

Deshmukh) was of opinion that this act of the accused might be regarded as coming either within section 211 or section 182, Indian Penal Code, and he convicted the accused under the latter section, and sentenced him to a fine of Rs. 10, or, in default, to suffer simple imprisonment for a week. For adopting this course he quoted the authority of the Calcutta High Court in the case of *Bhokteram v. Hira Kolita* (1).

On an examination of the criminal calendar the record and proceedings were called for by the High Court.

At the hearing of the case no one appeared on behalf of the accused or the Crown.

PINHEY, J.—We must reverse the conviction and sentence, and direct the trial of the accused for an offence punishable under section 211 of the Indian Penal Code. The accused did not merely falsely inform the chief constable that he had been robbed, but he complained that Ganpat had robbed him.

NOTE.—The following ruling, under section 182, in the case of *Reg. v. Gopala Bhihaji*, dated 24th April, 1873, was made by Melvill and West, JJ. :—

“A petition made by a person to the police, falsely stating that the petitioner suspects another person of having committed an offence and praying for inquiry, does not amount to an institution of criminal proceedings against that person within the meaning of section 211, Indian Penal Code. The petitioner should be charged, under section 182 of the Code, with having given false information with intent to cause a public servant to use his lawful power to the injury of another person.”

(1) I. L. R., 5 Calc., 184.

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.*

JANOJI (ORIGINAL DEFENDANT), APPELLANT, v. JANOJI (ORIGINAL PLAINTIFF), RESPONDENT.\*

1882  
December 19.

*Mortgage—Suit for account and redemption—Mortgagee overpaid—Decree—The Deccan Agriculturists' Relief Act (XVII of 1879), Secs. 12 and 13.*

In a suit for account and redemption, if the mortgagee, on taking the accounts, is found to have been overpaid, the general practice is to order the payment, by him, of the balance due to the mortgagor, with interest from the date of the institution of the suit.

\* Second Appeal, No. 76 of 1882.

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The application of the above rule, however, in redemption suits instituted under the Deccan Agriculturists' Relief Act (XVII of 1879), in cases where the terms of the mortgage contract between the parties are set aside for the purpose of taking the account under the provisions of section 13 of the Act, would not only lead to the redemption of the mortgaged property, contrary to the terms and conditions of the contract, but would in many cases oblige the mortgagee to refund the money which rightly came into his hands under the contract.

The plaintiff, an agriculturist, sued (as mortgagor) for account and redemption of the mortgaged property under the Deccan Agriculturists' Relief Act. The defendant pleaded that, by the terms of the mortgage-bond, he was not bound to account, and that section 12 of the Act did not apply. The Subordinate Judge overruled the objection, and on taking the account, found a balance due from the defendant to the plaintiff. He, accordingly, made a decree in favour of the plaintiff for the land and the amount. The District Judge confirmed the decree of the first Court.

*Held* that the decree of the lower Court must be varied by omitting the direction ordering the defendant to pay the balance to the plaintiff.

THIS was a second appeal from the decision of R. F. Mactier, Judge of the District Court of Satara, affirming the decree of J. B. Tirmulrav, Second Class Subordinate Judge of Rahimatpur.

This suit was instituted by the plaintiff Janoji for the redemption of a field, Survey No. 152, alleging that it had been mortgaged to the defendant for Rs. 200 by his (plaintiff's) uncle, Sadu, under two bonds dated, respectively, the 5th August, 1872, and the 7th July, 1874. The plaintiff prayed for an account, and offered to pay whatever should be found due to the defendant.

The defendant answered that, under the terms of the mortgage bonds, the plaintiff had no right to ask for the accounts; that he (defendant) was willing to give up the land if the plaintiff paid him the amount of the mortgage debt with interest, *viz.*, Rs. 382.

The Subordinate Judge made a decree in favour of the plaintiff for the land and for Rs. 107-8-6. The District Judge affirmed it in appeal.

The defendant appealed to the High Court.

