

GANAPATI
v.
CHATHU.

would exceed Rs. 2,500 if it were valued as a suit for possession. On this ground also I concur in the order proposed by my learned colleague.

APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

v.

RAMI REDDI *

Forest Act—Act V of 1882 (Madras), ss. 6, 10, 16, 21—Tree patta—Trespass.

The holder of a *patta* of certain trees on land which had been declared a reserved forest was convicted of trespass under the Madras Forest Act on proof that he had continued to gather the produce of the trees :

Held, that the conviction was bad for want of proof, that the pattadar's claim had been duly disposed of or that he had not preferred his claim within the period required by law.

PETITION under ss. 435 and 439 of the Code of Criminal Procedure praying the High Court to revise the proceedings of the Special Deputy Magistrate of North Arcot in appeal No. 21 of 1888 confirming the conviction and sentence in case No. 106 of 1888 on the file of the Second-class Magistrate of Chittoor.

Petitioner was convicted of the offence of trespass under s. 21 of the Madras Forest Act. The land upon which the offence was alleged to have been committed had been constituted a reserved forest by a Government Notification dated 16th July 1885 ; this notification was cancelled by a subsequent notification published on 20th August 1885 ; but it was subsequently, on 8th February 1887, republished, that of 20th August 1885 being annulled.

The provisions of the Madras Forest Act as to “ notifications declaring forest reserved ” are as follows :—

Sec. 16. “ When the following events have occurred, namely—
(a) the period fixed under section six for preferring claims has

* Criminal Revision Case No. 712 of 1888.

elapsed, and all claims (if any) made within such period have been disposed of by the Forest Settlement-officer ; and

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- (b) if such claims have been made, the period fixed by sections ten and fourteen for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the Appellate authority ; and
- (c) all proceedings prescribed by section ten have been taken, and all lands (if any) to be included in the proposed forest, which the Forest Settlement-officer has, under section ten, elected to acquire under the Land Acquisition Act, 1870, have become vested in the Government under section sixteen of that Act ;

“ the Governor in Council may publish a Notification in the *Fort St. George Gazette*, specifying the limits of the forest which it is intended to reserve and declaring the same to be reserved from a date to be fixed by such Notification.

“ The Forest Settlement-officer shall, before the date so fixed, publish such Notification in the manner prescribed for the Proclamation under section six. From the date so fixed, such forest shall be deemed to be a reserved forest.”

Petitioner had a *patta* of certain trees on the land constituted a reserved forest ; and the trespass of which he was convicted consisted in continuing to gather the produce of the trees in question, after the publication of the Government Notification constituting the reserved forest.

As a tree *pattadar* he was a ‘ known occupier of the land,’ and as such entitled to special notice under s. 6 : see *Reference under s. 39 of Madras Forest Act*(1). Sections 10 and 14 of the Forest Act relate to ‘ claims to rights of occupancy and ownership’ and proceedings with regard thereto.

The further facts of the case and the arguments adduced on the petition appear sufficiently for the purpose of this report from the judgment of the Court (Collins, G.J., and Wilkinson, J.).

Mr. *Subramanyam* for petitioner.

Mr. *Wedderburn* for the Crown.

JUDGMENT.—The prosecution of the petitioner for trespass

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was under the circumstances clearly illegal. Section 16 of Act V of 1882 (Madras) lays down that the Governor in Council may publish a notification declaring a forest to be reserved when certain events have occurred, and that such forest shall become reserved from the date specified in that notification. One of the events which must have occurred before the Governor in Council can declare a forest reserved is the disposal of all claims made by owners or occupiers of land. It has not been shown in the present case that the claim of the petitioner who is an owner or occupier of land (*Reference under s. 39 of Act V of 1882(1)*) was disposed of prior to the notification of 16th July 1885; and the fact that in April 1887, subsequent to the publication of the notifications of 20th August 1886 and 8th February 1887, the Forest Officer was negotiating with the petitioner, would appear to show that his claim had never been disposed of according to law. The prosecution did not assert that the petitioner did not prefer a claim within the period required by law, and unless he had failed to do so, his right would not have been extinguished. He appears to have continued to gather the produce of the trees in his *patta* up to October 1887. We accordingly reverse the findings and sentences of the Courts below. The fine will be repaid.

APPELLATE CIVIL.

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

KETLILAMMA (PLAINTIFF), APPELLANT,

v.

KELAPPAN AND OTHERS (DEFENDANTS), RESPONDENTS.*

Civil Procedure Code, ss. 43, 244—Separate suit on disallowance of objection to execution—Evidence Act—Act I of 1872, s. 44—Competent Court.

In execution of a decree the defendant, who was sued as the representative of her deceased brother, objected under s. 244 of the Code of Civil Procedure to the attachment of certain lands to which she set up independent title. The objection was disallowed and the land was sold. She then sued the execution purchaser to set aside the Court sale and obtained a decree against which no appeal was preferred. She now sued for possession :

(1) *Ante* page 203.

* Second Appeal No. 1508 of 1888.