

1877.

PAULIEM
VALOO
CHETTY
v.
PAULIEM
SOORJAH
CHETTY.

carrying on her profession, was entitled to share in her gains (1) ; and the second to the effect that the gains of a vakeel who has received no special education for his profession are to be shared in by the joint family of which he was a member (2), decisions which have been to a certain extent also acted upon in Bombay (3). It may hereafter possibly become necessary for this Board to consider whether or not the more limited and guarded expression of the law upon this subject of the Courts of Bengal is not more correct than what appears to be the doctrine of the Courts of Madras.

For these reasons their Lordships are of opinion that the judgment of the Court below was right, and they will humbly advise Her Majesty that that judgment be affirmed, and this appeal be dismissed with costs.

Agents for the appellant : Messrs. *Keen and Rogers*.

Agents for the respondents : Messrs. *Talbot and Tasker*.

Appeal dismissed.

FULL BENCH.

Before Sir W. Morgan, C.J., Mr. Justice Holloway, Mr. Justice Innes, Mr. Justice Kernan and Mr. Justice Kindersley.

PROCEEDINGS, 24TH NOVEMBER 1876.

1876.
November 24.

RAMAKRISHNA CHETTI (COMPLAINANT), v. PALANIYANDI
KUDAMBAR AND ANOTHER (DEFENDANTS).

Penal Code, sec. 430—Causing a diminution of water-supply—Definition of offence of causing such.

Held by the majority of a Full Bench, INNES, J., dissenting, that it is not part of the definition of the offence of causing a diminution of water-supply for agricultural purposes that the act of the accused should be a mere wanton act of waste. It is sufficient that the act is done without any show of right.

UPON reading a letter from the Acting District Magistrate of Madura, referring the proceedings of the Second-class Magistrate of Dindigul in case No. 38 of 1876 on his file, and upon reading the records in the said case, the High Court made the following

(1) *Chalakonda Alasani v. Chalakonda Ratnachalam*, 2 Mad. H. C. R. 56.

(2) *Durvasula Gangadharudu v. Durvasula Narasamma*, 7 Mad. H. C. R. 47.

(3) See *Bai Manchha v. Narotandas Kashidas*, 6 Bom. H. C. R. (A. C.) 1.

RULING :—In this case the Second-class Magistrate has convicted the accused (1) of the offence of causing a diminution of water-supply for agricultural purposes by digging a channel across the complainant's anicut in a certain river.

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In submitting the proceedings for the orders of the High Court the Magistrate remarks that "the case is representative of a large class of cases constantly disposed of by magistrates as mischief by *diminution of water-supply* for agricultural purposes when the real charge is not *mischief by diminution*, but simply *unauthorized diminution of water*."

"I understand the section to be aimed at a wanton waste made with intent to injure, and not at disputes between individuals as to whether one should have more and the other less of a given quantity. These latter, though constantly the subject of magisterial enquiries, lie, I consider, altogether in Civil Courts."

The High Court do not agree in these general observations. It is not part of the definition of the offence that the act of the accused should be in common language a mere wanton act of waste.

Under section 430 of the Penal Code the physical requisites of the act are the doing of an act which causes, or to the doer's knowledge is likely to cause, a diminution of supply. He also fulfils the mental requisites when he does this with intent to cause wrongful loss, and the intention is properly held to be such when he takes it without any sort of right, and it matters not that he claims to set up such a right if the facts are so clear that the claim is manifestly only an additional wrong. It is for judicial tact to distinguish where the case is sufficiently doubtful to prevent the inference of a wrong intent.

On the findings, the High Court see no reason to interfere with the decision of the Second-class Magistrate.

(1) Under sec. 430 of the Indian Penal Code.