the Civil Procedure Code in which case admittedly leave to sue can be given after the plaint is filed.

There are thus no sufficient reasons for holding that the order of the City Civil Judge is wrong, and this petition must be dismissed with costs.

A.S.V.

APPELLATE CRIMINAL.

Before Mr. Justice Pandrang Row.

A. M. RANGACHARIAR (COMPLAINANT), PETITIONER,

1934, September 10.

v.

VENKATASAMI CHETTI (ACCUSED), RESPONDENT.*

Madras Local Boards Act (XIV of 1920), *sec.* 207 (*i*)—*Offence complete under, on failure to remove or alter encroachment after service of notice to do so—Another distinct offence not brought into being by subsequent notice on same facts—Fresh trial barred under sec.* 403, *Criminal Procedure Code* (*Act V of* 1898).

The offence under section 207 (i) of the Madras Local Boards Act (XIV of 1920) consists in the failure to obey the notice issued under section 159 of that Act to remove or alter an encroachment. Once there is such failure, the offence is complete; and another separate or distinct offence is not brought into being by the issue of a subsequent notice when that notice is by the same authority, to the same person, and relates to the same encroachment or contains the same direction.

Where an accused had once been tried for an offence under section 207 (i) of the Madras Local Boards Act (XIV of 1920) and acquitted on the ground that there had been no failure to remove an encroachment,

held, that section 403, Criminal Procedure Code Act (V of 1898), was a bar to his being tried again for failure to

---

* Criminal Revision Case No. 99 of 1934.

RANGACHARIAR v. VENKATASAMI CHETTI.

remove the same encroachment, even though the subsequent complaint alleged a subsequent notice to remove the encroachment.

Moidi Beary v. *President, Taluk Board of Mangalore*, (1932) 36 L.W. 426, referred to.

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 First Class Bench Magistrate of Conjeevaram in Bench Case No. 2419 of 1933.

E. R. Krishnan and *Mahommad Fazlullah* for petitioner.

The Public Prosecutor (*L. H. Bewes*) for the Crown.

N. T. Raghunadhan for *Srinivasaraghavan* and *Thiyagarajan* for respondent.

Cur. adv. vult.

ORDER.

The petitioner contends that the order of the First Class Bench Magistrate's Court, Conjeevaram, dated 31st October 1933, discharging the respondent is contrary to law. The petitioner admitted during his examination as Prosecution Witness 1 in that Court that "for the same offence the accused was charged in Bench Case No. 378 of 1933", and the order of the Court, dated 3rd March 1933, which decided that case showed that the accused had been acquitted. The Court held that the accused was not liable to be tried again for the same offence in view of section 403, Criminal Procedure Code, and the ruling reported as *Ramanujachariar* v. *Kailasam Iyer*(1).

It is now contended that the offence is not the same because the subsequent complaint alleged a

(1) (1925) I.L.R. 48 Mad. 870.

subsequent notice to remove the same encroachment; except that the notice in the present case bears a subsequent date all the facts alleged in the present case are exactly the same as those alleged in the previous case of the same year which ended in acquittal.

RANGACHARIAR v. VENKATASAMI CHETTI.

The question for decision is whether the issue of a subsequent notice avoids the bar imposed by section 403, Criminal Procedure Code. This question has been answered in the affirmative by PAKENHAM WALSH J. in the two cases reported as *Moidi Beary* v. *President, Taluk Board of Mangalore*(1) and *President, Panchayat Board, Velgode* v. *Venkata Reddi*(2) after reviewing all the previous decisions. It is clear, however, from the Bench decision in *Ramachandra Chetti* v. *Chairman, Municipal Council, Salem*(3), that the point now to be decided was not decided therein; on the other hand, it is expressly stated therein that

> "if a prosecution had been instituted on the first requisition and had failed or not been pressed, other considerations might come in, but that question does not arise here."

There are conflicting decisions by single Judges on the point, and I feel myself at liberty to act upon the view which commends itself to my judgment. The offence consists, as laid down by the Bench in *Ramachandra Chetty* v. *Chairman, Municipal Council, Salem*(3), in the failure to obey the notice issued under section 159 of the Local Boards Act to remove or alter the encroachment; or, in other words, it is the failure to remove or alter the encroachment specified in the notice that constitutes the offence; once there is such failure the offence is complete, and failure to perform an

(1) (1932) 36 L.W. 426. (2) (1932) 36 L.W. 429.
(3) (1926) I.L.R. 49 Mad. 880.

act is *ex necessitate rei* continuous in character. Another separate or distinct offence is not brought into being by the issue of a subsequent notice when that notice is by the same authority and to the same person, and relates to the same encroachment or contains the same direction. To hold otherwise would be to go against the spirit of the ancient maxim "*Nemo debet bis vexari pro eadem causa*" which is embodied in section 403. I cannot bring myself to believe that it would be right or just, when the Court has once decided that there has been no failure to remove an encroachment and acquitted the accused, to make the same person liable to be tried again and again for failure to remove the same encroachment, simply because the same authority hopes to get a different decision later on by issuing one notice after another. Otherwise, there would be no end to such prosecutions. The policy of the law relating to this subject is clear: if a person has been convicted for failure to remove an encroachment he is to be prosecuted again, not under sub-section (1) of section 207 of the Local Boards Act for failure to remove the same encroachment, but for "continuing breach" under sub-section 2 of that section which provides an effective remedy. The necessary implication is that if the person has been acquitted he goes free altogether. Courts must generally lean, in cases of doubt, against any construction of a penal law which is patently oppressive to the subject and in favour of a construction which is in accord with the general policy of the criminal law, which is to protect the subject from a fresh prosecution after he has been convicted or acquitted in respect of what is in

substance the same matter. Even if the question of law had to be decided otherwise, I would not have been prepared in the circumstances of the case to interfere in revision with the order of the First Class Bench Magistrate's Court. The revision petition is therefore dismissed.

K.W.R.

APPELLATE CRIMINAL.

Before Mr. Justice Curgenven and Mr. Justice Cornish.

1934, October 31.

MAYANDI NADAR (PROSECUTION WITNESS 1), PETITIONER,

v.

PALA KUDUMBAN AND TWO OTHERS (ACCUSED 2 TO 4), RESPONDENTS.*

Criminal Procedure Code (Act V of 1898), *ss.* 408 *and* 562—*Order under sec.* 562—*Whether appealable*—"*Conviction*"—*Meaning of.*

An appeal lies to the Sessions Judge from an order of a First Class Magistrate passed under section 562, Criminal Procedure Code (Act V of 1898).

The word "conviction" in sections 408 and 562 of the Code must be given its ordinary meaning of an adjudication of guilt.

Emperor v. *Hira Lal,* (1924) I.L.R. 46 All. 828, *Bahadur Molla* v. *Ismail,* (1924) I.L.R. 52 Calc. 463, and *Madhav* v. *Emperor,* A.I.R. 1926 Bom. 382, followed.

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

* Criminal Revision Case No. 540 of 1934.