

[4 Mad. 228.]

APPELLATE CRIMINAL.

The 19th October, 1881.

PRESENT :

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

The Queen
against

Tamma Ghantaya and others. *

Theft—Possession—Spontaneous salt in swamp guarded.

A swamp, the property of Government, having been surrounded with Police guards by Government to prevent salt being removed.

Held that the taking against the will of Government and with the intention of obtaining an unlawful gain of salt, which had been spontaneously produced on the swamp, was theft.

THE Second-class Magistrate of Repalle Taluk having convicted of theft and flogged three men who gathered salt, spontaneously formed on a swamp which was watched by the Police, the District Magistrate submitted the records of the case for the order of the High Court, being of opinion that the taking of salt so protected was not theft, inasmuch as the salt spontaneously formed in the swamp was not in the possession of Government.

No one appeared at the hearing.

The Court (TURNER, C.J., and KERNAN, J.) delivered the following

Judgment :—It appears to us that the Government, by placing guards round the swamp, had taken such possession of the salt as would cause its removal from the swamp against the will of Government and with the intention of obtaining an unlawful gain, theft. We cannot distinguish this case from theft of wood in a reserved forest, except that salt is actually a part of the soil, while trees are not ; yet things immoveable become moveable by severance, [229] and this would apply to severed parts of the soil, e.g., stone quarried, minerals, iron or salt collected, as well as to timber which has grown, or edifices which have been raised on the land.

In our judgment, assuming the swamp has been rightly found to be the property of Government, it must be held the offence was committed.

NOTES.

[In 10 Mad. 255 this case was distinguished as a case of spontaneous growth but the Full Bench in (1904) 27 Mad. 531=14 M. L. J. 155 broadly laid down that earth etc. removed from the earth might be the subject of theft. See also 15 Bom. 702.]

* Case No. 48 of 1881, referred by the District Magistrate of Kistna under Section 296 of the Code of Criminal Procedure.

[4 Mad. 229.]

APPELLATE CRIMINAL.

The 21st October 1881.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE MUTTUSAMI AYYAR.

The Queen

against

Vitti Chokkan and others*

Indian Penal Code, Section 277—Public spring, river water.

The term "public spring," in Section 277† of the Indian Penal Code does not include a continuous stream of water running along the bed of a river.

THE Second-class Magistrate of Periyakulam Taluk having convicted and fined one Vetti Chokkan for having "dirtied the drinking waters of the Varaga river," the only drinking water available in the locality, by washing bullocks therein, under paragraph 7 of Section 48 of the Police Act (Act XXIV of 1859), and having also convicted and fined four other persons under Section 277 of the Indian Penal Code for having "rendered the spring water of the Varaga river unfit for the purpose of bathing and drinking by putting up a dam across the river and catching fish," the District Magistrate of Madura referred the cases for the orders of the High Court under Section 296 of the Code of Criminal Procedure.

No one appeared at the hearing.

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

Judgment:—We think that the "public spring" contemplated in Section 277 of the Indian Penal Code does not include a continuous stream of water running along the bed of a river, and that both convictions are bad and must be quashed.

NOTES.

[For similar rulings, see 1 Weir 230; 6 Bom. L. R. 52, Ratanlal, 14; 215.]

* Case No. 52 of 1881 referred by H. J. Stokes, District Magistrate of Madura, under Section 296 of the Code of Criminal Procedure.

† [Sec. 277 :—Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred Rupees, or with both.]