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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.*

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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.

The decree of the Subordinate Judge was therefore reversed, and the case remanded for hearing with regard to the various claims set up by the defendants.

Against this order of remand the plaintiff appealed to the High Court.

*Narayan Ganesh Chand.warkar*, for appellant.—Section 122 of Bombay Act V of 1869 refers to boundary marks. It authorizes the revenue authorities to assess all charges incurred in putting up boundary marks on the holders or others having an interest therein. I submit that the mortgagees in possession were bound to pay such charges, in order to protect their interest in the holding. [69] Section 187 enables the Collector to recover such charges in the manner provided for the realization of the land revenue. Section 56 shows how it is to be realized. The Collector may declare the holding, in respect of which the arrears are due, to be forfeited, and sell it freed from all incumbrances effected by the occupant. Section 56 applies to the present case—*Secretary of State for India v. Bombay Landing and Shipping Company* (1).

*Shantaram Narayan*, for respondent :—The charges in question do not constitute a paramount charge provided for in chap. IX of the Revenue Code. There is nothing to show that the Collector declared the occupancy to be forfeited. Section 153 applies only to sales for default of payment of arrears of land revenue. Section 187 distinguishes land revenue from other charges.

#### JUDGMENT.

BIRDWOOD, J.—The plaintiff sues, as the purchaser of land at a revenue sale held for the levy of charges incurred on account of boundary marks, to recover possession of the land from the mortgagees of the occupant. The Subordinate Judge awarded possession, as he was of opinion that the claim of Government in respect of the charges in question was a paramount charge on the land, which was, therefore, sold free from all incumbrances created by the occupant. The District Judge, being of a contrary opinion, has reversed the Subordinate Judge's decree, and remanded the case, in order that the various incumbrances set up by the defendants may be determined. From this order of remand, the plaintiff has appealed; and the question is, whether the revenue sale in this case transferred merely the rights of the occupant, or extinguished those rights and also the rights of his mortgagees.

The charges, for the recovery of which the sale was held, are such as can be assessed under s. 122 of the Bombay Land Revenue Code, 1879, on the holders or others having an interest in the boundary marks for the construction or repair of which the charges were incurred. It is not contended, in the present case, that the charges were not due by the occupant. Under s. 187 of the Code, which occurs in Chap. XI, all charges payable or leviable under the Code must be levied under "the [70] foregoing provisions" of the chapter. In s. 187 such charges are distinguished from sums due on account of land revenue, but they are recoverable under the same provisions. The charges assessed on the occupant of the lands in suit, though not land revenue, were therefore recoverable under s. 150, which is one of the sections in Chap. XI; and that section provides the following methods of recovery, among others :—

(1) 5 B.H.C.R. O.C.J. 23 (49, 50).

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*viz.*, by forfeiture of the occupancy or alienated holding in respect of which the arrear of land revenue is due under s. 153, and by sale of the defaulter's immoveable property under s. 155. If the former method is adopted, then, under s. 153, the Collector may declare the occupancy or alienated holding, in respect of which the arrear is due, to be forfeited to Government, and sell or otherwise dispose of the same under the provisions of ss. 56 and 57. If the latter is adopted, then the Collector may, under s. 155, cause the right, title, and interest of the defaulter in any immoveable property, other than the land on which the arrear is due, to be sold. In the former case, the land is sold freed from all incumbrances created by the occupant, as provided by s. 56. In the latter case, the rights of incumbrancers are not touched.

The effect of s. 187 of the Code is clearly to make applicable the provisions of ss. 153 and 56, and also of s. 155, to sales for the recovery of charges assessed under s. 122. And the question is, whether, in the present case, the Collector declared the occupancy of the land in suit forfeited to Government under s. 153 and thereupon sold it under s. 56; or whether he sold only the right, title, and interest of the occupant, under s. 155, the land being land other than that in respect of which the charges on account of boundary marks were due. Neither of the Courts below has dealt with this question; nor does the evidence on the record enable us to answer it.

We therefore reverse the order of the lower appellate Court and remand the case for a re-hearing of the appeal by that Court. Costs to abide the result.

*Remand order reversed and case sent back.*

[71] 15 B. 71.

APPELLATE CIVIL.

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

ONKARAPA AND OTHERS (*Original Defendants*), *Appellants v.*  
SUBAJI PANDURANG (*Original Plaintiff*), *Respondent* ;  
AND SUBAJI PANDURANG (*Original Plaintiff*), *Appellant v.*  
ONKARAPA AND OTHERS (*Original Defendants*), *Respondents.\**  
[10th July, 1890.]

*Landlord and tenant—Ejectment suit—Tenant expending money on the premises.*

In a suit for ejectment it appeared that the defendants and their father had occupied the premises in question for over forty years, and that the house, which had originally been a cow-house, had been altered by the defendants and converted into a dwelling-house. The District Judge found that as the plaintiff had allowed the defendants to rebuild and virtually erect a new house, it would not be equitable to allow him to eject them from it, and he accordingly refused the plaintiff a decree for ejectment, but gave him a decree against the defendants for three years' rent. On appeal to the High Court the decree was varied by directing that the plaintiff should recover possession of the land and house, there being no evidence that the defendants had entered on the land, for building purposes or had built "in the hope or encouragement of the plaintiff of an extended term or an allowance for expenditure" (*Ramsden v. Dyson* (1)), and, consequently, the defendants had no equity against the plaintiff.

\* Cross Second Appeals Nos. 229 and 246 of 1889.

(1) L.R. 1 H.L. 170.