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 VERIBHAI
 AND ANOTHER
 v.
 RAGHABHAI
 AND OTHERS.

mesne profits claimed by them, and we, therefore, amend the decree of the Court below, and award the plaintiffs' claim in full, with all costs on the defendants throughout.

Decree accordingly.

[APPELLATE CRIMINAL JURISDICTION.]

Criminal Review.

June 14.

REG. v. HANMANT GAVDA.

Cotton—Adulteration—Possession—Bombay Act IX. of 1863, Section 2.

Possession of adulterated cotton, even though accompanied by a knowledge that the cotton is adulterated, is not sufficient to sustain a conviction of fraudulent adulteration or deterioration of cotton under the Cotton Frauds Act (Bombay Act IX. of 1863). No criminality attaches to such possession till the cotton is actually offered for sale or compression.

THIS was an application for a revision.

The accused Hanmant Gavdá was tried and convicted by Ráv Sáheb Bhisto Bhimáji, 2nd Class Magistrate of Gadag, in the Kaládgí District, under Section 2 of Bombay Act IX. of 1863⁽¹⁾ for adulterating cotton, and sentenced to three months' rigorous imprisonment and a fine of Rs. 100, or, in default, to one month's rigorous imprisonment. It was further ordered that the cotton, which formed the subject of the conviction, should be confiscated and sold, and the proceeds credited to Government.

(1) Whoever adulterates or deteriorates cotton by mixing therewith any seed, dirt, stones, or other foreign matter, or who fraudulently or dishonestly mixes cleaned and uncleaned cotton, commonly called cuppas, or cotton of different varieties in one bale, or who fraudulently or dishonestly, by exposing cotton to dew or by any other means, deceptively increases, or attempts to increase, the weight of the same, shall be punishable, on conviction, with imprisonment of either description for a term not exceeding twelve months, and shall also be liable to fine. All cotton so adulterated or deteriorated, or fraudulently mixed or deceptively increased in weight, and which has formed the subject of such a conviction, shall be confiscated.

Against this sentence an appeal was made to Mr. Waddington, Magistrate, F. C., duly empowered to hear appeals, who, in disposing of the objection raised by the accused that it was not proved that he had adulterated the cotton, gives the facts of the case as well as the reasons for confirming the conviction and sentence, thus :—

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“ The cotton was undoubtedly found in a room belonging to the appellant and his mother jointly. The appellant denies that the cotton was put there by him or belongs to him, and attempts to shift the blame of being in possession of this adulterated cotton on his mother Sheshavá. Sheshavá herself was made an accused in the case, and, evidently to screen her son, she stated that she and her son lived quite separately, that the cotton was hers, and that she had the cotton ginned and packed in *dokras*. The trying Magistrate not only convicted Sheshavá upon her confession and upon the other evidence, but also convicted the appellant, as he (the trying Magistrate) considered it clearly proved that the appellant and his mother were the joint owners of the cotton, that the cotton was adulterated as described in Section 2 of the Act (Bombay Act IX. of 1863), and that this adulteration was effected by the appellant and Sheshavá conjointly. There is, it is true, no direct evidence as to the appellant having personally adulterated, or caused to be adulterated, the cotton in question (that the cotton is adulterated by an admixture of dirt and seed is not even denied by the appellant); and, in fact, it would be simply unreasonable to expect that the Cotton Department should bring forward actual eye-witnesses of the ginning and packing of cotton which may be seized by the Department; but under ordinary circumstances, when cotton in considerable quantities is found in *dokras* in a man's possession, and such cotton is found to be adulterated, the natural presumption is that that man is the person who adulterated the cotton, or caused it to be adulterated, and then had it packed. * * * * *

His defence as to his mother living separately, and having different interests, falls completely to the ground; while his denial as to the whereabouts of the cotton (which was found in a room belonging to him) and the clumsy attempt to conceal it by closing up the door of the room, indicate distinctly a guilty knowledge on the part of the appellant.”

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Dissatisfied with the result of the appeal, the accused applied to the High Court to review the case, and this application was heard by MELVILL and KEMBALL, JJ.

Kāshināth Trimbak Telang (with him *Ghanashām Nilkanth*) for the accused :—There is no legal evidence of fraudulent adulteration. The circumstance that adulterated cotton was found in the possession of the prisoner's mother, or of the prisoner himself, is not sufficient to prove that he had adulterated it. At the most, it may amount to guilty knowledge, but not more.

Dhirajlāl Mathurādās, Government Pleader, for the Crown :—The prisoner, when challenged by the cotton inspector as to whether there was any cotton in his house, denied that there was any, and said that grain only had been stored in the room where cotton was subsequently discovered. This not only raises a presumption of knowledge that the cotton was adulterated, but that the prisoner himself had adulterated it. It is something more than mere possession of adulterated cotton.

The judgment of the Court was delivered by MELVILL, J. :—Assuming that there is evidence on the record to prove that the cotton was found in a room occupied jointly by the prisoner and his mother, and assuming that this fact is sufficient to constitute possession by the prisoner, we still think that such possession, even though accompanied by a knowledge that the cotton was adulterated, would not be sufficient to sustain a conviction. The Magistrate says :—“There is, it is true, no *direct* evidence as to the appellant having *personally* adulterated, or caused to be adulterated, the cotton in question (that the cotton is adulterated by an admixture of dirt and seed is not even denied by appellant), and, in fact, it would be simply unreasonable to expect that the Cotton Department should bring forward actual eye-witnesses of the ginning and packing of cotton which may be seized by the Department; but under ordinary circumstances, when cotton in considerable quantities is found in *dokras* in a man's possession, and such cotton is found to be adulterated, the natural presumption is that that man is the person who adulterated the cotton, or caused it to be adulterated, and then had it packed.” This is as much as to say that the mere possession of adulterated cotton is

sufficient for a conviction. If that were so, Bombay Act IX. of 1863 would, no doubt, have said so in distinct terms. If possession, and nothing more, were sufficient to bring a person within the penalties provided in Section 2 of the Act, it would have been useless to enact the penalties provided by Sections 3 and 8 of the Act for fraudulently offering adulterated cotton for sale or for compression. The possession of stolen goods soon after the theft justifies a presumption that the person in possession is either the thief or has received the goods, knowing them to be stolen (Section 114, Evidence Act). If the same analogy be applied to the possession of adulterated cotton, the legal presumption is not necessarily that the person, in possession, adulterated the cotton; it is an equally admissible presumption that he received the cotton, knowing it to have been adulterated. In the latter case there would certainly be nothing in the provisions of Bombay Act IX. of 1863 under which such receipt would be punishable. In the present instance it is just as likely that the prisoner bought dirty cotton from the cultivators, intending to sell it as good cotton, as that he adulterated it himself; but, if that were so, there is nothing in the law which would make him liable to punishment, until he offered it for sale or compression. It is very desirable that the Magistrates and the officers of the Cotton Department should understand that they are not justified in seizing and confiscating dirty cotton wherever they may find it, or in punishing persons against whom nothing more is proved than that they had dirty cotton in their possession. These observations are sufficient to dispose of the conviction against the prisoner, which is accordingly reversed.

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Conviction and sentence reversed.
