

APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

QUEEN-EMPRESS

against

SIVANNA AND OTHERS.*

1887.
Sept. 14.

*Madras Forest Act, 1882, Rules 7 and 12—Removal of leaves from classified trees
no offence.*

The mere removal of leaves from classified trees on unreserved land does not constitute a breach of rule 12 of the Madras Forest Act, 1882.

CASE referred under s. 438 of the Code of Criminal Procedure by J. W. Best, Sessions Judge of South Canara.

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

Counsel were not retained. .

JUDGMENT.—The question raised by the Sessions Judge in this reference is one of great public importance, and we cannot but express our surprise that the Public Prosecutor, to whom notice was sent by the special order of this Court, should not have been instructed to appear.

The Deputy Magistrate, on appeal, has confirmed the conviction of the accused, observing that their offence consisted of cutting plants and leaves of classified trees for the purposes of manure. Had the evidence established the offence of cutting plants of classified trees, the conviction might apparently have been sustained on that ground; but we observe that the Second-class Magistrate convicted the accused only of removing leaves of classified trees from unreserved land, and the evidence would seem to indicate that all they did was to remove the leaves and not to cut the plants. Rule 12 (for the breach of which the accused have been convicted) makes it unlawful for any person to fell, girdle, mark, lop, tap, uproot, or burn or strip off the bark or leaves from, or otherwise

* * Criminal Revision Case No. 285 of 1887.

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damage, any tree growing on reserved or unreserved land; but this prohibition is subject to the privileges, exceptions, and reservations specified in rules 7, 9, and 10. Rule 7 provides that in all unreserved lands the villagers shall continue to enjoy free of charge such privileges as they have hitherto exercised in the way of grazing cattle or of cutting, converting, and removing trees (other than reserved and classified trees) and timber and other forest produce for fuel or for building or agricultural or domestic purposes. It is observed that the words "other than reserved or classified trees" in rule 7 have reference only to the cutting, converting, and removing of trees, not to the removal of other forest produce for fuel or agricultural or domestic purposes.

There is no finding that the leaves were stripped off in such a manner as to damage the trees from which they were cut, and the mere removal of leaves from classified trees would not alone appear to constitute a breach of the two rules when read together. It may be that the Deputy Magistrate confirmed the conviction under the impression that the accused were guilty of cutting the plants of classified trees, but this was not the offence charged against them. We shall, therefore, set aside his order and direct that the appeal be reheard, after giving notice both to the appellants and to the Public Prosecutor at Mangalore.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

KHAÑSA BIBI (PLAINTIFF), APPELLANT,
and

SYED ABBA AND OTHERS (DEFENDANTS), RESPONDENTS.*

*Madras Civil Courts Act (Act III of 1873, s. 12) Jurisdiction—Suit to recover
share of inheritance—Subject-matter of suit.*

The plaintiff sued to be declared an heir to a deceased Muhammadan and to recover her share of the inheritance, the share claimed being less than Rs. 2,500, while the value of the whole estate exceeded that amount:

Held, that the suit was within the jurisdiction of a District Munsif.

* Appeal against Order No. 130 of 1886.