RÁMAYYANGÁR v. KRISHNAYYANGÁR.

The facts and arguments appear sufficiently for the purpose of this report from the judgment of the Court (Kernan and Brandt, JJ.).

JUDGMENT.—The suit was instituted by appellant No. 1, Rámayyangár, after he had obtained the sanction of the Collector.

Subsequently, Ramayyangár's son, Dorasámi, was added as plaintiff No. 2, and he also obtained the Collector's sanction to "institute" the suit, as it is termed in the Collector's order. Subsequently issues were framed. The Judge holds that the Collector's sanction in the case of Dorasámi is not sufficient with reference to s. 539 of the Code of Civil Procedure, as at the time when the suit was instituted, the Collector's sanction had not been obtained by him. Referring to the decision of the Privy Council in *Mahammad Azmat Ali Khan* v. *Lalli Begum*,(1) which appears to be an analogous case, decided with reference to the Pensions Act; we are of opinion that the sanction obtained by Dorasámi relates back to the institution of the suit.

We think the order dismissing the suit was wrong; and as the Judge dismissed the suit on a preliminary ground which excluded evidence, we set aside the order and direct the Judge to restore the case to his file and to dispose of it on the merits.

The costs of this appeal to be costs in the cause.

APPELLATE CRIMINAL.

Before Mr. Justice Kernan and Mr. Justice Muttusámi Ayyar.

1887. March 1.

QUEEN-EMPRESS

against

PONNURANGAM.*

Penal Code, ss. 24, 378—Theft of joint property by co-parcener.

Theft of joint property may be committed by a co-parcener if he takes it from joint possession and converts such possession into separate possession.

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

(1) I.L.R., 8 Cal., 422.

* Criminal Revision Case 765 of 1886.

The case was stated as follows:—

"Ponnurangam, the accused, a boy of 18, took a cart from his father's mandi, or shop, without his father's knowledge, and sold it, and appropriated the proceeds. He admitted all this, but pleaded, first, that he was undivided from his father and was a joint owner of the cart; and, secondly, that the reason he took the cart was that his father, who was married a second time, does not support either him (accused) or his mother. He kept, he said, part of the proceeds for his own support and sent the rest to his mother.

"The Second-class Magistrate took the accused person's word for all these allegations and found 'he seems to have acted under *bonâ fide* claim of right,' and discharged him."

Counsel were not instructed.

The Court (Kernan and Muttusámi Ayyar, JJ.) delivered the following

JUDGMENT:—The Second-class Magistrate's judgment and order are wrong. Theft of joint property of a family may be committed by one of the family though a co-parcener, if he takes it from joint possession and converts such possession into separate possession—See Weir's Criminal Rulings, p. 154, on s. 379, Indian Penal Code.

The acquittal is set aside and the Magistrate is directed to re-try the case and to have regard to the definition of theft in s. 378, Indian Penal Code, and of the word "dishonestly" in s. 24.

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Muttusámi Ayyar.

VENKAPPA AND OTHERS (DEFENDANTS), APPELLANTS,

and

NARASIMHA (PLAINTIFF), RESPONDENT.*

1887. March 2.

Stamp—Court Fees Act—VII of 1870, *s.* 6, *schedule II, art.* 17.

In a suit on a mortgage bond a decree was passed for payment of principal and interest, and in default for sale of the mortgaged property. Some of the defendants filed a memorandum of appeal against so much of the decree as declared the liability of the property, affixing a stamp of Rs. 10 only:

* Referred Case No. 1 of 1887.