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agriculturists should be registered, it virtually prohibits, in my opinion, such entries being made at all. I doubt, however, whether this was the intention of the Legislature. It therefore appears necessary to submit this case to the Honourable the Chief Justice and Judges of the High Court for the decision of the point raised above."

There was no appearance of parties in the High Court.

Per Curiam.—The signed account is an instrument which purports to evidence an obligation for the payment of money, and cannot, therefore, be admitted in evidence, unless written by or under the superintendence of and attested by a village registrar as required by section 56 of Act XVII of 1879.

APPELLATE CRIMINAL.

Before Mr. Justice Melvill and Mr. Justice Pinhey.

EMPRESS *v.* MALHARI.*

October 11.

Evidence—Possession of stolen goods—Presumption—Dishonest receipt of stolen property—Dacoity—Jury.

In considering whether the possession of stolen goods raises a presumption of dishonest receipt of stolen property, the attention of the jury should be drawn to the necessity of satisfying themselves that the possession is clearly traced to the accused.

The fact of stolen property being found concealed in a man's house would be sufficient to raise a presumption that he knew the property to be stolen property, but it would not be sufficient to show that it had been acquired by dacoity.

THE appellant along with others was tried by Sir William Wedderburn, Session Judge of Poona, and a jury, for the offence of dishonestly retaining stolen property the possession of which he knew had been transferred by the commission of dacoity under section 412 of the Indian Penal Code, and was sentenced to suffer rigorous imprisonment for four years.

The Session Judge in his charge to the jury with respect to the appellant Malhari summed up thus :—

"There remains the evidence as to the ornaments, articles found in the house of No. 17, Malhari. It is not denied that

* Criminal Appeal, No. 145 of 1882.

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these ornaments formed part of the property stolen in the dacoity, but No. 17 maintains that he does not know how they came into his house. It appears that the ornaments were found concealed in a large earthen pot containing tobacco, stored in a sort of loft; and if the jury are satisfied that no fraud has been committed, there will arise a strong presumption against accused No. 17. At the same time there are circumstances which are deserving of consideration in favour of accused. The dacoity was committed on 6th April, and his house, which is in Bibi, was not searched till 8th June. During the whole interval stringent inquiries were going on, and many arrests made. It seems, therefore, somewhat unaccountable that accused, who had served as a police patel, should have kept silver ornaments all that time in a place where they would certainly be found if his house was searched. It would have been very easy in this long interval either to melt them down or hide them in the jungle. Also there seems to be some suspicion that the searchers knew what they were going to find. For they seem to have stopped their search as soon as the bundle containing the ornaments was discovered. Ladhuji complainant's total loss is stated at Rs. 2,692-8-0, and we might have naturally expected that the discovery of a small portion would have led to a more vigorous search. Instead of this the police seem to have been quite satisfied with what they found, and proceeded to search another house, leaving unexamined some large grain baskets in which grain was stored. From the evidence of complainant it appears that the dacoits in searching for his valuables broke open such grain stores and further broke up the walls and flooring. The kulkarni states that the loft in which the ornaments were found, can be got at through a window opening to the outside, but his evidence is weakened by the fact that in the memorandum of the search it is stated that there is no entrance except by a ladder inside the house."

The jury brought in a verdict of guilty against Malhari, and the Session Judge concurring with that verdict convicted him, under section 412, Indian Penal Code, of dishonestly receiving stolen property, knowing that the possession thereof had been transferred by dacoity, and sentenced him to four years' rigorous imprisonment.

Branson with him *Mahadev Chimnaji Apte* for the appellant.—From the recent possession of the appellant of property stolen in *dacoity* the Session Judge has presumed that he knew that the property had been stolen in *dacoity*. In this he has committed an error in law, for the presumption can go no further than imputing to him a knowledge of the property being stolen. For this offence, which falls under section 411, Indian Penal Code, the maximum punishment is three years. The sentence of four years is, therefore, illegal. But in this case the possession of the stolen property was not clearly traced to the appellant; and the Session Judge committed an error in law in not drawing the attention of the jury to this fact.

Nanabhai Haridas, Government Pleader, for the Crown.

MELVILL, J.—It is admitted that there is no evidence against the appellant Malhari except the circumstance that stolen property was found concealed in a loft in his house. This would be sufficient to raise a presumption that he knew the property to be stolen property, but not to support the finding of the jury that he knew that it had been acquired by dacoity. But, apart from this defect in the verdict, it is to be observed that the attention of the jury was not directed to the necessity of their being satisfied that the possession of the stolen property was clearly traced to the accused, and that it could not have been placed where it was found by any other member of the accused's household. The following observations by Mr. Best in his work on Evidence, Section 212, page 294 (fifth edition,) are worthy of consideration:—"But in order to raise this presumption legitimately, the possession of the stolen property should be *exclusive* as well as recent. The finding it on the person of the accused, for instance, or in a locked-up house or room, or in a box of which he kept the key, would be a fair ground for calling on him for his defence; but if the articles stolen were only found lying in a house or room in which he lived jointly with others equally capable with himself of having committed the theft, or in an open box to which others had access, no definite presumption of his guilt could be made. An exception has been said to exist where the accused is the occupier of the house in which the stolen property is found, who, it is argued, must be presumed to

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have such control over it as to prevent anything coming in or being taken out without his sanction. As a foundation for *civil* responsibility this reasoning may be correct; but to conclude the master of a house guilty of *felony*, on the double presumption, first, that the stolen goods found in the house were placed there by him or with his connivance; and, secondly, supposing they even were, that he was the thief who stole them, there being no corroborating circumstances, is certainly treading on the very verge of artificial conviction."

In the present case the appellant appears to have had a grown-up brother living in his house during his absence, besides several other relatives; and the presumption that the appellant and not one of these relatives placed the stolen property where it was found, is under the circumstances so weak that the attention of the jury might well have been directed to the point. We do not think that the conviction as it stands, nor even a minor conviction under the Indian Penal Code, section 411, is under the circumstances sustainable in law, and we, therefore, reverse the conviction and order Malhari to be discharged.

Conviction reversed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Kemball.

September 5.

BABAJI AND ANOTHER, PLAINTIFFS, *v.* VITHU AND OTHERS, DEFENDANTS, AND PATLUJI, PLAINTIFF, *v.* TULSIRAM, DEFENDANT.*

The Dekkhan Agriculturists' Relief Act XVII of 1879—Mortgage—Agriculturist mortgagor—Suit for account and redemption before the time fixed for payment.

Under the Dekkhan Agriculturists' Relief Act XVII of 1879 an agriculturist mortgagor may sue for account and possession of mortgaged property before the time fixed in the mortgage deed for the payment of the mortgage debt, on the ground that the debt has been satisfied.

The rule of law that the right to redeem is co-extensive with the right to foreclosure, and is consequently postponed until the time fixed for the payment of the mortgage debt, does not apply to cases falling under that Act.

UNDER section 617 of the Civil Procedure Code, Act X of 1877, these cases were submitted for the decision of the High Court by Rao Saheb V. V. Paranjpe, Second Class Subordinate Judge of Dahivadi.

* Civil References, Nos. 41 and 42 of 1882.