1877.

NARHAR GOVIND KULKARNI v. NA'RA'YAN VITHAL.

claimed for Government by Act XI. of 1843, when, if such a right existed, we might fairly expect to find that it would have been recognized; and Sections 33 and 34 of Bombay Act III. of 1874 are inconsistent with the existence of any such right. The provisions of these sections seem to be in accord with the passage in Steele's Hindu Law, page 51, para. XL., 1st edition; page 45, para. XL., 2nd edition, where it is said: "It is enjoined that notice of an adoption should be given to the relations within the Sagotra Sapindas, and to the Raja, though no provision appears in case of their disapprobation, even in adoption by widows." Those Acts made sufficient provision for securing to Government the services of competent officiators: so that no such objection, in that respect, as suggested by the appellant's pleader, can arise. In the case of *Ramchandra* v. *Nanaji*[1] the defence was that the adoption had been disallowed by Government; but that defence failed in the High Court. That, like the present case, related to *vatan* appendant to the office of *Kulkarni*. We affirm the decrees of the Courts below with costs.

Decrees affirmed.

[APPELLATE CRIMINAL JURISDICTION.]

Before Mr. Justice Melvill and Mr. Justice Kemball.

REG. v. HANMANTA',

AND

APPEAL BY THE GOVERNMENT AGAINST THE ACQUITTAL OF HANMANTA' AND OTHERS.

February 26.

The Code of Criminal Procedure (Act X. of 1872), Sections 344, 345, 347, 452, et seq.—The Indian Penal Code (Act XLV. of 1860), Section 378—The Indian Evidence Act (I. of 1872), Section 32, Clause 2 and Section 34—Joint trial of separate offences—Condonation of irregularity where accused not prejudiced—Account books—Entries by persons having no personal knowledge—Account books kept by a servant or agent of a firm relevant as admissions—Evidence of accused illegally pardoned—Theft.

The accused persons were tried on 27 charges, comprising the offences of theft, abetment of theft, and receiving stolen property, in 1872-73; similar offences in 1873-74; similar offences in 1874-75; the giving and receiving of gratifications to and by public servants in 1874-75; and, finally, the fabrication and abetment of

(1) 7 Bom. H. C. Rep. 26, A, C. J.

fabrication of false evidence in 1876. One of the accused was convicted on two heads of charge, and the rest acquitted. The convict appealed against his conviction and sentence; and the Government appealed against his acquittal on the other heads as well as against the acquittal of the rest.

Held that the trial was irregular under Section 452 of the Code of Criminal Procedure; and so would be the hearing of the appeal. The High Court, however, heard the appeal in respect of offences in 1874-75 only, it appearing that this course did not prejudice the accused persons who had been fully and fairly tried for those offences.

Account books containing entries not made by, nor at the dictation of, a person who had a personal knowledge of the truth of the facts stated, if regularly kept in course of business, are admissible as evidence under Section 34 of the Indian Evidence Act I. of 1872, and semble under Section 32, Clause 2.

Account books, though proved not to have been regularly kept in course of business, but proved to have been kept on behalf of a firm of contractors by its servant or agent appointed for that purpose, are relevant as admissions against the firm.

It is not competent to a Magistrate to convert an accused person into a witness except when a pardon has been lawfully granted under Section 347 of the Code of Criminal Procedure. Evidence given by such a person who had received a pardon in the case of an offence not exclusively triable by the Court of Session, held not relevant, that person not having been acquitted or discharged or convicted.

Possession of wood by a forest inspector, who is a servant of Government, is possession of the Government itself; and a dishonest removal of it, without payment of the necessary fees, from his possession, albeit with his actual consent, constitutes theft, within the meaning of Section 378 of the Indian Penal Code, if that consent was unauthorized or fraudulent.

THIS was an appeal from the decision of John Jardine, Session Judge of Thána, at the Kolába Sessions.

Pirozesha M. Mehtá, instructed by *Vishnu Ghanashám,* appeared for Hanmantá, who appealed against his conviction.

Marriott, Acting Advocate General, with him *Honourable V. N. Mandlik,* Acting Government Pleader, and *Shántárám Náráyan* appeared for the Government.

