petitioner makes the necessary allegations and proves them, then the Court would be justified in adjudging the members of a joint family insolvents. In the case of a joint Hindu family, if the father incurs debt and dies, the other members of the family do not stand in the relation of heirs; they only succeed to him and the debts are binding upon them. It was laid down by a Bench of this Court in *Chockalingam Chettiar* v. *Thiruvenkatasami Naidu*, C.M.A. No. 47 of 1916 (unreported), that the relation of creditor and debtor existed between the lender and the members of a joint family in respect of debts incurred by the family. That being so, there was no reason why the lower Court should not have enquired into the matter and disposed of the petition on the merits.

We, therefore, set aside the order and direct the District Judge to restore the petition to file and dispose of it according to the provisions of section 24 of the Provincial Insolvency Act. Costs will abide the result

K.R.

APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice Madhavan Nayar.

1925. September 21.

THE MUNICIPAL COUNCIL, TUTICORIN, DEFENDANT (PETITIONER),

v.

T. SHANMUGA MOOPANAR, PLAINTIFF (RESPONDENT).*

Madras District Municipalities Act (V of 1920), sch. V (o), ss. 249 and 328—"Grain," meaning of—Licence for storing "grains" in godowns for wholesale trade—Notification, whether applicable to storing of rice and broken rice for

* Civil Revision Petition No. 553 of 1923.

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wholesale trade—Rice and broken rice, whether "grains" under the Act.

The word "grain" used in schedule V, clause (*o*) of the Madras District Municipalities Act (V of 1920), does not include rice and broken rice; consequently wholesale dealers are not liable to take out licences on payment of fees in respect of godowns in which rice and broken rice are stored for wholesale trade.

"Grain" means a natural product of the earth, untreated except by gathering. *Cotton* v. *Vogan & Co.*, [1896] A. C., 457, followed.

PETITION praying the High Court to revise the decree of C. C. ANDREWS, the District Munsif of Tuticorin in Small Cause Suit No. 858 of 1922.

The Tuticorin Municipal Council resolved to require wholesale dealers in grain to take out licences under section 248 of the Madras District Municipalities Act (V of 1920) and published a notification under section 328 of the Act. The Municipality levied a fee and recovered it from the plaintiff in respect of certain godowns in which he had stored rice and broken rice for wholesale trade; the plaintiff paid the amount under protest, and sued to recover the amount by instituting this suit against the Municipal Council. The District Munsif held that rice and broken rice were not "grains" within the meaning of the Act, on the ground "grain" implied the capacity to germinate, and paddy after it was husked, became rice or broken rice, which could not germinate and was no longer grain. He accordingly decreed refund of the licence-fee paid in respect of the godowns in which rice and broken rice were stored. The Municipal Council preferred this Civil Revision Petition. The plaintiff preferred a memorandum of objections and contended, inter alia, that there was no due publication of the notification full sixty days before it was enforced.

B. Sitarama Rao (with him *Marthandam Pillai and Chithambaram Pillai*) for petitioner.—Schedule V (o) relates to jaggery, grain, etc., which are stored for wholesale trade. Rice is still grain, though the paddy has been husked. In its altered condition, it does not cease to be grain. See Stroud's Judicial Dictionary, Merchant Shipping Act, section 456, Chambers' Twentieth Century Dictionary.

M. S. Vythinatha Aiyar, for respondent :—Until husking, paddy is grain ; by husking paddy is made into rice and it is no longer grain ; it ceases to be seed or germinating seed. " Grain " is derived from granum, which means " seed ". See Century Dictionary page 2592, defining " grain." The House of Lords has defined grain as corn untreated except by gathering. *See Cotton* v. *Vogan & Co.*(1) and *Scott* v. *Bourdillion*(2).

Grain is " dhanyam " in the Government translation of the District Municipalities Act ; Maclean's Glossory enumerates Navadhanyams but does not include rice. See Apte's Dictionary. Rice is " thandula " and is " nis-thusha " (without husk) ; Paddy is " sas-tusha " and is " dhanya." In Winslow's Dictionary " dhanya " is grain, corn in general, and rice is not included.

