with *H. Wanigatunga*, for appellants.

E. B. Wikramanayake, K.C., with *J. N. David* and *Naina Marikar*, for respondents.

Cur. adv. vult.

December 14, 1949. BASNAYAKE J.—

On April 19, 1948, the nine persons who are respondents to this appeal (hereinafter referred to as the petitioners) made a preliminary application under section 16 of the Muslim Intestate Succession and Wakfs Ordinance (hereinafter referred to as the Ordinance) for leave to make an application under section 15 of that Ordinance. They named the two appellants as respondents to that application. The petitioners alleged that they were regular worshippers and members of the congregation of the Mosque called Meera Pallivasal at Kattankudy and that the first appellant was the Chief Maracair and the second appellant a Maracair of that Mosque, and asked that leave be granted to make a regular application to the District Court under section 15 of the Muslim Intestate Succession and Wakfs Ordinance.

On June 22, 1948, leave was granted and on July 30, 1948, a petition under section 15 was filed. The appellants thereupon lodged "a statement of objections". The matter thereafter proceeded to trial on the following issues:

- (1) Were there more than two trustees of the Meera Pallivasal at the date of filing of this application?
- (2) If so, have all the trustees been made parties?
- (3) If not, can this application be entertained?

The learned District Judge held that there were thirteen trustees of the place of worship known as Meera Pallivasal and that only two of them had been named as respondents to the petition. He also held that the application was one that he could entertain and made order that the remaining trustees be added as parties. The present appeal is from that order.

The question that arises for decision on this appeal is whether the learned trial judge has jurisdiction to entertain under sections 15 and 16 of the Ordinance an application to which all the trustees of the charitable trust or place of worship are not made respondents.

Section 15 gives the right to any five persons interested in a Muslim place of worship, after obtaining leave under section 16, to apply by petition to the District Court within the local limits of whose civil jurisdiction the subject of such place of worship is situate in order to obtain an order for any or all of the purposes enumerated therein. The enactment requires a person invoking its aid to "apply by petition to which the trustee or trustees (if any) shall be made respondents". In the instant case the petitioners have omitted to make eleven of the trustees respondents to either the application for leave or the petition.

Sections 15 and 16 are provisions which regulate procedure in a court of law and must in this context be construed as imperative in accordance with the general rule of interpretation applicable to enactments regulating procedure in courts. Unless the requirements of the statute are complied with the court has no jurisdiction to proceed with the matter¹. The language of section 15 does not to my mind admit of the addition of parties to the petition after it is filed. Apart from that, the Ordinance is a new statute, and where a new statute creates new rights and obligations and provides a special procedure for enforcing those rights and obligations the provisions of the Civil Procedure Code will not, in the absence of any provision in that behalf, regulate the procedure under such an enactment². Care has been taken in similar enactments³ where the ordinary civil courts are designated as the forum for the settlement of disputes thereunder to make express provision prescribing the procedure to be observed. The Ordinance makes no such provision and the court has no power to invoke the aid of section 18 of the Civil Procedure Code as the learned District Judge appears to have done.

¹ *Holland v. Peacock*, (1912) 1 K. B. D. 154 at 156.

² *Pasmore v. Oswaldtwistle Urban Council*, (1898) A. C. 387 at 394.
The Queen v. County Court Judge of Essex, (1887) 18 Q. B. D. 704 at 708.
Wilkinson v. Barking Corporation, (1948) 1 All E. R. 564 at 567.

³ Section 3, *Insolvency Ordinance*.
 Section 32, *Land Acquisition Ordinance*.
 Section 116, *Trusts Ordinance*.
 Section 17, *Land Settlement Ordinance*.

The order of the learned District Judge cannot be sustained and is accordingly set aside. The appellant's appeal is allowed with costs and the petitioner's petition will stand dismissed with costs.

In order to remove any doubt, I wish to state that the petitioners or any other persons qualified to make an application under sections 15 and 16 of the Ordinance in respect of the place of worship known as Meera Pallivasal are not precluded by this judgment from making a properly constituted application thereunder.

GRATIEN J.—I agree.

Appeal allowed.

1950 Present: Nagalingam J.

ANNAMALAI, Appellant, and GURUSWAMY (S. I. Police),
Respondent

S. C. 1,148—M. C. Colombo, 6,265

Pawnbrokers Ordinance, No. 13 of 1942—Sections 37, 40, 41—Offence committed by servant of pawnbroker—Proper charge—Burden of proof—Proviso to Section 40—Effect of a proviso.

The accused-appellant was the servant of a pawnbroker. The charge against him was that he being a servant of a pawnbroker had acted in contravention of two provisions of the Pawnbrokers Ordinance, No. 13 of 1942, and thereby had committed offences punishable under Section 41. The charge contained no reference to the pawnbroker having been absent from the shop or premises at the time the appellant was alleged to have committed the offences. Nor was any evidence given with regard to the whereabouts of the pawnbroker.

Held, that, under section 40 of the Pawnbrokers Ordinance, unless the prosecution satisfied the Court that the pawnbroker himself was absent from the premises the servant could not be held to have committed an offence. The charges were therefore defective and the case itself was not established against the accused.

APPEAL from a judgment of the Magistrate's Court, Colombo.

K. C. Nadarajah, with *M. Markhani* and *D. R. P. Goonetilleka*, for accused appellant.

A. C. Alles, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

March 31, 1950. NAGALINGAM J.—

This appeal raises an interesting question under the Pawnbrokers Ordinance, No. 13 of 1942. Section 40 of that Ordinance renders a pawnbroker liable to vicarious punishment for anything done or omitted to be done by his servant in relation to the business. On the heels of this enactment follows a proviso rendering the servant liable in the absence of the pawnbroker from the shop or place of business to punishment for any act done or omitted to be done in contravention of any provision of the Ordinance.