

## CRIMINAL REFERENCE.

*Before Mr. Justice Birdwood and Mr. Justice Parsons.*

QUEEN-EMPRESS *v.* HUSAIN VALAD TA'JBHA'I.\*

1890.

November 20. *Indian Penal Code (Act XLV of 1860), Sec. 183—Resistance to taking of property by the authority of a public servant—Objection to attachment of property in execution of a decree.*

A mere oral statement by a person claiming to be the owner of certain articles attached by a bailiff in execution of a decree, to the effect that he would not allow the bailiff to take away the articles unless he entered them as his property, does not amount to an offence under section 183 of the Indian Penal Code.

THIS was a reference, under section 438 of the Code of Criminal Procedure (Act X of 1882), by S. Hammick, Sessions Judge of Ahmednagar.

The accused was convicted by the First Class Magistrate at Nagar under section 183 of the Indian Penal Code and sentenced to a fine of Rs. 10.

The reference was in the following terms:—

“The complainant is a bailiff of the First Class Subordinate Judge at Nagar. He was employed to attach the property of a judgment-debtor, who was a carpenter and maker of tongas. He proceeded to attach two tonga-tops which were lying on the road in front of the judgment-debtor's shop. Thereupon the accused Abdul Husain said that the said tonga-tops were his, and that he would not let the bailiff take them away unless entered them as his property. Abdul Husain has on these facts been convicted of the offence of offering resistance to the taking of property by the lawful authority of a public servant, and punished with a fine of Rs. 10 under section 183 of the Indian Penal Code.

“I venture to submit that the facts disclosed by the evidence do not amount to a resistance, as contemplated by the Indian Penal Code. It does not appear from the evidence whether the tonga-tops were or were not the property of Abdul Husain; even if they were not his property I think that a mere verbal direction to the bailiff not to remove them, cannot be regarded as an illegal resistance; and if they were his property, still less pro-

\* Criminal Reference No. 108 of 1890.

per would it be to regard his conduct as an offence against the Penal Code. The evidence does not show that, in this case, the bailiff was either abused, or intimidated, or that any physical resistance\* was attempted.

“ I have, therefore, the honour to suggest that the conviction and sentence be set aside.”

*PER CURIAM*:—For the reasons stated by the Sessions Judge, the Court reverses the conviction and sentence, and directs the fine to be restored, if paid.

*Conviction and sentence reversed.*

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.*

PA'TEL VANDRA'VAN JEKISAN AND ANOTHER, (ORIGINAL DEFENDANTS),  
APPELLANTS, v. PATEL MA'NILA'L CHUNILA'L, (ORIGINAL PLAINTIFF),  
RESPONDENT.\*

1890.  
December  
10, 17.

*Adoption—Adoption in Gujarát—Adoption by a widow whose husband died while a minor—Implied authority from minor husband—Adoption from corrupt and improper motives—Onus of proof—Kadwa Kunbi Caste, adoption among—Custom as to adoption—Evidence—Statement as to custom made by witnesses—Admissibility in evidence—Sec. 32, Cl. 4, of the Indian Evidence Act (I of 1872)—Proof of custom.*

In the Marátha country a Hindu widow may without the permission of her husband and without the consent of her kindred adopt a son to him if the act is done by her in the proper and *bonâ fide* performance of a religious duty, and neither capriciously nor from a corrupt motive. But the adoption must not have been expressly forbidden by the husband, and must not have the effect of divesting an estate already vested in a third person.

There is no reason for drawing any distinction, as regards the general law, between Gujarát and the Marátha country properly so called. Apart from local or caste custom, the general law in Gujarát must be taken to be as stated in *Rakhábái v. Rádhabái*(1).

A widow has implied authority from her husband to adopt, even though her husband be a minor.

Where a widow adopts there is a presumption that she has performed the duty from proper motives, and the *onus* lies heavily on him who seeks to set aside the adoption on the ground of corrupt motive.

\* Appeal No. 72 of 1890.

(1) 5 Bom. H. C. Rep., 191, A. C. J.