B. Sitarama Rao in reply.—Some kind of treatment such as beating of the grains is necessary in almost all grains, such as black gram Bengal gram, etc. ; outer coating has got to be removed in almost all grains. They are not treated otherwise than that in all cases. They are still considered grains. So also is paddy when made into rice.

JUDGMENT.

SPENCER, J.—The Tuticorin Municipal Council, which through its Chairman preferred this Revision Petition, resolved to require wholesale dealers in grain to take out licences under section 248 of the Madras District Municipalities Act (V of 1920) and accordingly published a notification under section 328 in the *Tinnevelly District Gazette*. The respondent, who was one of such wholesale dealers paid the fees, demanded of him under protest and brought a suit in the Small Cause Court to recover what was illegally collected from him. He succeeded in obtaining a decree for a portion of his claim. The District Munsif held that he was not liable to take out licences for godowns in which rice and broken rice, etc., were stored for wholesale trade but only for grain stores. It is contended for the petitioner that the word

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(1) [1896] A.C., 457.
(2) (1806) 2 Bos. and Pul. (N.R.), 213 ; 127 E.R., 606.

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"grain" in Schedule V (o) to the Act includes rice and broken rice.

The District Munsif observed,

"Paddy without husk is rice. Rice is not a seed and does not sprout out. Hence rice or broken rice cannot be called a grain."

If the District Munsif meant by this that the distinction between grain and rice depended on the existence or absence of the power of germination, I think he went near the mark without hitting it. The germ or seed is in the rice. The outer husk merely serves as a protection from water and other external agencies which would penetrate and destroy the germ.

In the English language "corn" which is derived from the same Latin word "granum" as "grain" is, is commonly used to mean the grain of certain cereals, specially wheat in England, and maize in America, while growing. Thus an Englishman would speak of a field of growing wheat as a field of corn, but he would never include other plants grown from seed such as turnips, clover, mustard, etc., under the head of "corn". After the wheat is harvested and threshed, it is still corn and it is sold in a corn market, but after it has gone through a mill and become flour or meal, the individual corns or grains cannot be distinguished, and a substance is produced which is not corn or grain but something else. This meaning of the word "Grain" was brought out in a case that went up to the House of Lords and is reported in *Cotton* v. *Vogan & Co*(1), LORD HERSCHELL in interpreting the meaning of the words which occur in the Metage on Grain (Port of London) Act of 1872 "in respect of all grains brought into the port of London for sale", observed,

(1) [1896] A.C., 457.

"If the Legislature had intended to include what had always been regarded and treated as manufactured articles such as flour and meal, as distinguished from the natural products of the earth untreated except by gathering, the language would have been altogether different."

Using similar language, I would say that if the Madras Legislature intended to include in Schedule V (o) rice and broken rice, which have gone through a certain process, as distinguished from the natural products of the earth untreated except by gathering, the storing of which without a licence may be prohibited by any Municipal Council, they would have used more explicit language to denote their meaning. In clauses (b) and (q) (proviso) the word "paddy" occurs and in clause (l) the word "flour" is used. There is therefore no reason to regard the word "grain" in clause (o) as being used in the comprehensive sense of all articles of commerce into which grain can be turned by some process or other. The use of the Tamil word "Danyam" (தான்யம்) in the translation of the notification as the equivalent of "grain" strengthens the respondent's case. A trader who sells rice may be called a grain merchant and his merchandise may in a loose sense be called grain, when it includes both grain and rice; but rice is strictly not grain, and the separate entity of the grains by a process of disintegration disappears when they are converted into broken rice. For these reasons, I consider that there is no occasion to interfere with the District Munsif's decree. The Civil Revision Petition is dismissed with costs.

There is no substance in the objection taken in the memorandum of cross objections, that the notification was not published full sixty days before it was enforced as required by section 249 of the Act. There was evidence before the Court that the Gazette notice must have been published on January 30th to come into force

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on April 1st, and the District Munsif accepted the evidence. The memo. of objections is dismissed with costs.

