ceasing the prohibition would not apply and that the said prohibition is clearly directed to a case where the gotra of the adopter is different from that of the natural family of the boy adopted. For there might be cases in which adoption from a different family (gotra) may become necessary, that is, in the absence of nearer relatives and it is to such cases clearly the case applies. The other learned Judges concurred.

In view of the support which the evidence in this case receives from the circumstances that the usage was regarded as sanctioned by some writers of authority, that it was accepted by a more recent writer held in esteem in the Tamil Districts and that evidence of its recognition is afforded by the earlier cases to which we have referred, I consider we should not be justified in holding that the Subordinate Judge ought not to have accepted the usage as sufficiently established by the evidence to be received as a part of the law.

This being the only question referred, the case will be sent to the Division Bench for disposal.

KERNAN, J.— I concur.

MUTTUSÁMI AYYAR, J.—I concur.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Parker.

THE QUEEN-EMPRESS

against

APPATHORAI.*

1885. November 17, 23.

Act XXIV of 1859 (*Madras*), *s.* 48 (5)—*Act I of* 1885 (*Madras*)—*Dung-heap kept in a town, no offence.*

By cl. 5 of s. 48 of Act XXIV of 1859 (Madras), as amended by Act I of 1885 (Madras), any person, who within the limits of a town "throws or lays down any dirt, filth, rubbish or any stones or building materials; or who constructs a cow-shed or stable within the bounds of any thoroughfare; or who causes any offensive matter to run from any dung-heap into the street" is punishable.

A was convicted and fined for having kept a manure-heap in a town but not in a street:

Held, that the conviction was bad.

* Criminal Revision Case 565 of 1885.

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THIS was a case, referred for the orders of the High Court, under s. 438 of the Code of Criminal Procedure, by H. P. Gordon, District Magistrate of South Arcot.

The facts were stated as follows:—

"In this case the Magistrate has convicted the accused under s. 48 of Act XXIV of 1859, cl. 5, for keeping a manure-heap in a vacant spot near the public street.

"The Joint Magistrate refers the conviction as illegal on the ground that it is not shown that the heap was within the bounds of a thoroughfare, or that offensive matter ran from it into the street.

"I am of opinion, looking to the effect of Act I of 1885, which came into force on the 1st July, that the conviction is good; but having regard to the collateral results which would attend that construction, have thought it better to refer the question for the decision of the High Court. It seems to me that the effect of the repeal by Act I of 1885 of the expressions in the body of s. 48, as applied to cl. 5, is to render penal not only the deposit of dirt or rubbish, but also that of stones or building materials in any place within the limits of the town. It is impossible to suppose that it could have been the intention of the Legislature to prohibit the deposit of building materials in convenient places within the town, but it is possible that the concluding words of the first part of cl. 5 were overlooked when the words limiting the provisions of the section to thoroughfares, &c., were repealed. The object of the amendment is known to have been to afford facilities for the prevention of ill-usage of animals.

"The punctuation and the grammatical construction of cl. 5, as printed in the authorized edition of the Madras Code, would appear to prevent the application of the words 'within the bounds of any thoroughfare' occurring in the second paragraph of cl. 5, to the first paragraph of that clause."

Counsel were not instructed.

The Court (Muttusámi Ayyar and Parker, JJ.) delivered the following judgments:—

MUTTUSÁMI AYYAR, J.—In this case the accused kept a manure-heap in a vacant spot *near* his house and a public street, intending to remove it ultimately to his field for use. The Second-class Magistrate convicted him of an offence punishable under cl. 5, s. 48, of Act XXIV of 1859, and sentenced him to pay a

fine of eight annas. The Joint Magistrate considered that the conviction was illegal because the dung-heap was not kept *in* any public street, nor was any offensive matter permitted to run from it into such street. The District Magistrate is, however, of opinion that, under s. 48, as amended by Madras Act I of 1885, it is no longer necessary that the manure-heap should be kept *in* any street. The amendment consisted in the omission in the body of s. 48 of the words "in any street or thoroughfare or passage," and the words "to the obstruction, inconvenience, annoyance, risk or damage of the residents and passengers." The amending Act, however, does not alter cl. 5. It is in these terms:—"Any person who throws or lays down any dirt, filth, rubbish, or any stones or building materials; or who constructs any pial, cow-shed or stable, or the like within the bounds of any thoroughfare; or who causes any offensive matter to run from any house, factory, dung-heap, or the like into the street." I am unable to adopt the construction suggested by the District Magistrate. It could never have been intended by the Legislature to make the deposit, either of rubbish or building materials, in convenient places within the limits of a town penal. The last sentence in cl. 5, which makes it penal to cause any offensive matter to run from a dung-heap into the street, contemplates the deposit of a dung-heap near a street or within the limits of a town as otherwise than penal. If the District Magistrate's construction is right, there was no necessity for retaining the word "dung-heap" in this sentence. The omission to insert the words, "in any street," in the first part of cl. 5 is an oversight; but the latter part of the clause sufficiently indicates the intention of the Legislature, and the construction we place should be such as is consistent with that intention. I would set aside the conviction and the sentence referred to us and direct that the fine be refunded.

PARKER, J.—It was certainly not the intention of the Legislature to make it penal to lay down a heap of dirt or materials for building *anywhere* within a town, but only in such places where those acts might cause public inconvenience or annoyance.

I observe that in some editions there is only a comma and not a semicolon after the word "materials" in cl. 5, and looking at the context, it appears to me probable that the Legislature intended to make the words "within the bounds of any thoroughfare" apply to both classes of acts spoken of, viz., the throwing

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or laying down of certain substances, or the construction of certain buildings. It will be seen that the third class of acts spoken of in the same clause, viz., the causing any offensive matter to run from any house, &c., is only made penal when the offensive matter is allowed to run "into the street" and not in any other case.

In the decision before us, as there is no evidence that the heap of rubbish was deposited in a public thoroughfare, I would set aside the conviction and direct that the fine be refunded.

APPELLATE CIVIL.

Before Mr. Justice Kernan (Officiating Chief Justice) and Mr. Justice Parker.

1885. November 17.

VÍRARÁGAVA, PLAINTIFF,

and

RÁMUDU, DEFENDANT.*

Army Act, 1881, *s.* 151 (3)—*Civil Procedure Code, s.* 266, *expl.* (*b*)—*Debtor subject to military law—Attachment of moiety of salary under Rs.* 20 *per mensem.*

Section 151 of the Army Act, 1881, not being affected by the provisions of s. 266 of the Code of Civil Procedure, the attachment by a Civil Court of a moiety of the monthly salary of a debtor subject to military law, not exceeding Rs. 30, is legal.

THIS was a case stated under s. 617 of the Code of Civil Procedure by B. Rámasámi Náyudu, District Múnsif of Bellary.

The facts necessary for the purpose of this report appear from the judgment of the Court (Kernan, Officiating C.J. and Parker, J).

Counsel were not instructed.

JUDGMENT.—In this case, after decree against the debtor, who is a person subject to military law, but not a soldier of the regular forces, the judgment-creditor put in an execution petition, asking for a special order under the Army Discipline Act, 1879, s. 144, and Army Circular thereunder, No. 66, for the attachment of half the salary of the judgment-debtor, and obtained a special order granting the relief prayed for.

The Executive Commissariat officer objected to the attachment

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* Referred Case 8 of 1885