

“Again on the facts found, it is no more than likely that, as alleged by the accused, he was enticed into the house in order to be beaten and falsely charged with theft. Under these circumstances I have the honour to request their Lordships to quash the conviction and to order that the accused who has been this day ordered to be released on bail be set at liberty.”

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v.
RAYAPADA-
YACHI.

Counsel were not instructed.

JUDGMENT.—We agree with the opinion of the Sessions Judge based on a decision of this Court *in re Sivaratri Guruwaiya*(1) which, however, is not in accordance with a previous decision *in re Veda Gurukka*(2). In our opinion the accused, though he may have known that, if discovered, his act would be likely to cause annoyance to the owner of the house, cannot be said to have intended either actually or constructively to cause such annoyance. It is one thing to entertain a certain intention and another to have the knowledge that one's act may possibly lead to a certain result. The section (441) defining criminal trespass is so worded as to show that the act must be done with intent and does not, as other sections do (*e.g.*, section 425), embrace the case of an act done with knowledge of the likelihood of a given consequence.

The conviction must be set aside and the prisoner who is on bail released from his bond.

APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

v.

SUBBANNA.*

1896.
February 14.

*Madras District Municipalities Act—Act IV of 1884, s.179—Criminal
Procedure Code, s. 433.*

By section 179, Madras District Municipalities Act IV of 1884, it is provided “the external roofs, verandahs, pandals, and walls of buildings erected or renewed

(1) Criminal Revision Case No. 544 of 1895, *Weir's Criminal Rulings*, Third Edition, 329.

(2) Criminal Revision Case No. 249 of 1882, *Weir's Criminal Rulings*, Third Edition, 328.

* Criminal Revision Case No. 532 of 1895.

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“ after the coming into operation of this Act shall not be made of grass, leaves,
“ mats or other such inflammable materials except with the written permission of
“ the Municipal Council :’

Held, that the word “ renewed ” includes repairing.

CASE referred for the orders of the High Court by J. N. Atkinson, District Magistrate of Kistna, under section 438, Criminal Procedure Code.

The case was stated as follows :—

“ One Kowludu Subbanna of Bezwada repaired a portion of his
“ thatched roof without the permission of the Municipal Chairman.
“ The Sanitary Inspector of the Bezwada Municipality prosecuted
“ him under section 179 of the Madras District Municipalities Act,
“ 1884. But the Bench acquitted the accused under section 245,
“ Criminal Procedure Code, on the following grounds :—

“ ‘ This is neither erection, nor renewal contemplated by the
“ Act. Only a portion of the roof was repaired. This is not
“ within the purview of the Act.’

“ The Bench is clearly wrong. Section 179 of the Municipal Act covers all ‘ external roofs of buildings renewed.’ My Head Assistant Magistrate comments on the case as follows :—

“ ‘ Repair ’ is renewal and further the contention is not technical. The section places in the hands of the Municipal Council a means of preventing fire through thatched roofs, since the substitution of tiles can, at its discretion, be made a condition of the grant of the license. By decisions such as this, that discretion is taken away, since so long as a vestige of the old roofs remains the plea of repairs will be successful.”

Parties were not represented.

JUDGMENT.—We have no doubt that the interpretation put by the Bench of Magistrates upon the meaning of the word ‘ renewed ’ is wrong. It includes repairing. The acquittal is set aside and the accused must be retried.