

v. *Becharam Sircar*(1), it was only decided that no suit would lie for damages on account of slander uttered by a witness whilst under examination in a judicial proceeding. There is no real conflict between these decisions and the decision in *The Queen v. Gopal Doss*(2), and we feel, therefore, bound to follow it. As observed by the District Magistrate, the Sessions Judge was clearly in error in holding that the depositions given by the third and fourth accused were not legal evidence against them, and that it was not one of the presumptions arising under section 80 of the Evidence Act that the witnesses did actually say what was recorded. Section 80 provides, *inter alia*, that the Court shall presume that the evidence was duly taken, and it could not be considered to be duly taken if it did not contain what the witness actually stated. Having regard to the decision in *The Queen v. Gopal Doss*(2) and to the mistake made by the Sessions Judge in declining to act upon section 80 of the Evidence Act, we think that the acquittal of the third and fourth accused was wrong. As the sentence of imprisonment has been suffered in part, we will merely restore the conviction and treat the sentence that has been undergone as sufficient.

QUEEN-  
EMPRESS  
v.  
SAMIAPPA.

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## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Handley.*

SARAVANA (DEFENDANT), APPELLANT,

1891.  
August 26.

v.

CHINNAMMAL (PLAINTIFF), RESPONDENT.\*

*Transfer of Property Act—Act IV of 1882, s. 68 (c)—Personal suit for mortgage amount.*

In a suit against a mortgagor for the principal and interest due on a mortgage, it appeared that the payment of interest had fallen into arrears, and that the mortgage deed provided that in such event the mortgagee should be entitled to possession of the mortgage premises; the mortgagor falsely alleged that all the interest due had been tendered: \*

*Held*, that the mortgagee was entitled to sue as above.

(1) I.L.R., 15 Cal., 264.

(2) I.L.R., 3 Mad., 271.

\* Second Appeal No. 1015 of 1890.

SARAYANA  
v.  
CHINNAMMAL.

SECOND APPEAL against the decree of R. S. Benson, District Judge of South Arcot, in appeal suit No. 291 of 1888, reversing the decree of S. A. Krishna Rau, District Munsif of Chidambaram, in original suit No. 526 of 1888.

Suit for the principal and interest due on a mortgage dated 18th June 1887 : the sum secured was Rs. 300, and the material portion of the mortgage deed was as follows :—

“ The interest accruing at the rate of half per cent. per mensem shall be paid in cash within the 30th Vykasi of every year. In default of so paying, the said hypothecated land shall be enjoyed. I myself shall pay the assessment of the said land.”

The further facts of the case appear sufficiently for the purposes of this report from the following judgment

*Krishnamachariar* for appellant.

*Mahadeva Ayyar* for respondent.

JUDGMENT.—By the terms of the mortgage document, on failure of payment of interest at the stipulated time, plaintiff was entitled to possession of the mortgaged property. Defendant alleged tender of the interest at the due date, but it is found that this allegation is false. On the findings, therefore, plaintiff was, some months before suit, entitled to possession, and defendant did not put her in possession, but, on the contrary, denied her right to possession on a false plea of tender of the interest. We think, therefore, that, under clause (c) of section 68 of the Transfer of Property Act, plaintiff was entitled to sue for the mortgage amount, and the decree of the Lower Court can be supported on this ground. The appeal is dismissed with costs.

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