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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.

The plaintiffs in both the cases sued for an account and possession of the mortgaged lands, alleging that the mortgage debts had been fully satisfied out of the profits of the said lands. The defendants in both the cases answered (*inter alia*) that the plaintiffs had no cause of action under the terms of the mortgage deeds, both of which are fully set out in the judgment of the High Court. The mortgage deed in the first case was dated the 24th April, 1871, while that in the second case bore date the 31st March, 1876.

The Subordinate Judge, therefore, submitted to the High Court the question whether the suits were maintainable. He was of opinion that as the mortgage deeds had fixed the time for the payment of the mortgage debts, they were agreements which determined the manner of taking the account, between the parties within the meaning of section 13 of Act XVII of 1879. He was, however, of opinion that the suits would be maintainable if, after taking account, the mortgage debts should be found to have been satisfied.

There was no appearance of parties in the High Court.

SARGENT, C. J.—Both these suits are suits for redemption by an agriculturist under the Dekkhan Agriculturists' Relief Act of 1879. The mortgage bond in the first suit is as follows:—"I owe you certain debts, account of which is made up to this day. The balance is fixed to be Rs. 85, for which I give my land, Survey Nos. 63 and 68, for twenty years, and you are to enjoy its produce in satisfaction of the debt." In the second suit the mortgage bond was in the following terms:—"I have received from you principal Rs. 50 of the Surat currency. As for the interest thereof, I have given you my *miras* land. Therefore, you should enjoy the said land by cultivating it at home or letting the same to any one. The time fixed for payment of the said amount is ten years from the date of the bond, *i.e.* you are to carry on the management down to the Fasli year 1295 (A.D. 1886). After the expiration of the ten years, I will pay off your debts Rs. 50 and receive back the land. Therefore, after enjoying the land for the full period of ten years, you should give it up. I will pay the *chardi* (assessment). If the assessment be recovered from you, I will not deduct that year, because you will have held the land on payment of the *chardi*. This is the agreement. Should the money be not paid at the time

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fixed, you are to carry on the management of the land until the amount is paid."

The question referred to us in both cases is, whether the plaintiff can redeem the mortgaged lands before the periods fixed for payment of the mortgage debt. The general principle is that the right to redeem is co-extensive with that of foreclosure, and that, consequently, the right to redeem, under such mortgage agreements as the above, is postponed until the time fixed for payment. The question is whether that rule can still prevail in cases falling under the Dekkhan Relief Act, and we think it must be answered in the negative. The object of the Dekkhan Relief Act, as stated in the preamble, is to relieve the agricultural classes in the Deccan from indebtedness, and, therefore, any agreement between the parties by which the mortgagor is compelled to remain in the mortgagee's debt for a definite period *pro tanto* frustrates the object which the Legislature had in view; and such would be the effect of the mortgage bonds in question, if construed and acted upon according to the general rule. It must be admitted that there is no express provision in the Act which prevents the application of the rule; for it would, we think, be straining the language of the Act too much to hold, as suggested by the Subordinate Judge, that the time fixed for payment is an agreement "determining the manner of taking the account" between the parties, although that expression in section 13 undoubtedly appears to be used in an elastic sense and not strictly according to its technical meaning. The Dekkhan Act, however, is a remedial Act presumably enacted for the public good. Bearing this on mind, and having regard to the anomalous powers which by sections 12 and 13 of the Act the Court is required to exercise in disregard of the contractual relations between the parties, we think that a beneficial construction of the Act to effect its object requires us to hold that when the Act says in section 12—"In any suit for redemption the Court *shall* proceed to enquire into the past history of the case *ab initio*, and take the account in the manner directed by section 13," it impliedly excludes any objection based on the agreement between the parties that the suit is premature. The question, referred to us in both cases must be answered in the affirmative.