

APPELLATE CRIMINAL.

Before Mr. Justice Wallace.

G. P. SATYANARAYANAMURTI (AGENT TO THE
RAJAH OF MANDASA, PETITIONER), COMPLAINANT,

1926,
April 21.

v.

PILLA RAMAYYA (RESPONDENT), ACCUSED.*

Estates Land Act (I of 1908), sec. 212 (b)—“Distrainment duly made”—Distrainment—Essence of—When complete.

The essence of a distrainment is the act of taking out of the possession of the real owner and such act is not completed until the taking out of the possession of the real owner is complete.

Where cattle seized for arrears of rent under the Estates Land Act were still in the owner's pen and the person distraining was proceeding to drive them out of the pen, and the owner prevented him from so doing, held, that the distrainment was not complete, and that such interference constituted resistance to a distrainment duly made within the meaning of section 212 (b) of the said Act.

Narayana Reddi v. Dyvadeenachar, (1925) I.L.R., 48 Mad., 505, distinguished.

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 Joint Magistrate of Berhampur in Criminal Appeal No. 97 of 1925 preferred against the judgment of the Court of the Second-class Magistrate of Sompeta in Calendar Case No. 83 of 1925.

K. Bashyam for the petitioner.

M. V. Narayana Rao for the respondent.

V. L. Ethiraj for Public Prosecutor for the Crown.

SATTANARA-
YANAMURTI
v.
RAMAYYA.

JUDGMENT.

The chief point in this case is whether the accused resisted "a distraint duly made" under Act I of 1908. The facts are that the agent of petitioner seized certain cattle said to belong to accused, for arrears of rent, and was proceeding to drive them out of accused's pen, when accused interfered and prevented him from doing so. Petitioner contends that this was resistance to a distraint. I am inclined to agree. No doubt a learned Judge of this Court held in *Narayana Reddi v. Dyvadeenachar*(1) that cattle are not "produce" within the meaning of section 212 (b), but the offence regarding produce is forcibly or clandestinely removing it *after* it has been duly distrained. In the present case my view is that the distraint was not complete when accused interfered and therefore it is not a case on all fours with *Narayana Reddi v. Dyvadeenachar*(1). The essence of a distraint, I take it, is the act of taking out of the possession of the real owner, and such act will not be completed, until the taking out of the possession of the real owner is complete. Here the cattle were still in accused's pen when accused resisted, and I would hold therefore that the act of taking them out of his possession had not been completed when he resisted the taking and that therefore he was "resisting a distraint" within the meaning of section 212 (b). Accused urges that even so it has not been proved that the distraint was legal since the power-of-attorney of prosecution first witness has not been produced. Prosecution first witness swore that he had a registered power-of-attorney to distrain and this statement has never been challenged by accused until now and I cannot uphold the contention.

(1) (1925) I.L.R., 43 Mad., 505.

The next point is the contention that the cattle were not the accused's because he is divided from his father. The first Court found that unproved. The Lower Appellate Court did not consider it, and it is not worth while sending the case back for a finding on that point.

With this expression of opinion on the main point of law I dismiss the petition.

B.C.S.

SATYANARA-
YANAMURTI,
v.
RAMAYYA.

APPELLATE CIVIL.

Before Mr. Justice Odgers.

DAVID CUTINHA (PLAINTIFF), APPELLANT,

v.

SALVADORA MINAZES AND 11 OTHERS (DEFENDANTS
1, 2, 4 TO 13), RESPONDENTS.*

1926,
August 25.

Landlord and tenant—Lease—Restraint upon alienation of leasehold interest—Alienation of a portion, no breach of restraint.

Unless there is a restriction against the alienation of any portion of the demised property, a restraint upon alienation of the demised premises does not prevent the alienation of a portion; *Chatterton v. Terrell*, [1923] A.C., 578, followed.

SECOND APPEAL against the decree of K. S. MENON, District Judge of South Kanara, in Appeal No. 239 of 1922, preferred against the decree of T. S. RAJA RAO, Principal District Munsif of Mangalore, in Original Suit No. 110 of 1920.

The facts are given in the judgment.

J. A. Pinto for appellant.

B. Sitarama Rao for respondent.