MADHAVAN NAYAR, J.—I agree. The main question for decision in this Civil Revision Petition is whether "rice", i.e., paddy without husk, and "broken rice" come within the meaning of the term "grain" found in Clause (o) of Schedule V of the District Municipalities Act. In the course of the argument we have been referred to well-known English Dictionaries, such as Murray's Oxford Dictionary, Chambers' Twentieth Century Dictionary, Webster's Dictionary, etc., wherein the word "grain" has been explained. According to Murray's Dictionary the word "grain" is derived from the root *Granum* which means "seed". From this, the inference is sought to be drawn that an article to be called "grain" should have the power to germinate or sprout and since this power is absent in rice which is husked paddy, it is argued that rice cannot be called "grain." But I am not quite sure whether this distinction can be accepted as a safe test, because it involves the assumption that the presence or absence of "husk" is the main determining factor in the matter of germination, whereas, it is well known, that rice contains the seed which germinates or sprouts while the husk present in paddy merely serves to protect it from destruction during germination.

In a case under the Metage on Grain (Port of London) Act, 1872 (c.c) section 4), *Cotton* v. *Vogan & Co.*(1), the House of Lords had to consider whether maize and oats imported with a view of their being first subjected to a process of grinding or crushing before sale would be "grain brought into the Port of London for sale" within the meaning of section 4 of the Act. By section 2 of that Act "Grain" is defined to mean

(1) [1896] A.C., 457.

"Corn, pulse and seeds, except the following seeds when brought into the Port of London in sacks or bags, that is to say linseed, rapeseed, millet seed, etc."

With reference to the argument of Mr. Dankwerts that maize and oats sold after being subjected to the process of grinding and crushing might come within the definition of "grain" contained in the Statute, Lord HERSCHELL pointed out in his judgment that

> "If it (Legislature) had intended to include what had been always regarded and treated as manufactured articles, such as flour and meal, as distinguished from the natural products of the earth untreated except by gathering, the language would have been altogether different to that which is to be found in this Statute".

From this it may be inferred that the meaning of the term "grain" should be confined to *natural products of the earth untreated except by gathering.* Lord WATSON stated that

> "The result of that process was that substances operated upon ceased to answer the statutory description of a dutiable article."

Though the decision was given with reference to the definition of the word "grain" contained in a special statute, I think the description of the term "grain" in Lord HERSCHELL's judgment is sufficiently general and may well be used for the purposes of the present case also. Judged by this test rice which is paddy subjected to the process involving the removal of husk and broken rice cannot strictly be called "grain". Mr. Sitarama Rao for the petitioner invited our attention to the definition of the word "grain" contained in section 456 of the Merchant Shipping Act, 57 and 58 Vict., Chapter 60. That section defines "grain" to mean any corn, rice, paddy, pulse, seed, etc. But the section itself makes it clear that this is a special definition applicable to provisions of the part of the Act specially dealing with the

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"carriage of Grain Cargo". Obviously this definition cannot be of much help in deciding the present case.

Under section 249 of the District Municipalities Act, Act V of 1920,

"The Council may publish a notification in the District Gazette and by beat of drum that no place within the Municipal limits or at a distance within three miles of such limits shall be used for any one or more of the purposes specified in Schedule V without the Chairman's licence and except in accordance with the condition specified therein."

Section 328 states that

"Every notification under this Act shall be published in the Official Gazette of the District in which the Municipality is situated both in English and in a vernacular language of the District".

That the Legislature never intended to include "rice" and "broken rice" within the meaning of the term "grain" appears to be clear from the fact that in the notification in Tamil published by the Municipality in pursuance of the above provisions of the Act, the word "தான்யம்" (dhanyam) is used as the Tamil equivalent of the English word "grain"; "dhanyam" as generally understood in the Tamil language does not mean "rice" (see Winslow's Dictionary).

For the above reasons, I am inclined to hold that "rice" and "broken rice" do not come within the meaning of the term "grain" in clause (o) to Schedule V of the District Municipalities Act. The decision of the District Munsif is right and the Civil Revision Petition should be dismissed with costs.

I agree that the Memorandum of objections should also be dismissed with costs.

K.R.