my property and as to the surplus the heir to the same is my daughter Nathi." Nathi died in 1895, the wife died in 1897. The facts, therefore, are almost exactly the same as those in the case of *Lallu* v. *Jagmohan*[1], and, if that ruling is followed, the result would be that Nathi would take an estate vested in interest from the testator's death which would pass to her heirs on her death, and the plaintiff would have no title.

The Judge of the lower Appellate Court has, however, distinguished it on the ground that, in the will there dealt with, the word "owner was used, whereas in the will now under discussion the word "heir" is employed. We think that this is not correct. There is no real difference in the meaning of the words *málak* (assuming that that was the vernacular word translated owner) and *wáras* when they are used in the wills. The intention of the testator in each case to give his whole property to his wife for life and on her death to his daughter absolutely is clear, and we cannot hold that because in this case he has said they shall be heirs of the property, and not said they shall be owners, the intention fails.

For this reason we reverse the decree of the lower Appellate Court and dismiss the plaintiff's claim with costs throughout.

Decree reversed.

(1) (1896) 22 Bom., 409.

APPELLATE CRIMINAL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

QUEEN-EMPRESS *v.* TYAB ALLI.*

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Indian Arms Act (XI of 1878), Sec. 22—Master and servant—Master's liability for the criminal acts of his servant.

Where the manager of a licensed vendor of arms, ammunition and military stores sold certain military stores without previously ascertaining that the buyer was legally authorized to possess the same,

Held, that the licensee was liable to punishment under section 22 of the Indian Arms Act (XI of 1878), though the goods were not sold with his knowledge and consent.

* Criminal Appeal, No. 492 of 1899.

1900.

QUEEN-EMPRESS v. TYAB ALI.

The principle—"whatever a servant does in the course of his employment with which he is entrusted and as a part of it, is his master's act"—is applicable to the present case.

Attorney General v. *Siddon* (1) followed.

APPEAL from the conviction and sentence recorded by Sanders Slater, Chief Presidency Magistrate, in the case of *Queen-Empress* v. *Tyab Alli*.

The accused kept a shop under a license granted to him for the sale of arms, ammunition and military stores. He did not himself sell the goods, but placed a man in charge of the shop for the purpose of selling the goods. This man sold certain military stores, *viz.*, 8 cwts. of leaden bird shot, to one Hasan Ali and fuzes to Raghunath Martand, without previously ascertaining that such persons were legally authorized to possess the same.

Thereupon the accused was prosecuted under section 22 of the Indian Arms Act (XI of 1878)(2).

The accused pleaded that the goods were sold without his knowledge and consent, and that he was not criminally liable for the acts of his servant.

The Chief Presidency Magistrate overruled this contention, and convicted the accused under section 22 of Act XI of 1878 and sentenced him to pay a fine of Rs. 250.

The accused appealed from this conviction and sentence.

Macpherson (with him Messrs. *Nanu and Hormusji*) for accused :—A principal is not criminally answerable for the acts of his agent. There must be a *mens rea*, a guilty knowledge, before a person can be convicted of a criminal offence. In the present case it is found that the military stores were sold and delivered with-

(1830) 1 Cr. and J., 220.

(2) Section 22 of Act XI of 1878 provides as follows :—

"Whoever knowingly purchases any arms, ammunition or military stores from any person not licensed or authorized under the proviso to section five to sell the same; or delivers any arms, ammunition or military stores into the possession of any person without previously ascertaining that such person is legally authorized to possess the same, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both."

out the knowledge and consent of the accused. The conviction is, therefore, illegal—*Queen* v. *Stephens*[1]; *Hearne* v. *Garton*[2]; *Imperatrix* v. *Balu Miya*[3]. There is no provision in the Indian Arms Act (XI of 1878) which makes the master liable for the acts of his servant.

Lang, Advocate General, for the Crown:—The goods were delivered by the accused's servant in the course of his employment. The delivery by the servant would, therefore, be a delivery by the master. Otherwise the provisions of the Act would be defeated. The master may be ignorant of his servant's doings, he may have given express directions to his servant to act in accordance with the provisions of the Act, and yet he will be held responsible if the servant breaks the law. To prevent an indiscriminate sale of military stores, the law requires a dealer to take a license. If he chooses to misplace his confidence, he must suffer. The fact that he is a seller, and not the actual salesman, makes no difference in his liability. Refers to *Mullins* v. *Collins*[4] and *Coppen* v. *Moore* (No. 2) [5].

PARSONS, J.:—The Indian Arms Act, 1878, section 22, makes penal the delivery of military stores into the possession of any person without previously ascertaining that such person is legally authorized to possess the same. The question is whether the appellant in this case delivered the stores. He did not deliver them with his own hands, that is admitted, because that was not his mode of business. He had a shop which was kept under a license granted to him for the sale of arms, ammunition and military stores, but he did not himself sell any stores there; he only visited it occasionally for purposes of inspection. He placed a man in charge of the shop for the purpose of selling the goods there. We fail to see how it can be contended that under these circumstances a delivery of goods by the man in charge would not be a delivery by the owner of the shop? It is not a question of intention, of *mens rea*, or of knowledge; it is the delivery which the Act makes penal, and the delivery by the manager is clearly in this case a delivery by the licensee. The

(1) (1866) L. R. 1 Q. B., 702, 710.
(2) (1859) 28 L. J. M. C., 216.
(3) (1891) Bom. H. C. Cr. Rul. No. 40.
(4) (1874) L. R. 9 Q. B., 292.
(5) (1898) 2 Q. B., 306.

1900.

QUEEN-EMPRESS v. TYAB ALLI.

authorities are concurrent upon this point. In *The Attorney General* v. *Siddon*[1] the rule is thus stated: "Whatever a servant does in the course of his employment with which he is entrusted and as a part of it is the master's act." This rule, which is of general application so far as civil liability goes, is applicable to certain criminal proceedings also. In *Mullins* v. *Collins*[2], where the servant of a licensed victualler supplied liquor to a constable on duty without the authority of his superior officer, it was held that the licensed victualler was liable to be convicted under 35 and 36 Victoria, Chapter 94, section 16, sub-section 2, although he had no knowledge of the act of his servant, that statute forbidding any licensed person to supply liquor in that way. So, too, it was held in *Coppen* v. *Moore* (No. 2) [3], that a master was liable for the sale by his servants when acting under the general scope of their employment of goods in contravention of the provisions of section 2, sub-section 2 of the Merchandise Marks Act, 1887. The present case is undistinguishable from these, and we have no doubt that the appellant is liable. "Any other conclusion would render the act ineffective for its avowed purposes." The appeal is dismissed.

Appeal dismissed.

(1) (1830) 1 Cr. and J., 220. (2) (1874) L. R. 9 Q. B., 292.
(3) (1898) 2 Q. B., 306.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

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MAHIPAT RANE AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* LAKSHMAN AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Landlord and tenant—Ejectment—Disclaimer of title—Notice to quit—Limitation—Khoti Act (Bom. Act I of 1880), *Secs.* 20, 21, 22—*Decision of survey officer as to nature of tenure—Botkhat—Date of framing botkhat.*

Where a tenant under a plea of ownership has succeeded in obtaining a possessory order in a suit before a Mámlatdár, it is not necessary for the evicted landlord to give notice to quit before suing in ejectment on his title.

* Second Appeal, No. 539 of 1899.