Dinkar Gangádhar appeared for Sakhárám and Máhádáji, two of the accused, against whose acquittal Government appealed.

Máhádev C. Apté appeared for Vishnu and Apáji, two other of the accused, against whose acquittal Government appealed.

The remaining two accused against whose acquittal Government appealed, Hari and Patlia, were unrepresented.

1877.

REG. v. HANMANTA'.

The facts and arguments sufficiently appear from the following judgment of the Court delivered by

MELVILL, J.:—In this case fourteen persons were tried in the Sessions Court of Thánà for being concerned in the fraudulent cutting and removal of wood from the Government forests in Alibágh. They were all acquitted, with the exception of the first accused, Hanmantá, who was convicted on two out of twenty-seven heads of charge. Against this conviction Hanmantá has appealed. On the other hand the Government of Bombay has appealed against the acquittal of Hanmantá on the other charges, and against the acquittal of twelve out of the remaining thirteen accused persons on all the charges. The appeal against Appáji, No. 14, was withdrawn at the commencement of the hearing, it being admitted that the evidence against him was insufficient for conviction. The Government of Bombay succeeded in serving a notice of the appeal on only six out of the remaining accused persons: and, therefore, it is only as against these six persons that we have been able to hear the appeal.

At a very early stage of the arguments we were able to come to the conclusion that the conviction recorded against accused No. 1, Hanmantá, could not be sustained. That conviction is for the offence of abetting the fabrication, in Bombay, of false evidence. The Sessions Court had no jurisdiction, unless the abetment took place in the Kolába Collectorate, and the charge accordingly alleges that the abetment did take place in that collectorate. But we find no proof of any act of abetment committed therein by Hanmantá. A letter containing directions for the fabrication of evidence is alleged to have been written by his direction at Alibágh: but it is not proved that it was written by his direction, nor that it was written at Alibágh. The conviction against Hanmantá must, therefore, be reversed, and thereupon his case must be considered in the same way as that of the other persons who are before the Court as respondents.

We have been much embarrassed, in hearing this appeal, by the irregular manner in which the case has been tried in the Sessions Court. Section 452 of the Criminal Procedure Code lays down that there "must be a separate charge for every distinct

offence of which any person is accused, and every such charge must be tried separately, except in the cases hereinafter specified." Certain exceptions are mentioned in the two succeeding sections, but they cannot be made applicable to the circumstances of the present trial. In contravention of the provisions of Section 452, the accused persons in this case have been tried on twenty-seven charges, comprising the offences of theft, abetment of theft, and receiving stolen property, in 1872-73; similar offences in 1873-74; similar offences in 1874-75; the giving and receiving of gratifications to and by public servants in 1874-75; and, finally, the fabrication and abetment of fabrication of false evidence in 1876. It was impossible for this Court to hear an appeal against the acquittal on each and all of the above charges: for that would have been virtually to re-try the case in the same irregular manner in which it had been tried in the Court below. After some discussion it was decided that the Advocate General should withdraw his appeal in respect of all the offences alleged to have been committed in 1872-73 and 1873-74, and in respect of the fabrication of evidence in 1876; and that the appeal should be heard in respect of the offences of 1874-75 only. We should not have felt justified in condoning the irregularity in the trial even to this extent, if we had thought that the respondents had been prejudiced by the irregularity. If the effect of including in the trial the offences of 1872-73, 1873-74, and 1876 had been to import into the case a quantity of extraneous evidence, and thus to confuse and embarrass the accused persons in their defence, it would have been impossible to hold that the accused had not been prejudiced. But although the case has assumed such enormous dimensions that it occupied the Sessions Court for 76 days, and that the hearing of the appeal has lasted for 7 days, a very small portion of the recorded evidence could have been rejected as irrelevant, if the trial had been confined to the offences of 1874-75. If the first eleven accused persons had been tried solely for the theft, abetment, and receiving, in 1874-75, it would have been open to the prosecution to show that they had bribed public servants while the theft was going on, and had subsequently fabricated false books of account, to be substituted for the genuine books of 1874-75: for both these circumstances would have tended to show the dishonest intention of the acts, to conceal which such devices were resorted to. Evi-

1877.

