on the same day shall be held to be barred by the operation of Order II, rule 2. This being so, we think the sellers here are entitled to ask that the doctrine, if applied, should be applied to the suit for damages in respect of the non-acceptance of 32 bales so as to leave their remedy unaffected as to the 28 bales sold and delivered. The result is that both appeals fail and are dismissed with costs.

N.R.

APPELLATE CRIMINAL.

Before Mr. Justice Devadoss and Mr. Justice Waller.

KAMMABOYINA RAMADAS (ACCUSED), PETITIONER,* 1926, February 1.

v.

KING-EMPEROR (COMPLAINANT), RESPONDENT.

Forest Act (V of 1882), sec. 21 (d)—Bare finding of cattle within forest reserve—Liability of owner—"permits his cattle to trespass"; construction of.

If the cattle of a person left under the care of some servants strayed into a reserved forest, the owner not being present at the time and place, the owner is not guilty of the offence of "pasturing or permitting his cattle to trespass" in or into a reserved forest within the meaning of section 21 (*d*) of the Madras Forest Act. An owner is not guilty unless he by some act or wilful omission of his allows his cattle to trespass. Mere proof that his cattle trespassed, without more, does not make out the offence.

Criminal Revision Case No. 253 of 1886, I Weir, 762 and, *Queen Empress* v. *Krishnayya*, (1892) I.L.R., 15 Mad., 156, followed.

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* Criminal Revision Case No. 536 of 1925.

RAMADAS v. KING-EMPEROR.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of the Sub-divisional Magistrate of Narasaraopet in C.C. No. 12 of 1925 (C.A. No. 14 of 1925, Court of Sessions, Guntūr Division).

B. Jagannadha Das for the petitioner.

Public Prosecutor for the Crown.

JUDGMENT.

The petitioner was convicted under section 21 (*d*) of the Forest Act (V of 1882) and sentenced to pay a fine of Rs. 200. His appeal to the Sessions Judge of Guntūr was rejected on the ground that no appeal lay against the conviction in a summary trial, when the fine did not exceed Rs. 200. The petitioner has preferred this Revision Petition.

The contention on behalf of the petitioner is, that the Deputy Magistrate has not correctly applied the law to the facts of the case and that the mere finding of the petitioner's flock of goats grazing within the forest reserve would not by itself make the owner of the goats punishable under section 21 (*d*). Under that section "any person who pastures cattle or permits cattle to trespass" is punishable with imprisonment for 6 months or with fine which may extend to Rs. 500, or with both.

The statement of the law in paragraph 4 of the Deputy Magistrate's judgment

> "I hold that as the rightful owner of the flock, the accused is responsible for its actions and that his paid servants or agents cannot be solely taken to task. The word 'permit' used in the section has to be interpreted in its broadest sense and includes all the acts which, though done without his explicit orders, are such as to be guarded against."

is not correct. The expression "permits his cattle to trespass" means something more than the cattle

trespassing within the forest reserve. In order to make the owner liable, there must be something more than the mere finding of his cattle within the forest reserve. If the owner, knowing that the cattle would trespass into the forest reserve, neglects to take proper care of his cattle, or knowing that his servants would take the cattle to the reserved forest, does not forbid them from doing it, or knowing that his servants might take his cattle to the reserve forest connives at it, then he might be said to permit the cattle to trespass; but where without his knowledge or against his orders his servants allow cattle to trespass into the forest reserve, he cannot be held to be guilty. In this case it is a question of fact whether from the circumstances the Magistrate, as a judge of fact, can come to the conclusion that the accused by his act or by his negligence permitted or allowed his cattle to trespass into the forest reserve. If the law is as stated by the Magistrate, then the owner of cattle would be liable even if his enemy without his knowledge, or his servant, in spite of his orders, drives his cattle into the forest reserve. The law has been correctly stated by MUTTUSWAMI AYYAR and BRANDT, JJ., in Criminal Revision Case No. 253 of 1886 reported in Weir's Criminal Rulings, Vol. I, at page 762, as follows :—

"A person certainly cannot be said to permit cattle to trespass into a reserve forest, unless he knows that such trespass is likely to be committed and neglects with such knowledge to take measures to prevent it. The essence of the offence consists either in a misfeasance, as in the case of one wilfully pasturing cattle, or in a nonfeasance as in his neglecting to take proper measures to prevent the cattle trespassing in circumstances from which it may reasonably be inferred that such trespass might have been foreseen or known as the probable consequence of his negligence."

