

Inverarity, for the respondent :—The respondent wishes to file two objections only. One is on a point which he can take in the appeal without filing any objection, but the other is that the appellant should have been ordered by the decree to pay his costs. The appellant cannot be prejudiced by the objections if allowed. The object of filing objections is to give the appellant timely intimation of the points to be taken against him—*Dinkar Parshram v. Vinayek Moreshwar* (1). We sent a copy of our objections to the appellant on the 21st December last. The Court has discretion under the Civil Procedure Code (Act XIV of 1882), s. 561, to allow the objections to be filed now.

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JUDGMENT.

SARGENT, C. J.—If we were now to allow objections to be filed in this case, it would be difficult to refuse leave to file them in any case in which a similar application might be made. Section 561 of the Civil Procedure Code requires that objections shall be filed within one month from the date of the service of notice of the appeal. We must give effect to the section. No cause has been shown here for extending the time.

Appeal refused.

Attorneys for appellant :—Messrs. *Tayabji and Dayabhai.*

Attorneys for the respondent :—Messrs. *Pestani and Rustim.*

14 B. 113.

[113] APPELLATE CIVIL.

Before Mr. Justice Scott and Mr. Justice Jardine.

DAUDBHAI RAMBHAI AND OTHERS (*Original Defendants*), Appellants,
v. DAUDBHAI ALLIBHAI AND OTHERS (*Original Plaintiffs*),
*Respondents.** [2nd April, 1889.]

Mortgage—Interest—Mortgagee's right to interest in a redemption suit—Extent of the right—Limitation.

In 1832 the plaintiffs sued to redeem a mortgage effected in 1833. The Court of first instance allowed the mortgagee interest from the date of the bond. The appellate Court reduced the interest awarded to the period of six years.

Held, reversing the decision of the lower appellate Court, that the mortgagee was entitled to claim interest from the date of the bond up to the date of the decree.

SECOND appeal from the decision of G. Jacob, Joint Judge of Ahmedabad, in appeal No. 119 of 1885.

The plaintiffs sued to redeem certain land which had been mortgaged with possession to the defendants' ancestor in 1833 A. D. to secure a loan of Rs. 110.

Under the mortgage-deed no rent was to be charged for the land, and no interest for Rs. 40 out of the sum borrowed. The remaining Rs. 70 was to carry interest at 18 *per cent. per annum.*

The Court of first instance decreed redemption on payment of Rs. 70, together with interest amounting to Rs. 638-13 calculated at the stipulated rate from the date of the mortgage upto the date of the decree.

* Second Appeal No. 485 of 1887.

(1) 11 B. 698.

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On appeal the Joint Judge, following the ruling in *Vithal Mahadev v. Daud Muhammad Husen* (1) held that interest could only be awarded for a period of six years. He, therefore, varied the decree by reducing the amount of interest awarded to Rs. 75-9-7.

From this decision the defendant mortgagees appealed to the High Court, urging that interest ought to have been awarded from the date of the mortgage up to the date of the decree.

Ganpat Sadashiv Rao, for appellants.—The decision in *Vithal Mahadev v. Daud Muhammad Husen* (1) is overruled : see *Hari v. [114] Balambhat* (2). That was a suit between Hindus, and so the rule of *damdupat* was applied. But that rule has no application to the present case, the parties being Mahomedans. We are, therefore, entitled to claim interest from the date of the mortgage up to the date of the decree. *Prabhakar Chintaman Dikshit v. Pandurang Vinayak Dikshit* (3) is a case in point.

Vinayekrao Harychand, for respondents.—The mortgagee cannot claim more than twelve years' interest under art. 132 of the Limitation Act (XV of 1877).

Ganpat Sadashiv Rao in reply :—Article 132 applies to suits by mortgagees to enforce the mortgage lien. It has no application whatever to redemption suits. It would be unjust to allow a mortgagor to keep the mortgagee out of his money for upwards of fifty years, as in the present case, and then contend that he is not liable to pay more than twelve years' interest.

JUDGMENT.