REG. v. HANMANTA'.

dence as to thefts committed in 1872-73 and 1873-74 would, of course, have been inadmissible: but the evidence on these points forms an insignificant portion of that on the record. On the whole, therefore, as the accused persons have been fully and fairly tried for the offences of 1874-75, and have not been prejudiced by the introduction into the case of any considerable amount of irrelevant matter, we have not thought ourselves debarred from proceeding as if the trial had been held in respect of the offences of 1874-75 only.

The Advocate General has wished the Court, while confining the appeal to the offences of 1874-75 only, to admit into its consideration all the evidence on the record as bearing upon those offences. To this desire we are only partially able to accede. As we have said, the evidence as to the offences of 1872-73 and 1873-74 must be absolutely rejected as irrelevant. The evidence as to giving bribes to public servants in 1874-75 is in itself relevant; but we are hampered by the difficulty that the first eleven accused persons have been tried for giving these bribes, and acquitted; and that against this acquittal the prosecution, owing to an irregularity for which the prosecution itself is chiefly responsible, is unable to appeal We think that we should be unduly favouring the prosecution, if we were to allow it to withdraw its appeal against a judgment of acquittal, and at the same time, in order to establish another offence, to introduce a subsidiary issue as to the correctness of the acquittal. We have, therefore, determined to reject from consideration, as against the principal respondents, all evidence as to their having given gratifications to the public servants. The evidence as to the fabrication of false evidence stands on a different footing. This offence is alleged to have been committed in the town of Bombay; and we fail to find in the case any circumstances which could give the Sessions Court of Thánâ jurisdiction in respect of the offence. The acquittal of the accused by the Sessions Court in regard to this offence was, consequently, *coram non judice*, and must be treated as absolutely null and void; and it does not, therefore, prevent this Court from considering, as an issue subsidiary to the main issue, whether the fabrication of evidence is proved to have taken place.

The basis, then, on which after much consideration we finally determined to hear this appeal, was this: that the appeal, as against the principal respondents, should be confined to the offences of 1874-75, set forth in the 11th, 13th, and 14th heads of charge: that the evidence as to similar offences in 1872-73 and 1873-74, and also as to the giving of bribes to Government servants, should be excluded from consideration: and that the prosecution should confine itself, in arguing the appeal, to the evidence bearing directly upon the above heads of charge, and to that relating to the fabrication of false evidence.

By the term "principal respondents" we mean the following accused persons, designated by the numbers which they bear in the calendar of the Sessions Court, viz., Hanmantá No. 1, Sukharam No. 2, Máhádáji No. 4, Hari No. 7, and Patlia No. 9. The case made by the prosecution against these persons is that they were partners in a contract taken in the name of Hanmantá No. 1 for cutting firewood in the Government forests in Alibágh. The wood was to be brought to certain depôts and there stacked, until the fees due to Government had been paid on it. The contract specified the quantity of wood to be cut: but it is alleged that the respondents cut and carried a very much larger quantity than that specified, and that they dishonestly exported a great portion of it without having paid the Government fees. This system is said to have been going on for three years with the connivance of the officials of the Forest Department. Early in 1876, the Magistrate of Alibágh, Mr. Crawford, instituted inquiries into the frauds which had been committed; and thereupon the accused fabricated a false set of account books, with the object of showing that they had not taken from the Government forests, nor exported, any wood in excess of the quantity on which they had paid fees.

The evidence against the principal respondents consists mainly of (1) the accounts of their broker, one Ladak Háji, of Bombay, to whom all the wood was consigned for sale; (2) the genuine accounts of the firm, kept at the different depôts in Alibágh; and (3) the forged books, which it was intended to substitute for the genuine accounts. The two first set of accounts have been rejected by the Sessions Judge, on the ground that they are not shown to have been regularly kept in the course of business. The admissibility or otherwise of these books is the most important ques-

1877.

REG. v. HANMANTA.

tion in the case, for the Advocate General admitted at the outset that, if these books were rejected, he could not support his appeal.

