

with the same article of the Act of 1877. A special article, No. 147, however, has been introduced into the latter Act, which provides for suits by a mortgagee for foreclosure and sale, and places them, as regards limitation, on the same footing as suits by the mortgagor for redemption had already been placed by article 148 of the Act of 1871. Such suits, therefore, since the passing of the Act of 1877, must be regarded as falling under that article. By the instrument sued on, the property in question was mortgaged to the plaintiffs' father with an implied, if not express, power to sell the same in the event of the mortgage debt not being paid at the expiration of seven years, and the period of limitation was, therefore, sixty years from the 1st January, 1871. The suit was, therefore, not barred, and the decrees of the Courts below must be reversed, and the case sent back for trial on the merits. Costs to follow the result.

*Decree reversed.*

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BHÁICHAND  
v.  
KÁLNAK.

## REVISIONAL CRIMINAL.

*Before Mr. Justice Birdwood and Mr. Justice Jardine.*

QUEEN-EMPRESS v. KA'MA'LIA' AND ANOTHER.\*

*Evidence Act (I of 1872), Secs. 25, 26, 27—Confessions made to a Police Officer.*

The accused were charged with theft of some *juári*. During the police investigation they admitted before the police that they had taken the grain and concealed it in a jar, which they forthwith produced. The identity of the *juári* recovered with that stolen was not proved to the satisfaction of the trying Magistrate except by these admissions, and upon these admissions they were convicted of theft.

*Held*, that as the prisoners themselves produced the *juári*, it was by their own act, and not from any information given by them, that the discovery took place. Section 27 of the Evidence Act, therefore, did not apply; and though the fact of the production of the property might be proved, the accompanying confession made to the police was inadmissible in evidence.

*Empress v. Pancham*(1) and *Queen Empress v. Bábu LáK*(2) followed.

THE accused Kámaliá and Bhikiá were charged with having dishonestly removed *juári* from the threshing floor of one Rávji

\* Criminal Review, No. 75 of 1886.

(1) I. L. R., 4 All., 198.

(2) I. L. R., 6 All., 509.

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Jairám on 6th December, 1885. During the police investigation, they admitted to the police that they had taken the *iwári* and concealed it in a jar, which they forthwith produced. The Magistrate, who tried this case, believed the witnesses, who deposed that the accused admitted the theft, and that the property was recovered in consequence of the admissions. Upon these admissions he convicted them of theft, and sentenced Kámáliá to one month's rigorous imprisonment, and, taking into consideration Bhikiá's previous convictions, sentenced him to suffer two months' rigorous imprisonment.

The High Court sent for the record and proceedings of this case in the exercise of its revisional jurisdiction.

There was no appearance for either the Crown or the accused.

JARDINE, J. :—Mr. Winter, the Magistrate who tried this case, believed the witnesses, who deposed "that the accused admitted the theft, and that the property was recovered in consequence of the admissions." The judgment shows clearly that the identity of the *iwári* recovered with that stolen was not proved to the Magistrate's satisfaction, except by these admissions. The importance of the question, which arises under sections 25, 26 and 27 of the Indian Evidence Act I of 1872, is, therefore, apparent.

The two prisoners were in some sort of police custody at the time. The head constable describes them as being among those Bhils whom the police *pátel* "collected" on suspicion. The police *pátel* himself accused them of complicity in the theft. What followed is described by different witnesses, some of whom depose to the facts, as if they were not of the sort described in section 27. The complainant, *e.g.*, says: "Kámáliá said that he and accused No. 2, Bhikiá, had taken the *iwári*; and, on searching Bhikiá's house, and in an earthen jar, we found *iwári*, which the two prisoners gave up as that stolen, *viz.*, the *iwári* in the sack" The police *pátel* says that Kámáliá said that "he and Bhikiá had fetched the grain, and he said it was put in Bhikiá's house in a jar, and then they both brought out the jar." Bhikiá said nothing at the time according to this witness. Another witness gives similar evidence. The fourth

witness says that Bhikiá assented to what Kámaliá said, and that both of them brought out the *juári* as that stolen. The head constable gives similar evidence.

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We may observe, following Straight, J., in *Empress of India v. Pancham*<sup>(1)</sup>, that, as the prisoners themselves produced the *juári*, it was by their own act, and not from any information given by them, that the discovery took place. That case is also an authority for holding, in the same circumstances, that the production of the property may be proved, but not the accompanying confession made to the police. In the Full-Bench case, *Queen Empress v. Bábu Lál*<sup>(2)</sup>, the majority of the Judges held, that, where, in consequence of information given to the police by the accused to the effect that he had stolen a cow and calf and sold them to a particular person at a particular place, the animals were discovered, so much of the information as amounted to a confession of stealing was inadmissible in evidence. The reasons, why the question of the application of the exceptional proviso in section 27 to the facts of the case should be carefully considered, have been expounded by this Court in *Reg. v. Jorá Hasji*<sup>(3)</sup> and *Empress v. Rámá Birápá*<sup>(4)</sup>.

Being of opinion that the confession made to the police was not admissible in evidence, we reverse the convictions and sentences.

*Conviction reversed.*

(1) I. L. R., 4 All., 198.

(3) 11 Bom. H. C. Rep., 242.

(2) I. L. R., 6 All., 509; see pp. 514, 547, 549. (4) I. L. R., 3 Bom. 12.