

APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

v.

NARASIMMAYYA.*

Forest Act (Madras)—Act V of 1882, ss. 4, 7, 16 and 21.

A claim put forward to part of certain land notified for reservation under the Madras Forest Act originally rejected, was held to be valid by the District Court on appeal. The High Court set aside the decision of the District Court and directed that the appeal be reheard. Pending the rehearing, a lessee of the claimant felled trees on the land and was charged under s. 21 (a) with the offence of making a fresh clearing prohibited by s. 7 of the Act. The Magistrate acquitted him on the ground that there was no order in writing served on him by the Forest Department prohibiting him from felling trees pending the rehearing :

Held, that the acquittal was wrong.

CASE referred for the orders of the High Court under section 438 of the Code of Criminal Procedure by H. M. Winterbotham, District Magistrate of North Malabar.

The case was stated as follows :—

“The accused was charged, with having some time in April and May 1888, committed an offence under section 21 (a) of the Madras Forest Act by making a fresh clearing in the Pambara Forest which had been notified, under section 7 of the Act, for reservation. The forest was notified for reservation in October 1884. One Puhadi Kettilamma put forward a claim to a portion of it. The Forest Settlement officer rejected the claim on 30th September 1886. Appeal was made by the claimant to the District Court of South Malabar. The District Judge heard the appeal *ex parte* and reversed the Forest Settlement officer’s decision on 6th October 1887. Government applied to the High Court to have the *ex parte* order set aside. The High Court set aside the order and directed a rehearing of the appeal on 9th March 1888.

“The effect of the High Court’s order of 9th March directing a rehearing of the appeal is to leave the Forest Settlement officer’s

* Criminal Revision Case No. 76 of 1889.

judgment temporarily in full force and effect. The felling complained of admittedly took place in April and May 1888. The appeal was not reheard and determined till 24th August 1888. It appears perfectly clear that between the months of March and August 1888 the accused, as lessee of the claimant Pudhadi Kettilamma, had not the least excuse for trespassing upon the forest, and the Sub-Magistrate's remark that he ought to have been prohibited by an order in writing is utterly unsound.

"During the said period it cannot even be pleaded that any decision of a Court existed in Pudhadi Kettilamma's favor. The Forest Settlement officer found that the Government were in possession and that the claimant had no title to the property, and it was this finding that was in force at the time that the felling complained of took place.

"I learn that the lessee, encouraged by the Sub-Magistrate's judgment, has recommenced felling and I therefore think it proper to bring the illegal acquittal of the accused to the High Court's notice for such action as may be deemed proper. I think a re-trial should be ordered.

"Although the Government are undisputedly in present possession of the forest and have a large stock of timber lying in it, no steps have been taken to work the forest, and it seems only fair that Government should be accorded such protection as the law warrants against the illegal felling of the opposite party pending the final disposal of the dispute."

Section 21 of the Madras Forest Act (Act V of 1882) renders it penal for any person "to make a fresh clearing prohibited by section 7" *; it provides, however, as follows:—

"Nothing in this section shall be deemed to prohibit . . . (*inter alia*) . . . the exercise of any right continued under section 12 or

* Section 7. During the interval between the publication of such proclamation and the date fixed by the notification under section 16 no right shall be acquired in or over the land included in such proclamation, except under a grant or contract in writing made, or entered into by, or on behalf of, the Government, or by, or on behalf of, some person in whom such right, or power to create the same, was vested when the proclamation was published, or by succession from such person, and no fresh clearings for cultivation or for any other purpose shall be made on such land. No patta shall, without the previous sanction of the Governor in Council, be granted on behalf of Government in such land, and every patta granted without such sanction shall be null and void.

Nothing in this section shall be deemed to prohibit any act done with the permission in writing of the Forest Settlement officer.

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created by grant or contract in the manner described in section 18." Section 12 relates to the case where a right to forest produce is admitted by the Forest Settlement Officer. The terms of section 18 are given in the foot-note*: those of sections 4 and 6 which provide for notice to occupiers, &c., of an intended reservation of forest appear *ante* p. 204; those of section 16 as to "notifications declaring forest reserved" appear *ante* p. 226.

The *Acting Government Pleader* (*Subramanya Ayyar*) for the Crown.

The Court (Collins, C.J., and Wilkinson, J.) delivered the following

JUDGMENT:—The ground on which the Sub-Magistrate acquitted the accused, viz., that there was no order in writing served on the defendant by the Forest Department prohibiting him from felling trees during the pendency of the second hearing of the appeal before the District Court is clearly erroneous. Between the date of the notification under section 4 and the date of the notification under section 16 any fresh clearing is clearly rendered illegal by section 7, and the only question therefore was whether the accused had effected a clearing between those dates. We set aside the acquittal and direct the case to be reheard.

* Section 18. No right of any description shall be acquired in or over a reserved forest, except under a grant or contract in writing made by, or on behalf of, the Government, or by, or on behalf of, some person in whom such right, or the power to create such right, was vested, when the notification under section 16 was published, or by succession from such person :

Provided that no patta shall, without the previous sanction of the Governor in Council, be granted on behalf of Government for any land included within a reserved forest, and every patta granted without such sanction shall be null and void.
