If the accused be convicted, the Judge will no doubt take into consideration, among other things, the former trial and the time which has elapsed since the offence was committed.

APPELLATE CIVIL.

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

AMBU (PLAINTIFF), APPELLANT,

and

RÁMAN AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1886. April 1, 14.

Malabar law—Otti tenure—Right to make further advance—Second mortgage to stranger without notice to otti holder invalid.

R having conveyed certain land to P on otti tenure (mortgage) in 1852 executed a deed of further charge (ottikampuram) in 1873 to P's widow, and, in 1879, conveyed the jenm (equity of redemption) to her.

Between 1873 and 1879, R mortgaged the same land to A by jenm panayam deed.

In a suit by A to enforce his mortgage:

Held, that inasmuch as R had not given notice to the otti holder, nor given her the option of making the further advance made by A, A had no claim against the land.

APPEAL from the decree of H. J. Stokes, Acting District Judge of South Malabar, confirming the decree of O. Chandu Menon, District Múnsif of Calicut.

Plaintiff, Ambu Náyar, alleged that in 1881 he obtained a decree upon mortgage (panayam) against defendant No. 1, and attached the land mortgaged in execution of the decree; that defendant No. 2 intervened, claiming to be the owner of the land by purchase from defendant No. 1 in 1879.

The claim was allowed.

Plaintiff now sued to enforce his mortgage against the land.

Defendant No. 2, Annamma, pleaded that the land had been demised on otti to her husband in 1852, that she had since that date made a further advance, and in 1879 purchased the equity of redemption.

* Second Appeal No. 803 of 1885.

AMBU v. RÁMAN.

The District Múnsif upon the evidence of one witness found that according to custom no jenm panayam can be raised by a jenmi from a third party on land held on otti tenure, and dismissed the suit.

On appeal the District Judge confirmed the decree on the ground that as long as an otti is unredeemed, the otti holder's right to make further advances subsists.

Both Courts found that defendant No. 2 had no notice of and had not consented to the advance made to defendant No. 1 by plaintiff.

Plaintiff appealed on the grounds, *inter alia*, that the right of an otti holder to make further advances was no bar to the sale of the land by a subsequent mortgagee, and that the effect of the right of pre-emption which vested in defendant No. 2 was not to nullify plaintiff's mortgage but only to give her the option to purchase that right also.

Sankara Náyar for appellant.

Sankara Menon for respondent No. 2.

The Court (Collins, CJ., and Parker, J.) delivered the following

JUDGMENT:—Defendant No. 1 demised the paramba on otti to the late husband of defendant No. 2 in 1852, and in 1873 having received a further advance, executed an ottikampuram deed to defendant No. 2. He further conveyed the jenm right to defendant No. 2 in 1879.

Between 1873 and 1879, however, the defendant No. 1 executed a jenm panayam deed in favor of plaintiff, who now sues to establish his right to sell the paramba to cover the panayam amount.

Both the Lower Courts have dismissed the plaintiff's claim.

For the plaintiff it is contended that the paramba is liable for his lien unless defendant No. 2 likes to pay him the amount, in which case the amount so paid will be a further charge upon the paramba in addition to the claim already held by her on otti and ottikampuram.

For defendant No. 2 it is urged that the property cannot be made liable for plaintiff's panayam amount, that deed having been executed without notice to her and without giving her the option of making a further advance.

The District Múnsif found that defendant No. 2 had no notice

of plaintiff's jenm panayam and did not consent to it, and the District Judge adopts this finding. There was, therefore, no valid opportunity for making a further advance, and the suit was rightly dismissed. *Cheria Krishnan* v. *Vishnu.* (1) *Vasudevan* v. *Keshavan* (2) is not in conflict with this view, since in that case the veppu holder and his karnavan had the chance of purchasing at the price offered by the highest bidder at an auction.

The issue referred in *K. T. P. Kunhali* v. *V. V. Kinathe* (3) is not necessary here since the Courts have found that defendant No. 2 had no notice of the panayam.

The second appeal fails and is dismissed with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Parker.

QUEEN-EMPRESS

against

KETHIGADU.*

1886. April 16, 28.

Madras Forest Act, ss. 2, 43, Rules 10, 13, 23—Logs permanently fastened to a building cease to be timber.

The accused were convicted of removing 'timber' vested in the Forest Department, and the convicting Magistrate ordered it to be confiscated:

Held, that having been already permanently fastened to a building it had ceased to be timber within the meaning of s. 2 of the Forest Act, and the order for confiscation was illegal.

THIS was a case referred for the orders of the High Court by C. A. Bird, District Magistrate of Cuddapah.

In case No. 190 of 1885, the Second-class Magistrate of Budvel convicted Kethigadu and two others of an offence punishable under s. 26 of the Madras Forest Act, 1882, (viz., breach of Rule 12 of the Forest Rules passed by the Governor in Council) in cutting "reserved" trees without license and removing the timber.

The Magistrate found that the accused had cut sandal-wood and other logs and built huts therewith.

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(1) I.L.R., 5 Mad., 198. (2) I.L.R., 7 Mad., 309. (3) I.L.R., 3 Mad., 74.

* Criminal Revision Case 680 of 1885.