

or street caused by *cattle* or by *conveyances*, in certain circumstances therein detailed. The act of the accused in spreading fishing nets by the side of the road was clearly, therefore, not punishable under this clause of Section 48 of the Act.

[236] The present conviction cannot also, in our opinion, be sustained as a conviction under Section 283 of the Penal Code, because, although it is stated in the evidence, in general terms, that obstruction was caused, it does not appear that obstruction was caused to any particular individual or individuals. The conviction is accordingly quashed. The fine collected from the accused must be refunded.

[4 Mad. 236.]

APPELLATE CIVIL.

The 7th November, 1881.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE KINDERSLEY.

Gopal Kristna Sastri and another.....Plaintiffs
and
 Ramayyengar and others.....Defendants.*

Small Cause Court Jurisdiction—Hindu Law—Obligation of son to pay deceased father's debt—Cause of action.

A suit against the undivided sons of a deceased Hindu father to enforce payment of a debt incurred by the latter is within the jurisdiction of a Small Cause Court, and that jurisdiction is not ousted by a plea that the debt was contracted for immoral purposes.

THIS was a case stated under Section 617 of the Code of Civil Procedure in a Small Cause Suit by the Subordinate Judge of Madura on the following terms :

“The plaintiffs sue to recover Rs. 500, being the balance of principal and interest due under a simple bond executed by the late Srinivasa Ayyangar, the father of the defendants, on the 30th October 1876.

“The defendants plead that this Court has no jurisdiction to try this suit on the Small Cause side. The second defendant adds that the debt was contracted for illegal and immoral purposes.

“The case came on for hearing before me on the 13th instant. Final hearing was adjourned to 30th proximo, pending the decision of the Honourable the Judges of the High Court of Madras on the following case :

“The plaintiffs seek to obtain a decree against the defendants as the representatives of their deceased father. All the defen-[237]dants were adults at the date of the suit bond. It is not disputed that the whole of the property in their possession is the ancestral property of the late Srinivasa Ayyangar. The defendants contend that they were, from the date of their birth, joint owners of property with their father during his life; that, by right of survivorship, they have become the owners of the deceased's share in the joint family property; that it is a misnomer to call them representatives of their father who left no

* Referred Case No. 13 of 1879 stated by K. Kristnasami Rau, Acting Subordinate Judge of Madura, in Small Cause 368 of 1879.

self-acquired property; that the only ground on which the plaintiffs could seek to obtain a decree against them (defendants) is that the debt was contracted for the use and benefit of their (defendants') family; but that the High Court in Referred Case No. 4 of 1879 have ruled that Courts of Small Causes are incompetent to try the question whether a debt was contracted for the purposes sanctioned by Hindu Law. The plaintiffs replied that the defendants being the sons of the obligor have a special and legal obligation to discharge the debt contracted by their father, unless they could prove that the debt was contracted for immoral and illegal purposes [Judgment of the Privy Council in *Suraj Bunsji Koer v. Sheo Proshad Singh* (L.R. 6 I. A., 88)]; that this obligation is stronger than the obligation of a representative; that the trial of the question whether the debt was contracted for illegal and immoral purposes is not more difficult than many other questions which are daily raised and decided in suits based upon contracts; that the judgment of the High Court quoted by the defendants is distinguishable from the present case by the facts that in the case in which it was pronounced, the point for consideration was whether the Courts of Small Causes can decide upon the liability of coparceners *generally* to the contract entered into by one of them; but that the Court had no occasion to consider the peculiar position of the sons and their special obligation to discharge the debts of their father; and that there is nothing in Section 6 of Act XI of 1865 to warrant the presumption that a suit against the representatives of a deceased Hindu obligor is not within its scope. It was further argued that if it be held that sons could not be sued in Small Cause Courts in their representative character where their father leaves no self-acquired property, not [238] only the utility of these Courts will be marred, but that the object of the legislature in creating these tribunals, *viz.*, summary disposal of claims founded upon contracts, &c., will be frustrated.

"I am of opinion that if the defendants are the representatives of their late father, this action brought for money due on the bond executed by the latter clearly falls within Section 6 of Act XI of 1865, and this Court has jurisdiction to try it. But after the decisions of the Madras High Court in *Koopoo Konan v. Chinmayen* (Madras Law Reporter, p. 63), and in *Villa Butten v. Yamenamma*, (8 M. H. C. R., 6) and also of the Privy Council in *Suraj Bunsji Koer's case*, it is difficult to maintain that in a case like the present, where the father left no self-acquired funds, the sons are representatives of their father in the sense in which that term is generally understood. But the practical effect of the special obligation of the sons to discharge their father's just debts (11 Bombay High Court Reports, p. 85, which is quoted with approval by the Lords of the Privy Council in *Suraj Bunsji Koer's case*) is to convert the whole of the family property into the personal assets of the obligor in so far as the discharge of his just debts are concerned. In other words, the position of the sons in virtue of their special obligation to pay off their ancestor's debt does not really differ from that of the representatives. I would, therefore treat the defendants in this case as representatives of their late father, and hold that they are as amenable to the jurisdiction of this Court as their father, if alive, would have been. The fact that the defendants plead that the debt was contracted for illegal and immoral purposes cannot divest the Court of its jurisdiction. Even those who are directly parties to a contract are allowed by law to plead that they ought not to be held liable to the consequences of its breach. If this suit had been brought against the obligor in his lifetime, it would have been open to him to plead that the bond was given for an illegal or immoral consideration. No objection would have been then taken to the jurisdiction of the Court to try the plea. In my opinion the circumstance that the

representatives are the persons who raise the plea makes no difference in the jurisdiction of the Court.

“ For the reasons above stated I am of opinion, first, that the defendants must be taken to be the representatives of the late [239] Srinivasa Ayyangar, and, secondly, that the fact of the defendants pleading that the debt was contracted for illegal and immoral purposes does not bar the jurisdiction of this Court.

“ The questions for the decision of the Honourable the Judges of the High Court are :—

1st.—Are the defendants representatives of the late Srinivasa Ayyangar, and

2ndly.—Whether the circumstance that the defendants impeach the debt sued for on the ground of illegality and immorality bars the jurisdiction of this Court as a Court of Small Causes. ”

The parties appeared neither in person nor by Counsel.

The Court (INNES and KINDERSLEY, JJ.) delivered the following

Judgment :—Two questions are asked—

- (1) Are the defendants representatives of their deceased father ?
- (2) Whether the impeachment of the debt by defendants on the ground of illegality or immorality bars the jurisdiction of the Court as a Court of Small Causes.

As to the second question, the fact that the defendants raise a particular defence cannot affect the jurisdiction of the Small Cause Court, which depends on what the nature of the suit actually is. In *Govinda Muneya Tiruyan v. Bayu* (5 M. H. C. R., 200) the High Court held that “ contract ” had a very wide signification, and we think as under English law it would embrace a claim of this kind against the son of a deceased Hindu.

As to the first question, the sons are the persons who would succeed to any property of the father, and, in that sense, are his representatives.

But in the present case the question does not seem to arise. The defendants appear to be sued not as representatives of the father, but as persons under an obligation to pay his debts after his death by reason of their being his sons—an obligation which is binding unless the debts can be shown to have been immorally or illegally incurred. See the late Full Bench decisions (*ante*, p. 1).