The system on which the broker's books were kept, is thus described :—When any wood received from Alibágh was to be sold, a servant of the broker, named Khemji, went to the bunder and made a memorandum of the quantity weighed and sold. He states that he did not necessarily see the weighing, but that the quantity of wood was certified to him by the weigher, by an agent of the contractor, and by the purchaser. The memorandum so made was taken by Khemji in the evening to the broker's shop, and an entry was then made in the broker's accounts by his clerk Amulak. The objection taken to the accounts by the Sessions Judge is that the entries in them were not made by, nor at the dictation of, a person who had a personal knowledge of the truth of the facts stated. The English rule of evidence, of which the case of *Brain* v. *Preece* (1) is the best illustration, is briefly and clearly stated in Mr. Fitzjames Stephen's Digest of the Law of Evidence. "A declaration is relevant when it was made by the declarant in the ordinary course of business, or in the discharge of professional duty, at or near the time when the matter stated occurred, and of his own knowledge." We concur with the Sessions Judge in thinking that this rule would exclude such accounts as those of the broker Ladak Háji. But the Indian rule of evidence (Evidence Act, Section 32, Clause 2, and Section 34) simply requires that entries in accounts should, in order to be relevant, be regularly kept in the course of business : and although it may be no doubt important to show that the person making or dictating the entries had, or had not, a personal knowledge of the facts stated, this is a question which, according to the Indian rule of evidence, affects the value, not the admissibility, of the entries. In the present instance it appears to us that Ladak Háji's accounts were regularly kept in the course of business. When a clerk sitting in a Bombay office keeps accounts of transactions effected at the bunders or the Cotton Green, he must necessarily make the entries, not from his personal knowledge, but from information supplied to him by some other person. The rule adopted by the Sessions Judge would exclude the accounts of half the merchants

(1) 11 M. and W. 773.

in Bombay. We have no doubt that Ladak Háji's accounts are admissible in evidence. What their value is, we shall presently consider.

The second set of accounts, viz., those purporting to have been kept on behalf of the contractor at the different depôts, has been rejected by the Sessions Judge for the same reason, as not being proved to have been regularly kept in the course of business. This might be a good reason for rejecting the accounts, if offered in evidence against any person other than the conrtactor, or his partners. But, as against the contractor or his partners, the accounts, if proved to have been kept by a servant or agent of the firm appointed for that purpose, are clearly relevant as admissions (Evidence Act, Sections 17, 18, and 21). It is, of course, open to the contractor or any of his partners to show that the entries have been made after such a fashion that no reliance can be placed upon them : but, if made by a clerk of the firm, they are certainly relevant.

Another question of evidence which has arisen in the case, relates to the admissibility of the depositions of two of the principal witnesses, Moro Trimbak and Rámchandra Mahipat. These persons, who, according to their own statements, were accomplices in the alleged frauds, were brought before the Magistrate under a warrant purporting to have been issued by him on a charge of theft. They received from the Magistrate a certificate of pardon, purporting to have been granted under Section 347 of the Criminal Procedure Code on condition of their making a full disclosure of all the circumstances within their knowledge. Section 347 authorizes the tender of a pardon in the case of those offences only which are specified in the Schedule of the Code as triable exclusively by the Court of Session. None of the offences to which this trial relates are triable exclusively by the Court of Session ; and, therefore, the tender of a pardon was illegal. This circumstance did not escape the notice of the Session Judge. He examined Moro and Rámchandra as witnesses ; and then, when their evidence was complete, he informed them that their pardon was invalid, and asked them whether they adhered to the statements which they had made. After some hesitation they replied in the affirmative. The prosecution con-

1877.

REG. v. HANMANTA'.

tends that, even if this evidence was otherwise inadmissible, it is rendered admissible by the circumstance that the witnesses adhered to their statements, even after the promise of pardon had been withdrawn. If it were necessary to decide the point, we doubt if we could hold that the impression caused by the promise of pardon had, under the circumstances which we have stated, been fully removed. But, under the view which we take, we are not called upon to consider this question. Moro and Rámchandra were before the Magistrate as accused persons. Section 344 of the Code lays down that, "except as is provided in Section 347, no influence, by means of any promise or threat or otherwise shall be used to the accused person to induce him to disclose or withhold any matter within his knowledge." Section 345 prescribes that "no oath or affirmation shall be administered to the accused person." The effect of these sections is to render it illegal for a Magistrate to convert an accused person into a witness, except when a pardon has been lawfully granted under Section 347. Moro and Rámchandra being accused persons, and not having been legally pardoned, could not be examined as witnesses, until they had been acquitted, or discharged, or convicted. Their evidence must, therefore, be rejected as absolutely inadmissible.

