

In the Matter of the *Caveat* entered by CHRISTIAN MUTTIAH.

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D. C., Colombo, 211.

Marriage registration—Ordinance No. 2 of 1895, ss. 30, 31—Caveat by brother of bride—Fivolous and vexatious objection—Opportunity for showing cause.

A District Judge, who inquires summarily under section 31 of Ordinance No. 2 of 1895 into the matter of a *caveat* entered against a marriage proposed to be registered, is not bound to give the caveator in every case an opportunity to show cause why he should not be fined for entering the *caveat* on frivolous and vexatious grounds.

Per BROWNE, A.J.—A caveator, who is not a legal guardian of either of the parties who intend to marry, always takes upon himself a certain risk of creating a social scandal by his interference, and it is extremely desirable that all matters which such a person brings forward should be disposed of as quickly as possible. It is for this reason, I think, that Ordinance No. 2 of 1895, section 31, clause 2, requires that the procedure of the District Court should be by summary inquiry.

This Ordinance differs from the Criminal Procedure Code, which, in section 197 (3), requires that an opportunity for showing cause should be given. But there is no such provision in Ordinance No. 2 of 1895, and there is no necessity of giving time to show cause.

THIS was a proceeding based upon "The Marriage Registration Ordinance, 1895," sections 30 and 31. It appeared that one Mr. Chinniah and Miss Mary Muttiah intending to marry each other, proper notice thereof was given to the registrar of the district, but a brother of the bride named Christian Muttiah entered a *caveat* objecting to the marriage, whereupon the registrar reported the matter to the District Judge of Colombo. The caveator's objections were that the bride had been forced to give her consent to the marriage; that the mother also had consented under the influence of threats; that the bridegroom was a person of much lower status

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in society than the set to which the bride belonged; and that the bride would be discarded by her relatives if the marriage was solemnized in due course.

The Additional District Judge (Mr. F. R. Dias), after hearing evidence, was of opinion that the mother and bride had consented freely to the marriage, and that the *caveat* was entered on frivolous and vexatious grounds. Exercising his power under section 31 (2), he imposed a fine of Rs. 500 on Christian Muttiah.

The caveator appealed.

Walter Pereira (with him Elliott), for appellant.—Though section 31 does not provide that a party should be called upon to show cause why he should not be fined for entering a frivolous or vexatious *caveat*, yet that opportunity must be given to the alleged offender, even as it is given in the case of a similar offence dealt with in the Criminal Procedure Code, wherein there is no provision as to showing cause (*Silva v. Mamadu*, 3 N. L. R. 3). A witness giving false evidence has also the opportunity of showing cause, though there is no special procedure laid down. Had the appellant known that a fine was impending, he would not have rested his case upon his mother's evidence, but would have called other witnesses to prove coercion. The materials in the record were insufficient to justify a fine. The case of *Tidoris v. Carolis* (4 N. L. R. 325) proves the necessity for calling upon the offender to show cause. There was evidence, which was not adduced in the Court below, to show the *bona fides* of the appellant. [BROWN, A. J.—There is no affidavit before us that the appellant had any more evidence, or that he has been prejudiced by not being called upon. MONCREIFF, J.—The circumstances of the case much too clearly show that this was a frivolous and vexatious *caveat*.]

Van Langenberg, for respondent.

MONCREIFF, J.—

Mr. Pereira has taken a technical objection. He says that by analogy with the practice in other cases, particularly two sections which he quoted from the Criminal Procedure Code, the judge should not have inflicted the fine without giving the caveator a chance of showing cause. My opinion is that the judge was not bound to do that in this case. In my opinion it would have been a waste of time. The caveator knew what entering a *caveat* meant. He knew that he had undertaken to produce evidence in support of his objections, and that if he did not do so he would be open to a charge of having made a frivolous and vexatious objection, and he in fact knew so much about the law that I expect he knew what the result of that was. I think that he has not been prejudiced

by what the judge did, because the judge called upon him to give such evidence as he had in support of his objections. In my opinion his attempt to bring evidence was deserving of the fine.

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The status of the bridegroom is good, and the caveator is certainly not the person to complain of it. The bride was proved to have given her consent willingly. I dismiss from consideration the allegation that she would be discarded by her relatives if this marriage took place. We have then to deal with the question whether the mother gave her consent under the influence of threats. The only evidence called was that of the caveator's brother, who gave an account of his interview with his mother, in which he says that she expressed her dislike to the marriage; that she had not known until he informed her what the real state of affairs was; that she had been more or less coerced by Mr. Tampoe in the matter; and that she would like to write to her son, the caveator, begging him to put a stop to the marriage. Mr. Edward Muttiah says that he thereupon wrote out the letter which is now in the Court and his mother signed it. It is a very abrupt and short letter, in which the mother begs the son to stop the issuing of the certificate.

I have grave doubt as to whether any such conversation took place; in fact I am inclined to believe that no such conversation ever took place. With regard to the letter, I do not believe that Mrs. Muttiah sanctioned it. The appearance of the letter is suspicious. The address and the date appear to be in one handwriting, the body of the letter in a second handwriting, and the signature in a third. What it means I do not know, nor who the person or persons who wrote it were, but I do not regard it as genuine.

The mother was called, and she declared that there was no truth in the story told by her son Edward; she emphatically denied that she had signed the letter produced, or that she had any objection to the marriage. She said she consulted her parents regarding her daughter's marriage, and they were all agreeable; and she further says that she considered Dr. Chinniah a most eligible husband for her daughter.

On the evidence the District Judge found that the objections of the caveator were frivolous and vexatious and fined him Rs. 500. I think that the objections were frivolous and vexatious. The caveator professed to act with regard to the mother's consent upon her letter, which he should never have accepted as authority for what he did without making inquiries and seeing his mother on the subject. The evidence he produced—that of his brother—was

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of a most unsatisfactory description, and I think that the judge was justified under the circumstances in inflicting a fine.

I think, however, that the fine was rather severe. Perhaps it may be reduced to Rs. 250.

BROWNE, A.J.—

I agree in the view my brother has taken. A caveator who is not a legal guardian of either of the parties who intend to marry always takes upon himself a certain risk of creating a social scandal by his interference, and it is extremely desirable that all matters which he brings forward as a volunteer should be disposed of as quickly as possible. It is for this reason, I think, that Ordinance No. 2 of 1895, section 31, clause 2, required that the procedure of the District Court, when reference happens to be made to it, should be by summary inquiry, and therefore it added to that provision the power which the District Judge has here exercised, whereby also it gave warning to future caveators of the perilous position in which they would stand: they would get but short shrift when they came before the Court if they did not substantiate the scandal they set on foot. In so enacting, this Ordinance differs from the Criminal Procedure Code, which, in section 197 (3), requires that an opportunity for showing cause should be given, a provision which by analogy I thought it right to follow in orders made under sections 437 and 440. I do not therefore think that where, there being no such provision in Ordinance No. 2 of 1895, the procedure is summary, the same necessity of giving time to show cause arises. It may be that a complainant in a criminal matter may not know that he makes his complaint subject to the provisions of both these sections of the Criminal Procedure Code, and that he is exposing himself to the peril of a fine for compensation or Crown costs. But the caveator in the Ordinance is abundantly warned, and when he enters the Court he must know that the possibility of his being fined is at stake for himself. I therefore do not accede to Mr. Pereira's technical objection, and I quite agree with the condemnatory view of the caveator's conduct which my brother has expressed. At the same time I agree with him that the fine may be reduced as he proposes.