RAMADAS v. KING-EMPEROR.

In *Queen Empress* v. *Krishnayya*(1), all that the prosecution proved was that the defendant's cattle were found in a reserve. It was held that the accused was not liable. The decision therefore is correct, but, with great respect, we are unable to agree with the observation of the learned Judges that "the owner cannot be held liable unless some overt act of his be proved." It is not necessary that there should be any overt act. Omission to take reasonable precaution against trespass knowing or having reason to believe that cattle would trespass into the forest reserve, would amount to permitting cattle to trespass within the meaning of section 21 (*d*).

The learned Public Prosecutor relies upon *Rex* v. *Almon*(2), and contends that it is for the accused to show that there was no negligence on his part or that his servants acted contrary to his orders and that in the absence of such evidence the master is liable criminally for the acts of his servants. In that case the defendant was convicted for publishing a libel (Junius's letters) in one of the magazines called "The London Museum" which was bought at his shop and even professed to be printed for him. Lord MANSFIELD stated the law thus:

"That proof of a public exposing to sale and selling at his shop by his servant was *prima facie* sufficient, and must stand till contradicted, or explained or exculpated by some other evidence, and, if not contradicted, explained or exculpated, would be in point of evidence sufficient or tantamount to conclusive. Mr. Mackworth's doubt seemed to be 'whether the evidence was sufficient to convict the defendant, in case he believed it to be true.' And in this sense I answered it. *Prima facie* it is good; and remains so till answered. If it is believed and remains unanswered, it becomes conclusive. If it

(1) (1892) I.L.R., 15 Mad., 156. (2) (1770) 5 Burr., 2687; 98 E.R., 411.

be sufficient in point of law and the juryman believes it, he is bound in conscience to give his verdict according to it."

This case has no application to the present. There the libellous publication was sold in the defendant's shop and purported to have been printed for him. It was open to him to prove that the sale was without his knowledge and that the printing was done either contrary to his orders or without his knowledge. The Libel Act of 1843, 6 and 7, Victoria, Chapter 96, section 7, has made it clear that

> "it should be competent to such a defendant to prove that such a publication was made without his authority or knowledge and that the said publication did not arise from want of due care or caution on his part."

In the case of cattle trespassing within the forest reserve, the owner may be miles away from the reserve, and it cannot be said that the onus is upon him to prove that it was done without his authority or knowledge. In every case it is for the Magistrate who tries the case to find on the evidence whether the accused by some act or omission or by negligence allowed or permitted the trespass. If from the evidence on the side of the prosecution the Court could presume that the defendant by his omission to take such reasonable care as the owner of cattle should have, allowed his cattle to trespass, or knowing that the cattle would trespass, failed to take such care as every prudent owner of cattle is expected to take, a *prima facie* case would be made out. Then, the onus of proof that he took all reasonable care to prevent cattle trespassing, or that the trespass was in spite of his care or against his orders, would be upon him. If he fails to make out that, he should be held to be guilty. But the prosecution cannot succeed, by merely showing that a man's cattle was found within the forest reserve.

RAMADAS v. KING-EMPEROR.

In this case, inasmuch as the Magistrate erred with regard to the statement of the law and convicted the accused without recording a finding that he either wilfully or negligently permitted the trespass or failed to take such care as would be necessary to prevent cattle trespassing into the forest reserve, the conviction cannot stand. We therefore set aside the conviction and direct that the accused be retried and the case disposed of according to law. The fine, if paid, will be refunded to the petitioner.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Devadoss and Mr. Justice Waller.

1926 February 25.

RAMACHANDRA CHETTI (ACCUSED), PETITIONER,

v.

CHAIRMAN, MUNICIPAL COUNCIL, SALEM (COMPLAINANT), RESPONDENT.*

Madras District Municipalities Act (V of 1920), ss. 146, 149, 313 and 347—Notice directing a certain act—Not complied with within time—Second notice issued—Prosecution within three months of second notice, but after more than three months from first notice—if barred.

If a notice issued by a Municipality on an occupier of a house to do certain acts enjoined by the District Municipalities Act is not complied with, the Municipality is entitled to issue a second notice for the purpose. A prosecution instituted within three months of the second notice though beyond three months after the first, for not complying with the second notice, is not barred under section 247 of the Act.

Criminal Revision Case No. 164 of 1925 followed; *Ramanujachariar* v. *Kailasam Ayyar*, (1925) I.L.R., 48 Mad., 870, dissented from.

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* Criminal Revision Case No. 707 of 1925.