*G. R. Kirloskar* for the appellant.—The mortgage deeds stipulated that the mortgagee should receive the produce of the land in consideration of the Government dues on it. The defendant, therefore, ought to have been allowed the principal and interest without any deduction. At any rate, the lower Courts

ought not to have given the plaintiff a decree for the balance. The account was taken contrary to the express terms of the mortgage.

*V. M. Pandit* for the respondent.—The decision of the lower Courts is in accordance with the rule of law that if a mortgagee has been overpaid, he should be made to pay back the surplus money to the mortgagor. There is nothing in the Act which abrogates this general rule of the law of mortgages.

SARGENT, C. J.—This suit was brought by an agriculturist, under the Deccan Agriculturists' Relief Act, to redeem his lands which had been mortgaged to the defendant. The defendant contended that, by the terms of his mortgage-bond, he was not bound to account, and that section 12 of the Act was not applicable. The Subordinate Judge overruled the objection, and proceeded to take the account under the above section, which resulted in a balance of Rs. 107-8-6 being found in favour of plaintiff, and passed a decree for the restoration of the land to the plaintiff and the payment of Rs. 107-8-6, *minus* the defendant's costs. The District Judge confirmed this decree. The only point which was seriously argued before us on second appeal was that a decree for the balance of Rs. 107-8-6 ought not to have been passed in favour of plaintiff, the account having been taken under the Act. The general practice, when the mortgagee has been found on taking the accounts to have been overpaid, is to order the payment, by him, of the balance due from him, with interest, from the date of the institution of the suit(1). The application of such a rule, in a redemption suit instituted under the Deccan Agriculturists' Relief Act, in cases where the provisions of the mortgage contract between the parties have been set aside for the purpose of taking the account under those of section 13 of that Act, would not only lead to the redemption of the mortgaged land contrary to the terms and conditions of that contract, but would in many cases, such as the present one, oblige the mortgagee to refund money which had rightly come into his hands under that contract. There is no express provision in the Statute, either directing or enabling this to be done; and remembering that the Act encroaches on existing legal rights, it should, on general

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(1) Seton on Decrees, page 469.

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principle, not be construed to extend beyond the particular object which the Legislature had in view in passing the Act, and which in the preamble is said in express terms to be to relieve the agriculturist in the Deccan from indebtedness. That object is effected when the agriculturist is enabled to discharge his debt and recover his land on far easier terms than those which he has contracted for, and it would be going beyond that object if the Act were construed to entitle him also to a refund of money which had already properly come into the mortgagee's hands under the contract. In the present case it was not disputed that the balance in favour of the mortgagor was the result of the account being taken according to the provisions of section 13 of the Deccan Agriculturists' Relief Act. The decree of the Court below must, therefore, be varied by omitting the direction ordering the appellant to pay the balance of Rs. 107-8-6. Costs of appeal here and in the lower Appellate Court to be paid by the parties themselves.

### APPELLATE CIVIL.

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

1882  
September 18.

TRIMBAK BAWA *alias* BHAU BAWA (ORIGINAL DEFENDANT), APPELLANT,  
v. NARAYAN BAWA (ORIGINAL PLAINTIFF), RESPONDENT.\*

*Temple endowments—Management—Execution sale—Limitation Act XV of  
1877, Sch. II, Art. 12.*

In 1866 V. (the father of the plaintiff) sued his brother H. and G. (one of the two sons of H. and defendant No. 1) to establish his right to a third share of the management of certain lands granted for the maintenance of a Hindu temple. In that suit V. obtained a decree that he should have the exclusive management every third year, but was ordered to pay costs. To enforce payment of these costs, H. in execution of the decree attached the third share of V. in the management of the land. The share was accordingly sold by auction in January, 1870, to a Marwadi, who afterwards in May, 1870, re-sold it to the appellant T. (another son of H. and defendant No. 2). V. died in 1876. In 1879 the plaintiff sued G. and the appellant (the two sons of H.) for his share of the management. It was contended for the defence that as the execution sale of January, 1870, was not set

\* Second Appeal, No. 544 of 1881.