

Subordinate Judge will not affect the appellant's right under the license. As the decree is limited to the relief sought, it is unnecessary to interfere with it. The decree is affirmed and the appeal is dismissed with costs.

**NOTES.**

**[KARNAVAN—REPRESENTING THE TARWAD—**

In a properly brought suit the Karnavan represents the members of the tarwad and they are bound by the decree :—(1896) 20 Mad. 129 ; (1901) 24 Mad. 658 ; (1903) 27 Mad. 375=16 M.L.J., 307=1 M.L.J. 183 ; (1905) 29 Mad., 390 F. B., where the principle was referred to for the case of Reversioners under Hindu Law.

[3 Mad. 178]

APPELLATE CRIMINAL.

*The 27th April, 1881.*

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE HUTCHINS.

In the matter of the Petition of Khaja Mahomed Hamin Khan and another.\*

*Criminal trespass by co-owner—Indian Penal Code, Act XLV of 1860, sec. 297.*

A, B, C and D were co-owners of a plot of land in which they were accustomed to bury their dead ; A and B opened a saw-pit close to the graves of D's relatives, but did not disturb any of the graves.

[179] *Held*, that they were wrongly convicted under Section 297 of the Indian Penal Code.

THIS was a petition to the High Court under Sections 294 and 297 of the *Criminal Procedure Code*.

Mr. *Johnstone* for the Petitioners.

The facts and argument in this case appear in the following Judgment of the Court (TURNER, C.J., and HUTCHINS, J.)

**Judgment** :—We do not think that the offence has been established on the facts found.

We understand the Magistrate to find that the complainant, the accused, and one of the witnesses were co-owners of a plot of land of which a portion had been recently sold by them as a site for a market ; that in the portion of the plot remaining unsold they have been accustomed to bury their dead ; and that

\* Petition No. 132 of 1881 against the conviction and sentence of E. C. Johnson, Acting Joint Magistrate, Godavari District, in Case 57 of 1880, dated 8th January 1881.

†[Sec. 297 :—Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place or sepulchre or any place set apart for the performance of funeral rites, or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both.]

the accused, in defiance of remonstrances on the part of the complainant, lately open a saw-pit on this part of the plot and within a few yards of the spot at which some relatives of the complainant have been buried.

On these facts the Magistrate has convicted the accused of having committed trespass on a place of sepulchre or a place set apart as a depository for the remains of the dead, knowing it likely the religious feelings of the complainant would be wounded, and has fined each of the accused 50 rupees.

The Magistrate did not consider it proved the accused had disturbed any of the graves.

The points which appear doubtful are the following:—Whether the part of the plot on which the saw-pit was opened had been set apart as a place of burial, and whether the accused as co-owners can be convicted of trespass.

The accused as co-owners were in possession, and, unless they have ousted the complainant from possession, which is not asserted, or have committed some destruction or waste of the common property as by pulling down a common wall as in *Cubitt v. Porter* (8 B. & C., 257) or by carrying away a portion of the common property as by digging and carrying away turf, they cannot be held to have committed trespass.

[180] Although the plot of land was originally held in common, it may be perhaps inferred that each of the co-owners has assented to the appropriation by a co-owner of so much as he has actually appropriated to the grave of a relative, and, had a grave been disturbed, a trespass might, in this view, be held established; but it is not shown that the accused actually disturbed a grave, nor that any specific portion of the plot was set apart as a place of sepulchre.

We direct that the conviction be quashed.

**NOTES.**

**[I BURIAL PLACE—CRIMINAL TRESPASS—**

Persons entering upon a burial place and ploughing up the graves there were held guilty of Criminal Trespass even though they entered on the land with the consent of the owner :— (1896) 18 All. 395.

**II. CRIMINAL TRESPASS—MEANING OF —**

See (1896) 18 All. 395.]

[3 Mad. 180]

APPELLATE CIVIL.

*The 29th April, 1881.*

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE INNES.

Nagabhushanam.....(Plaintiff), Appellant

*versus*

Seshammagaru.....(Defendant), Respondent.\*

*Hindu Law—Adoption with knowledge of pregnancy of wife.*

An adoption by a Hindu with knowledge of his wife's pregnancy is not invalid. *Narayana Reddi v. Vardachala Reddi* (S.A. No. 223 of 1859. M.S.D., 1859, p. 97.) dissented from.

\* Appeal No. 86 of 1880 against the decree of J. Kelsall, Acting District Judge of Godavari, dated 16th December 1879.