

drain or privy, or the drainage from any stable or place, or any other offensive liquid matter." The acquittal on the ground that the Municipality has not provided drains was erroneous. The Municipality are not bound to make drains, whereas every owner or occupier is bound to keep his offensive liquid matter from running into the street. If drains are provided, the owner or occupier may apparently discharge offensive liquid matter into them, provided that in so doing he avoids causing a nuisance by allowing such liquid matter to soak into the walls or ground.

The acquittal must be set aside and the cases retried.

QUEEN-  
EMPRESS  
v.  
SEVUDAP-  
PAYAR.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Wilkinson and Mr. Justice Shephard.*

QUEEN-EMPRESS

v.

THIMMACHI. \*

1891.  
October 16.

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*Penal Code, s. 186—Obstructing a public servant—Public vaccinator.*

To spread a false report and thereby prevent persons from bringing their children for vaccination to the public vaccinator is not an offence under Penal Code, s. 186.

CASE reported for the orders of the High Court under section 438 of the Code of Criminal Procedure by S. H. Wynne, Acting District Magistrate of Madura.

The act charged as obstruction was the following:—

“While a vaccinator was at work, the accused spread a report  
“that the children vaccinated would go mad, and the mothers who  
“were in attendance with their children ran away, so that the  
“latter could not be vaccinated. Vaccination is not compulsory  
“in the locality.”

Counsel were not instructed.

WILKINSON, J.—I do not think the conviction can be maintained. Spreading a false report and thereby preventing people from bringing their children for vaccination does not appear to me to amount to voluntary obstruction of the vaccinator in the

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\* Criminal Revision Case No. 476 of 1891.

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performance of his public duties. The conviction and sentence should be quashed.

SHEPARD, J.—To prevent by physical means persons willing to be vaccinated from being vaccinated might be obstruction of the vaccinator within the meaning of the section. But merely to dissuade a person from submitting to vaccination is another matter. That is not obstruction, for it is only with regard to willing patients that the vaccinator has any duty. The conviction should be set aside, and the fine, if paid, refunded.

Ordered accordingly.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.*

MADAVARAYACHAR

v.

SUBBA RAU AND OTHERS.\*

*Criminal Procedure Code, s. 528—Village Munsif.*

A Village Munsif not being a Magistrate under Criminal Procedure Code, a Joint Magistrate has no power under Criminal Procedure Code, s. 528, to withdraw a case from a Village Munsif and transfer it for disposal to a Second-class Magistrate.

CASE reported for orders of the High Court under section 438 of the Code of Criminal Procedure by G. Stokes, District Magistrate of Salem.

*Aravamudu Ayyangar* for accused.

JUDGMENT.—Village Magistrates are not Magistrates under the Code of Criminal Procedure, and, therefore, we do not think that the Joint Magistrate had power under section 528 to withdraw the case and transfer it for disposal to the Second-class Magistrate.

The order must be set aside.

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\* Criminal Revision Case No. 189 of 1891.