In deciding this point we have not lost sight of the English case of *R.* v. *Rudd.*(1) In that case the question was whether Rudd, an accomplice, who had received a promise of pardon from the justices in a case of forgery, and had been examined as a witness, could be afterwards proceeded against for the forgery. On the one hand it was argued that Rudd was not protected from prosecution, inasmuch as the justices had no power to admit an accomplice in forgery as a witness, forgery not being one of the offences specified in the Statutes 10 and 11 Will. III, C. 23; and 5 Ann., C. 31. On the other hand it was contended that, whether or not the justices had strictly pursued the provisions of the different Acts of Parliament, Rudd had given evidence on the faith of the promise of pardon, and taking it for granted that the justices were perfectly acquainted with the duty of their office; and that the Court ought not to coun-

(1) 1 Cowp. 331.

tenance objections founded on nothing less than a breach of public faith. The question was referred for the opinion of all the Judges, and they unanimously held that, in any case not within any statute, an accomplice, who fully and truly discloses the joint guilt of himself and his companions, and truly answers all questions that are put to him, and is admitted by the justices of the peace as a witness against his companions, and who, when called upon, does give evidence accordingly, and appears, under all the circumstances of the case, to have acted a fair and ingenuous part, and to have made a full and true information, ought not to be prosecuted for his own guilt so disclosed by him, nor, perhaps, for any other offence of the same kind which he may accidentally, and without any bad design, have omitted in his confession. It may be inferred, from the report of the case, that Rudd's evidence had been admitted in the original trial without question; but the admissibility of the evidence was not a question before the Judges, and they gave no opinion in regard to it. The case, therefore, would hardly be any authority on the point in England; and it certainly could not affect the decision of the question in this country, in which we have a Code of Procedure, the provisions of which are clear and distinct. We have referred to Rudd's case at greater length than we should otherwise have done, because the Sessions Judge has suggested, though he does not recommend, that the District Magistrate should apply to this Court to cancel the pardons granted to Moro and Rámchandra, and that proceedings should be taken against them. It appears to us that Moro and Rámchandra have given evidence fairly and fully; and the decision in Rudd's case is an authority for holding that they ought not to be prosecuted.

An objection has been taken to the admission of the evidence of several other witnesses in the case, on the ground that they also were persons accused before the Magistrate. These persons were certainly arrested by the Magistrate, Mr. Crawford, on suspicion. But Mr. Crawford in his evidence states that they were discharged as soon as they were brought before him. No formal order of discharge appears upon the record; but it is to be presumed that they were discharged, as the law permits, because there was no evidence against them; and, indeed, it does not

1877.

REG. v. HANMANTA'.

appear that, at the time when they were discharged, there could have been any evidence of their having committed the offence for which they had been arrested. Although, therefore, some of these persons were undoubtedly accomplices, they were not accused persons when they were admitted as witnesses, and we are unable to say that their evidence is inadmissible.

We come now to a consideration of the evidence which we have thus sifted out as relevant. Every portion of that evidence has been so fully discussed between the counsel on both sides and the Court during the hearing of the appeal, that it is unnecessary for us to do more than state briefly the conclusions at which we have arrived.

[The learned Judge then reviewed the evidence, and proceeded:]

It having been established to the satisfaction of the Court that Hanmantá No. 1 and Sakhárám No. 2 conspired to commit the frauds alleged in the 11th head of charge, it remains to consider whether this fraud can be brought within the definition of theft. In the Court below, and at first in this Court, the prosecution laboured to show that a theft took place when the wood was cut and removed from the forest. But the difficulty of establishing this point induced the Advocate General, at a late stage in the hearing of the appeal, to abandon the ground previously occupied, and to adopt, as constituting the theft, the act of removing the wood from the depôts. It would, no doubt, be difficult, if not impossible, to prove that the dishonest intention commenced with the cutting and removal of the wood from the forests. It is true that the contractor cut much more wood than his contract allowed him to cut: but, by the terms of the contract, this proceeding subjected him only to the obligation of paying the price of the wood cut, and a trifling fine. During the three years, over which the contracts extended, the contractor had been allowed to pay fees for more than double the quantity of wood which his contracts entitled him to cut. This must have been reported to Mr. Hewett, the Assistant Conservator of Forests, and he made no objection to it; although he says in his evidence that, had he known of the extent to which the practice was carried, he should have objected to it. It is clear, therefore, that the contractor had

