

**Queen-empress Vs. Andi**

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**SooperKanoon Citation :** [sooperkanoon.com/788231](http://sooperkanoon.com/788231)

**Court :** Chennai

**Decided On :** Dec-05-1894

**Reported in :** (1895)ILR18Mad228

**Judge :** Arthur J.H. Collins, C.J. and ;Parker, J.

**Appellant :** Queen-empress

**Respondent :** Andi

**Judgement :**

1. Section 125, Clause (1) of the Railway Act, makes punishable the negligence of the owner or person in charge of any cattle which stray upon the line. The section recognizes the obligation of the owner to prevent the cattle from straying, while at the same time it provides that the negligence of the person in charge may be punished. There is nothing in the clause to restrict the discretion of the Court in ascertaining upon whom the fault really lies and awarding the punishment accordingly.

2. The second Clause of the same section makes punishable wilful acts of driving or knowingly permitting cattle to be upon a railway line, and provides that, at the option of the railway administration, the owner, instead of the person in charge, shall be punishable. This provision is of a very penal character, and it removes the discretion as to the person to be held liable to punishment from the Court to the Railway authorities. No such discretion is given to the railway administration when

the straying of the cattle has been through negligence. There is nothing to restrict the power and duty of the Magistrate to ascertain in such cases whether the person charged has himself been guilty.

3. In the case referred we are of opinion that the acquittal of the owner was correct.

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