

[4 Mad. 227.]

APPELLATE CRIMINAL.

The 17th and 19th October, 1881.

PRESENT :

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

The Queen

against

Chinna Vedagiri Chetti.\*

*Commitment to Sessions without examination of witnesses quashed.*

Where a Magistrate committed a person, charged with perjury in a trial before himself, to the Sessions without examining the witnesses for the prosecution :

*Held* that the commitment was illegal.

THE Acting Head Assistant Magistrate of Salem having read the depositions made by certain witnesses in a criminal trial in his Court framed a charge of perjury against one Vadagiri Chetti, took a statement from him, and committed him to take his trial at the next Sessions, binding over certain witnesses to appear at the trial and give evidence.

The case was referred for the orders of the High Court under Section 296 of the Criminal Procedure Code by the Sessions Judge of Salem on the ground that the order of the Magistrate was illegal.

No one appeared at the hearing.

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

**Judgment** :—It appears to us that if the Court elects to commit the person itself, it should take evidence and in other respects follow the procedure which is provided by the Code to justify a commitment to prison pending a trial by the Court of Session.

[228] Such preliminary inquiry is, if the Court determines to exercise this power, necessary.

The law contemplates that in the serious cases of which a Court of Session may take cognizance, the accused should have some information of the case he has to answer. We set aside the commitment and direct the Magistrate to proceed *de novo*.

**NOTES.**

[As to the Magistrate's duty to consider the evidence before committing, see 7 C. W. N. 77; Ratanlal 975; (1899) A. W. N. 135.]

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\* Case No. 46 of 1881 referred by F. H. Wilkinson, Acting Sessions Judge of Salem, under Section 296 of the Code of Criminal Procedure.

[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.