not, during the three years over which the contracts extended, been held to his contracts, but had been allowed to cut as much wood as he pleased, on condition only that he paid the Government fees. After such license, whether express or by ratification, had been for so long a period extended to the contractor by the officers of the Forest Department, it would be difficult to hold that the act of cutting a large quantity of wood necessarily indicated an immediate dishonest intention. Moreover, by the terms of the contract, the contractor was bound to deliver all the wood into the charge of the forest officers at the appointed depôts: and we consider that the evidence shows that this was done. So that, if we were required to find that a theft had been committed in the forests, the prosecution would have to make the somewhat absurd admission that there had been a restoration of the stolen property at the depôts. The Advocate General has, therefore, preferred to abandon this ground of attack, and to base the accusation of theft upon what took place at the depôts; and, fortunately for his argument, the charges in the Sessions Court were so framed as to allow of this change of position being made without it being possible to say that the accused persons are prejudiced or taken by surprise.[1] Confining our attention, then, to what took place at the depôts, we find the regular system of business to be thus described, and no doubt correctly described, by Mr. Hewett:—"When the wood has been felled, it is cut up into billets, which are removed to the depôts specified in the contract. At the depôt the billets are stacked. When there is a large quantity, the assistant conservator comes, if he can, to weigh them. If he cannot, the inspector weighs them; and sometimes the mukadum does it. If the mukadum has done it, it is the inspector's business afterwards to test that weighing. When the weighing is finished, the contractor receives from the inspector a memorandum addressed to the mámlatdár, stating that so many khandis have been weighed and given to the contractor at a certain rate, and that so much money has to be paid in. The contractor

(1) The charge of theft in 1874-75 was as follows:—"That you, between the 31st October 1874 and 30th October 1875, did commit theft of certain property, viz., 27,524 khandis of wood, or thereabouts, being the property of Government, from the Government forests of the villages of, &c., in the Kolába Collectorate, and have thereby committed an offence punishable under Section 379 of the Indian Penal Code."

1877.

REG.
v.
HANMANTA'.

takes the money and the memorandum to the mámlatdár, and pays in the amount mentioned to him. The mámlatdár credits the money, and tells the inspector that he has received so much money. After the reply of the mámlatdár, the contractor obtains possession of the wood." From this statement two facts appear perfectly clear, viz., first, that the wood, when stacked at the depôts, was in the possession of the forest inspector, until the fees were paid; secondly, that the contractor could not lawfully remove any of the wood until the fees had been paid. The definition of theft in the Indian Penal Code is the following:—"Whoever intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft." It has been argued for the defence that the contractor had the consent of the forest inspector, in whose possession the wood was, to its removal. That is probable enough: for the removal of the wood could hardly have taken place without the consent of the inspector, and it is in evidence that the inspector, Dwárkánáth Sakhárám, made a false report to Mr. Hewett as to the quantity of wood, and he seems to have absconded when the frauds were discovered. But the fraudulent consent of the inspector does not affect the case against those concerned in the dishonest removal of the wood. The inspector was a servant of Government, and the wood was in his possession on account of Government. By Section 27 of the Penal Code, "when property is in the possession of a person's wife, clerk, or servant, on account of that person, it is in that person's possession within the meaning of the Code." The definition, in Section 11, of the word "person" is sufficiently wide to include the Government as representative of the whole community. The possession, therefore, of the inspector was the possession of Government, and a consent, which he was not authorized to give, cannot be construed in favour of the accomplice of his breach of trust into the consent of Government. The respondents Hanmantá and Sakhárám are shown to have entered into a conspiracy to remove certain wood, intending thereby dishonestly to take it out of the possession of Government without the consent of Government. The removal of the wood under such circumstances comes within the definition of theft, and Hanmantá and Sakhárám must be convicted of the abetment of such theft.

