APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

1892.
November 30.

QUEEN-EMPRESS

v.

RAMASAMI AND OTHERS.*

Revenue Recovery Act—Act II of 1864 *(Madras), s.* 8—*Removal of crop under attachment—Theft—Dishonest intention.*

Certain crops which had been distrained for arrears of revenue were harvested and removed by the owners and occupiers of the land, who were thereupon charged with theft. The accused were not the defaulters, the demand having been made upon certain other persons in whose name the pattas stood as the registered proprietors. The accused were acquitted:

Held, that the acquittal was wrong in the absence of a finding whether or not the accused were aware of the distraint, and dishonestly removed the crops with such knowledge.

CASE referred for the orders of the High Court under Criminal Procedure Code, s. 438, by J. Thompson, District Magistrate of Chingleput.

The case was stated as follows:—

"I have the honour, under section 438, Criminal Procedure "Code, to submit the records in summary trial case No. 9 of 1892 "on the file of the Deputy Magistrate, Trivellore division.

"Musali Nayudu, Village Munsif of Nayapakkam village, "complained to the Taluk Magistrate, Trivellore, that Ramasami "Reddi, Marapa Reddi and Virasami Reddi removed the crops "attached for arrears of revenue due on pattas Nos. 6 and 51 in "the village, registered in the names of other individuals and "thereby committed an offence punishable under section 379, "Indian Penal Code.

"The Taluk Magistrate examined two witnesses for the pro-"secution, when the Deputy First-class Magistrate took the case "on his file and tried it summarily under section 260, Criminal "Procedure Code.

"The Deputy Magistrate found that the standing crop was "attached and copy of the list of attached property given to the

* Criminal Revision Case No. 506 of 1892.

" pattadars, but held, on the authority of the ruling of the High " Court in criminal revision case No. 321 of 1882, that the dis- " traint was not lawfully made, as neither the demand notice nor " the list of attached property was given to the accused persons " who occupied the land, and, in this view, discharged the accused " persons under section 253, Criminal Procedure Code.

" In criminal revision case No. 321 of 1882 on the file of " the High Court, the tenants of a defaulting shrotriemdar were " charged with theft of crops distrained for arrears of revenue " due to Government, and convicted by the Sheristadar-Magis- " trate of Gudoor taluk. But the High Court quashed the con- " viction on the ground that there was no evidence to prove that " a copy of the demand in writing was handed over to the accused, " or that a list of the property distrained was endorsed thereon, " with such particulars as are mentioned in section 8 of Act II of " 1864.

" I beg to point out that section 8 of Act II of 1864 only " enjoins that copy of the demand in writing, with the prescribed " endorsement, should be furnished to the defaulter, who is the " registered proprietor of the land. It, therefore, seems that an " omission to furnish copy of the demand or the list of attached " property to the occupying tenant will not render an attachment " illegal. Section 2 of Act II of 1864 provides that the products " of the land shall be regarded as security for the public revenue.

" I, therefore, consider that the finding of the Deputy Magis- " trate that the attachment in the present case was not lawfully " made, and the order of discharge based thereon are not correct. " The guilt of the accused in this case apparently turns on the " question as to whether they had knowledge of the attachment " when they removed the crops. The Deputy Magistrate has " failed to record a finding on this point."

Gopalacharlu for the accused.

The Acting Government Pleader and Public Prosecutor (*Subramania Ayyar*) *for the Crown.*

JUDGMENT.—In this case certain standing crop was distrained for arrears of revenue. The accused are the real owners of the land on which the crop had stood and the parties in possession. But the pattas stood in the names of others and the demand in writing and the list of distrained property prescribed by Act II of 1864 were given to them alone. The accused carried away the

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crop and were charged with theft. Their defence was that they knew nothing of the distraint, that they cut and carried away their own crop, and that no one objected to their doing so. The Deputy Magistrate acquitted the accused on the ground that no demand was served upon them and that no list of distrained property was furnished to them. The District Magistrate considers that as section 8 of Act II of 1864 requires the service of a demand in writing only on the defaulter and the delivery of the list of distrained property only to him, the acquittal is wrong and refers the case for the orders of this Court.

The Deputy Magistrate relied on the decision in criminal revision case 321 of 1882, but that decision proceeds on the view that the demand should be served on, and the list of attached property delivered to, the tenant in possession. As pointed out by the District Magistrate, section 8 refers only to the defaulter who is the pattadar or registered proprietor.

The Deputy Magistrate was, therefore, clearly in error in acquitting the accused on the ground that notice of demand and a list of distrained property should have been given to them.

There is no distinct finding as to whether they were in fact aware of the distraint, and with such knowledge dishonestly removed the crop.

We must set aside the order of acquittal and direct a retrial.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

1893. January 11.

UPPI HAJI (PLAINTIFF), APPELLANT,

v.

MAMMAVAN (DEFENDANT No. 1), RESPONDENT.*

Limitation Act—Act XV of 1877, s. 19—Acknowledgment of liability—Requirements of the section.

In a suit to redeem a kanom of 1805 the paintiff set up in bar of limitation an acknowledgment contained in the will of the deceased mortgagee, who thereby devised to his son lands therein described as held by him on kanom. The mortgagor's name was not mentioned nor the date of the kanom, nor was there any

* Second Appeal No. 438 of 1892.