

may remain out of the proceeds of the mortgaged premises after the defendants' claim under the mortgages have been satisfied.

Suit dismissed with costs.

Attorneys for the plaintiff :—Messrs. *Little Smith, Frere, and Nicholson.*

Attorneys for the defendant :—Messrs. *Crawford, Burder, Buckland, and Bayley.*

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REVISIONAL CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Candy.

QUEEN-EMPRESS v. KHANDIA BIN PANDU.* [3rd July, 1890.]

Evidence Act (I of 1872), s. 30—Confessions of fellow-prisoners tried jointly for the same offence—Evidence.

When the accused was convicted solely on the confession of his fellow-prisoners, who were tried jointly with him for the same offence.

Held, that the conviction was bad. Under s. 30 of the Indian Evidence Act (I of 1872) such confessions could be "taken into consideration" against the accused, but they were not evidence within the definition given in s. 3 of the Act; and they could not, therefore, alone form the basis of a conviction.

[R., 22 A. 445 (447)=20 A.W.N. 169; 24 M. 523 (541)=1 Weir 351; L.B.R. (1893—1900), 368 (369); 11 O.C. 328 (331); 38 B. 156 (175).]

THIS was an application under s. 435 of the Code of Criminal Procedure (Act X of 1882).

The applicant and two other accused were tried jointly on a charge of theft by the First Class Magistrate of Thana, convicted, and sentenced to three months' rigorous imprisonment.

The only evidence against the applicant was that contained in the confessions of the co-accused.

The applicant moved the High Court, under its revisional jurisdiction, to set aside the conviction and sentence.

Nagindas Tulsidas, for the applicant :—The confessions of the fellow-prisoners are no evidence against the accused. They [67] may be taken into consideration under s. 30 of the Evidence Act along with the evidence recorded in the case. But there is no independent evidence in the present case. The conviction is, therefore, unsustainable.

The Court (BIRDWOOD and CANDY, JJ.) delivered the following

JUDGMENT.

The applicant was convicted of theft solely on the confessions of the accused persons Nos. 2 and 3 who were tried jointly with him for the same offence. Under s. 30 of the Evidence Act (I of 1872), these confessions could be "taken into consideration" as against him; but they are not technically evidence within the definition given in s. 3 of the Act, as was pointed out in *Imperatrix v. Bayaji* (1), and they could not,

* Criminal Revision No. 106 of 1890.

(1) Bom. H. C. Criminal Ruling, dated 18th November 1886.

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therefore alone form the basis of a conviction. They could only be taken into consideration along with evidence. Standing alone, they could not, even if they could be regarded as evidence, be allowed such weight as can legally be given to the sworn testimony of an accomplice who gives evidence subject to cross-examination. The conviction and sentence are reversed, and the accused Khandia bin Pandu is acquitted of the offence of theft of which he was convicted by the Magistrate.

Conviction and sentence reversed.

15 B. 67.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Candy.

VENKTESH RAMKRISHNA (*Original Plaintiff*), *Appellant v. MHAL PAI BIN NARUPAI AND OTHERS (Original Defendants).** [7th July, 1890.]

Land Revenue Code (Bombay Act V of 1879), ss. 56, 122, 153, 155, 188—Charges incurred in connection with boundary marks—Effect of revenue sale—Mode of recovering such charges—Sale for recovery of such charges—Rights of incumbancers.

The effect of s. 187 of the Bombay Land Revenue Code (Bombay Act V of 1879) is to make the provisions of ss. 153 and 56, and also those of s. 155, applicable to sales for the recovery of charges assessed under s. 122 in connection with boundary marks.

[68] Such charges may be recovered either by forfeiture of the occupancy in respect of which the arrear is due, or by sale of the defaulter's immoveable property other than the land on which the arrear is due. In the former case the land is sold freed from all incumbances created by the occupant. In the latter case the rights of incumbancers are not touched.

[R., 21 B. 381 (384).]

APPEAL from the order of remand made by G. McCorkell, District Judge of Kanara, in appeal No. 39 of 1888.

The plaintiff sued to recover possession of certain lands purchased by him at a revenue sale held on account of default in payment of charges incurred in connection with boundary marks.

The defendants were mortgagees in possession of the lands in dispute. They contended (*inter alia*) that the revenue sale at which the plaintiff purchased, did not work a forfeiture of the defendants' incumbances.

The Subordinate Judge held that the claim of Government in respect of the charges in question was a paramount charge on the land in suit and that the plaintiff purchased at the revenue sale the entire holdings freed from all incumbances created by the occupant. He therefore decreed the plaintiff's claim.

The District Judge, in appeal, was of opinion that charges incurred in connection with boundary marks were not included in the term '*land revenue*' so as to constitute a paramount charge on the land, and that a sale held on account of such charges did not work a forfeiture under s. 56 of the Land Revenue Code.

* Appeal from Order No. 34 of 1889.