The only respondent whose case we have not yet considered, is Vishnu, accused No. 13. He was a forest mukadum temporarily employed in 1874-75. He is charged with receiving bribes, amounting to Rs. 54. The only evidence on this point is that of the accomplice Raghunath, whose statement is not corroborated, but contradicted, by the contractor's accounts, in which the sums alleged by Raghunath to have been paid to Vishnu are entered as paid to one of the partners of Hanmantá. It may be, as Raghunath says, that this was a false entry, intended to disguise the real truth: but the question is whether the statement of the accomplice is corroborated, and it is clear that the accounts contain no corroboration. Vishnu is further charged with allowing the contractor to cut wood in the forests which ought not to have been cut: but, for reasons which we have already stated, this cannot be construed into abetment of theft, the prosecution having abandoned the allegation that the cutting and removal of the wood from the forests constituted theft. Finally, Vishnu is accused of having, by omitting to weigh some wood altogether, and by a fraudulent method of weighing other wood, assisted the contractor in the theft committed at the depôts; and if this could be established against Vishnu, the offence of abetment would be made out. But the only evidence on the point is that of the accomplice Raghunath, and of Krishna, a sepoy in the Forest Department. All the assessors recorded their opinion that "Krishna Sepoy is not in the least to be believed," and the Sessions Judge regarded him as no better than an accomplice. The Sessions Judge was strongly of opinion that the whole story about the false weighing was a concoction, and that it had been worked up by the accomplices after the Magistrate had examined them. Without saying that we concur in this view, we think that, when the prosecution asks this Court to reverse a judgment of acquittal, it ought to be able to show some stronger evidence than the statements of an accomplice, and of a witness who was entirely disbelieved by the Sessions Judge and the assessors.

We reverse the conviction and sentence recorded against Hanmantá, accused No. 1, in the Sessions Court.

We reject the appeals made by the Government of Bombay against the judgment of acquittal recorded by the Sessions Court

1877.

REG. v. HANMANTA'.

in the instance of Mahadaji accused No. 4, Hari accused No. 7, Patlia accused No. 9, and Vishnu accused No. 13.

The appeal by the Government of Bombay against the judgment of acquittal recorded by the Sessions Court in the instance of Appaji, accused No. 14, has been permitted to be withdrawn.

The Court finds that Hanmantá accused No. 1 and Sakhárám accused No. 2, between the 31st October 1874 and the 30th June 1875, abetted the commission of theft at Chowre, Shenvai, and Shilosi, in the Alibágh Collectorate, of about 8,000 khandis of wood, the property of the Government of Bombay, and that they have thereby committed an offence punishable under Sections 379 and 109 of the Indian Penal Code.

And the Court directs that the said Hanmantá and Sakhárám be rigorously imprisoned for two years, and that they do each pay a fine of one thousand rupees, or, in default, do undergo rigorous imprisonment for a further period of nine months.

The sentence of imprisonment on Hanmantá No. 1 is to commence from the date on which he was sentenced by the Sessions Court.

[APPELLATE CIVIL JURISDICTION.]

Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Nánábhái Haridás.

March 6.

BASA'PA' BIN MURTIA'PA' (DEFENDANT No. 1 AND APPELLANT) *v.* LAKSHMA'PA' BIN MARITAMA'PA' (PLAINTIFF AND RESPONDENT).*

Mámlatdár's order under Bombay Act V. of 1864—Possession—Revenue Courts—Bombay Act III. of 1876—Act XVI. of 1838, Section 1, Clause 2.

A Mámlatdár's order under Bombay Act V. of 1864 is not conclusive evidence of the facts of possession and dispossession between the parties. Section 1 of that Act gives to Mámlatdárs' Courts jurisdiction in case of dispossession within six months from the date of such dispossession, and relates to immediate possession; and under Section 15, the party to whom such immediate possession is given by the Mámlatdár, or whose possession he shall maintain, shall continue in possession until ejected by a decree of a Civil Court.

* Special Appeal No. 319 of 1876.