SCOTT, J.—This is a suit for the redemption of certain property mortgaged in 1833. The Subordinate Judge allowed the mortgagee interest from the date of the mortgaged-bond. The Joint Judge reduced that interest to the period of six years, on the precedent of *Vithal Mahadev v. Daud Mahammad Husen* (1). But that case has been overruled by the decision of the Chief Justice in *Hari Mahadaji Savarkar v. Balambhat Raghunath Kahre* (2), who held that the section of Reg. V of 1827, on which the previous case was decided, had been repealed and never revived, and, therefore, as regards suits of foreclosure, art. 132 of the Limitation Act applied. In this case though that Act applies, art. 132 does not apply, as this is not a suit for foreclosure, but for redemption. The only article that applies to such suit is art. 148, which fixes the limit of sixty years for the institution of such suits. No provision of limitation is made by the Act for the payment of interest on the sum due to the mortgagee. In the Land Transfer Act (IV of 1882), ss. 92 and 60, the mortgage money must be paid, and in s. 58 of the same Act the mortgage money is interpreted [115] to include the interest due, and no limit to the payment of interest is fixed. In the case of *Prabhakar Chintamen Dikshit v. Pandurang Vinayak Dikshit* (3) Westropp, C. J., in laying down the principles of an account in a redemption suit, says the interest on the mortgage money must be calculated without saying any limit is made by law. This seems to meet the equity of the case, as the mortgagor could at any time have come in to redeem, and so stopped the accrual of interest. In taking an

(1) 6 B.H.C.R. A.C.J. 90.

(2) 9 B. 233.

(3) 12 B.H.C.R. 88.

account, moreover, the mortgagee is liable to a reasonable occupation rent, and it would be unfair to make him pay rent for the whole period, and not give him the interest for the same period.

We, therefore, reverse the decree of the Joint Judge so far as it does not allow interest on the mortgage money for the whole period and restore the decree of the Subordinate Judge. Respondents to pay the costs of both appeals.

Decree reversed.

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14 B. 115.

CRIMINAL REVISION.

Before Mr. Justice Bayley, Mr. Justice Scott, and Mr. Justice Jardine.

QUEEN-EMPRESS v. MAGANLAL AND MOTILAL.*

[24th September, 1889.]

Accomplice—Evidence of an accomplice—Necessity of corroboration—Compulsion an excuse for crime—Presence as evidence of common intention—Fear of instant death—Indian Penal Code (Act XLV of 1860), ss. 34 and 94.

The accused, who were classers employed in the Revenue Survey Department, were charged, under s. 161 of the Indian Penal Code, with taking bribes from the rayats of certain villages. The only evidence against the accused was that of persons who had either subscribed to the bribes or collected subscription or paid the money to the accused. They stated that they had offered the bribes, because the classers had threatened to raise the assessment, cut down the hedges, and erect new boundary-marks. As regards this evidence, the trying Magistrate remarked that, even if all the witnesses for the prosecution were treated as accomplices, it was open to him to convict on their uncorroborated testimony, as "there was inherent truth in their statements, and circumstances existed which negatived the presumption of a conspiracy, and evidenced signs of truthfulness." The Magistrate was also of opinion that there was a distinction between accomplices who volunteered to assist in the receipt of illegal gratifications and those who assisted under compulsion. In [116] the opinion of the Magistrate, the witnesses in the present case belonged to the latter class, and there was no reason to disbelieve their evidence. He, therefore, convicted the accused under s. 161 of the Indian Penal Code, and sentenced them to rigorous imprisonment and fine.

Held, (Scott, J., *dissenting*), that the convictions were illegal, there being no evidence to corroborate the witnesses for the prosecution, all of whom were accomplices.

Held, also (Scott, J., *dissenting*), that there was such error in the consideration by the Magistrate of the evidence as to prejudice the accused, and such a failure of justice as to justify the Court in revision in setting aside the convictions.

Per Curiam:—The limits of the application of the doctrine of necessity as an excuse for an act otherwise criminal are those prescribed in s. 94 of the Indian Penal Code. Therefore witnesses who in order to avoid pecuniary injury or personal molestation had offered or given bribes to a public servant were abettors of the offence of taking an illegal gratification, and their evidence should be treated as that of accomplices.

By the law both of India and England the evidence of an accomplice is admissible, and a conviction is not illegal because it proceeds upon the uncorroborated testimony of an accomplice (s. 133 of the Evidence Act I of 1872). But the presumption that an accomplice is unworthy of credit, unless corroborated in material particulars, has become a rule of practice of almost universal application.

Per SCOTT, J.—There may be, however, cases of an exceptional character in which the accomplice evidence alone convinces a Judge, and if he acts on that

* Criminal Review No. 263 and No. 265 of 1889.