

person entitled to succeed. A consideration of the circumstances under which the grant was made, in my opinion, strongly indicates the intention of Government to adopt the former course, and that view of the grant is further supported by the presumption which exists in favour of the supposition that the estate when re-granted to a member of the original family was intended to possess the qualities which it possessed in the hands of the former holder. For these reasons, I think the Subordinate Judge has come to a right conclusion and I would dismiss the appeal with costs to be paid by the appellants to the first respondent.

DAVIES, J.—I concur throughout.

KALIANA
SUNDARAM
AYYAR
v.
UMAMBA
BAYI SAHHEE.

APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

v.

VIRAPPA CHETTI.*

1896.
December
10, 17.

*Penal Code—Act XLV of 1860, ss. 268, 283—Encroachment on public highway—
Public nuisance.*

Whoever appropriates any part of a street by building over it infringes the right of the public *quoad* the part built over, and thereby commits an offence punishable under Penal Code, section 290, if not one punishable under section 283.

APPEAL on behalf of Government under section 417 of the Code of Criminal Procedure against the judgment of acquittal pronounced by the Second-class Magistrate of Nannilam in Calendar Case No. 225 of 1896.

The accused was charged with the offence of causing obstruction in a public way punishable under section 283, Indian Penal Code. The accused was the owner of a house in a street in the Nannilam Union. The charge was that, early in 1895, he widened the pials in front of his house by about three feet and thereby encroached upon the street. A notice was served on him under section 98 of the Local Boards Act, directing him to remove the encroachments.

* Criminal Appeal No. 422 of 1896.

QUEEN-
EMPRESS
v.
VIRAPPA
CHETTI.

The encroachments not having been removed, he was charged as above under the orders of the Taluk Board. The Magistrate said in his judgment:—"The Union karnam says that the pials as widened are within the line of the adjoining houses east and west, and it is clear from his statement and from my personal inspection that the encroachments in question cause no danger, obstruction, or annoyance to the public."

On this ground he acquitted the accused, and the present appeal was preferred on behalf of Government against the acquittal.

The Public Prosecutor (Mr. Powell) for the Crown.

Tiagaraja Ayyar for the accused.

JUDGMENT.—The Second-class Magistrate has acquitted the accused in these two cases of an offence under section 283, Indian Penal Code, on the ground that the encroachment, if such there be, does not cause any 'danger, obstruction or annoyance' to the public.

It may be that section 283 is inapplicable in the absence of evidence that danger, obstruction or injury was caused to any particular person, but the acts of the accused clearly fell within the definition of a 'public nuisance' in section 268, Indian Penal Code, and was, therefore, punishable under section 290.

The public is entitled to the use of the full width of the public street, however wide it may be. Whoever appropriates any part of the street by building over it infringes the right of the public *quoad* the part built over. The act must necessarily cause obstruction to persons who may have occasion to use their public right over the part encroached upon.

The Second-class Magistrate has not decided whether the land built over was in fact part of the public street or was their own private land as pleaded by the accused. We, therefore, set aside the acquittals in both cases, and direct that the accused be re-tried and charges against them be disposed of according to law.

Ordered accordingly.