

PUBLIC  
PROSECUTOR  
v.  
PALANIYANDI  
NAICKEN.

sentence him to pay a fine of Rs. 61 or in default to suffer simple imprisonment for 2 months.

REILLY, J.

REILLY, J.—I agree. In regard to the definition of a “public road” in the Madras Local Boards Act it appears to me that *prima facie* the public have a right of way over every part of every road poramboke. Therefore, if we find a place of road poramboke which lies between the roadway and the boundary of adjacent property, that will be a public road as defined in the Act unless it is shown that in some way the public have lost their right of way over it.

B.C.S.

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## APPELLATE CRIMINAL.

Before Mr. Justice Devadoss.

1927,  
November 13.

MUHAMMAD ABDUL KHUDUS SAHIB AND FIVE OTHERS  
(PETITIONERS), PETITIONERS,

v.

MUHAMMAD ASHROOF SAHIB AND THREE OTHERS  
(COUNTER-PETITIONERS), RESPONDENTS. \*

*Criminal Procedure Code (Act V of 1898), sec. 147—Claim to bury dead in a burial ground—If section applicable to—Vacant portion of burial ground—Improperly used for cultivation—If defeats claim.*

Section 147 of the Code of Criminal Procedure applies to a claim to bury the dead in a burial ground and a magistrate acting under the section has to see whether the right which is exercisable only on particular occasions or at particular seasons was in fact exercised during the last of such occasions or seasons.

Improper use of vacant portions of a burial ground for cultivation will not take away the right of persons entitled to bury their dead when occasion arises.

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\*Criminal Revision Case No. 504 of 1927.

PETITION under sections 435 and 439 of the Code of Criminal Procedure 1898, praying the High Court to revise the order of the Court of the Subdivisional Magistrate of Nidadavole, dated 7th March 1927, in Mis. Case No. 3 of 1926.

*V. Govindarajachari* for petitioners.

*K. Kameswara Rao* for respondents.

*Public Prosecutor* for the Crown.

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v.  
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SAHIB.

### JUDGMENT.

This is an application to revise the order of the Sub-divisional Magistrate of Nidadavole passed under section 145 of the Criminal Procedure Code. The petitioners' contention is that the land in dispute is a burial ground and that they as Muhammadans of Aurangabad are entitled to bury their dead there. The learned Magistrate has only addressed himself to the question of possession and has come to the conclusion that the respondents were in possession and directed that the possession should continue with them. In a case of this kind where certain persons claim to have the right to bury their dead in a burial ground the Magistrate should have addressed himself to the question whether the persons claiming the right exercised that right when occasion arose. It is only in open spaces in a burial ground that new graves are made. The fact that a portion of the ground was ploughed and sown is no ground for thinking that it is not a burial ground. The petitioners obtained a declaratory decree in Original Suit No. 162 of 1916 on the file of the Additional District Munsif's Court of Kovvur with reference to the plot now in dispute. The decision of the District Munsif has not been appealed against. The question is what was the portion which was declared to be the burial ground in that suit. The learned Magistrate has thought fit to

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place reliance upon the fact that the plot now claimed to be part of the burial ground was ploughed and sown and was also the subject of a lease. This is entirely immaterial for the present purpose. Vacant portions of a burial ground may be improperly used for raising crops; but that would not take away the right of persons entitled to bury their dead when occasion arises. Section 147 which relates to the exercise of any right of use of any land or water covers cases of this description and the magistrate has to see whether the right which is exercisable only on particular occasions or at particular seasons was exercised during the last of such seasons or occasions. It appears there were burials in this plot in spite of objection. The question is not whether the plots in dispute were cultivated or not but whether the Muhamadans exercised their right to bury in any portion of the plot which was decreed to be a burial ground. As the learned magistrate has not addressed himself to the real question in the case, I set aside his order and direct him to restore the petition to file and dispose of it in the light of the remarks made herein.

B.C.S.

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### APPELLATE CRIMINAL.

*Before Mr. Justice Devadoss.*

1927,  
December 1.

*In re* VADUGA KUMARA NADAR (ACCUSED), PETITIONER.\*

*Madras Local Boards Act, sec. 159—Liability under—Only if owner or occupier of premises encroaches—A person neither manager nor trustee of property belonging to a community but only treasurer of a fund of the community—If liable for encroachment by property of community.*

In order to make a person liable under section 159 (1) read with section 207 (1) (e) of the Madras Local Boards Act for

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\* Criminal Revision Case No. 751 of 1927.