1892.

RÁMBHAT v. RÁGHO KRISHNA DESHPÁNDE.

ed by the Court in *Navlu* v. *Rághu*[1]. There the Court held that an account could not be taken, and the Full Bench, in *Túni Bágavín* v. *Hari bin Bhaváni Dubal*[2], held that the case was rightly decided. In the case of *Dattátraya Rávji* v. *Anáji Rámchandra*[3], on which the lower Appellate Court relies, the decree simply put the mortgagee into possession. We must, therefore, reverse the decree of the Court below and restore that of the Subordinate Judge. The appellant to have his costs in the lower Appellate Court.

Decree reversed.

(1) I. L. R., 8 Bom., 303. (2) P. J., 1887, p. 315.
(3) P. J., 1886, p. 237.

NOTE.—The following is the report of the case of *Túni Bágavín* v. *Hari bin Bhaváni Dubal* (Printed Judgments for 1887, p. 315), which is referred to in the argument and the judgment of the Court:—

FULL BENCH.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice West, and Mr. Justice Farran (officiating).

1887.
September 29.

TA'NI BA'GAVA'N, DECEASED, BY HER HEIR DA'DU, (ORIGINAL DEFENDANT), APPELLANT, *v.* HARI BIN BHAVA'NI DUBAL, (ORIGINAL PLAINTIFF), RESPONDENT. *

THIS was a second appeal from the decision of S. Tágore, District Judge of Sholápur.

This action was instituted by plaintiff, Hari bin Bhaváni Dubal, to redeem and recover possession of certain land from the defendant. He also prayed for an account of the rents and profits and of the mortgage-debt.

The defendant, Dádu, contended *(inter alia)* that under a decree which he had obtained on the mortgage he was to remain in possession of the mortgaged property till the decretal amount was paid by the plaintiff.

The Subordinate Judge (Ráo Sáhel Bálájí Máhádeo) made account and directed the plaintiff to redeem and recover possession of the property on payment of Rs. 1-0-7 to the defendant.

The defendant appealed to the District Court, which amended the decree of the Subordinate Judge by disallowing Rs. 1-0-7.

Against the decree of the District Court the defendant appealed to the High Court.

* Second Appeal, No. 289 of 1885.

1892.

RÁMCHAT v. RÁGHO KRISHNA DESHPÁNDE.

Ghanashám Nilkanth Nádkarni, for the appellant, relied on *Navlu* v. *Rághu*(1).

Gangárám Bápsoba Rele, for the respondent, relied on *Dáttátraya Rávji* v. *A'naji Rámchandra*(2).

NÁNÁBHÁI HARIDA'S and JARDINE, JJ. :—Having regard to the apparently conflicting decisions in *Navlu* v. *Rághu* and *Dattátraya Rávji Kulkarni* v. *A'náji Rámchandra Deshpánde* we refer to a Full Bench the question whether an account should or should not be taken between the mortgagor and mortgagee, of interest on one side, and rents and profits on the other, from the date of the decree under which possession was taken by the defendant in this case.

The question being thus referred, it came on for argument before the Full Bench consisting of Sargent, C.J., and West and Farran (officiating) JJ.

Ghanashám Nilkanth Nádkarni for the appellant.

Shantárám Náráyan (with *Gangárám Bápsoba Rele*) for the respondent argued *(inter alia)* that as there were no words in the appellant's mortgage decree directing the respondent to pay the decretal amount after recovery of possession by the appellant, the decree meant that the debt was to be paid from the rents and profits which were taken by the appellant.

The judgment of the Full Bench was delivered by

FARRAN, J. :—The question which has been referred for our decision is "whether an account should or should not be taken between the mortgagor and mortgagee of interest on the one side, and rents and profits on the other, from the date of the decree under which possession was taken by the defendant in this case." The decree recites that the plaintiff (the mortgagee) filed the suit to obtain a decree against the mortgagor for payment of the sum of Rs. 396-10-0 principal and interest due on an instalment bond, dated 9th April, 1867, or, in defaalt of payment, to be put in possession of the land until payment; that the defendant appeared and admitted execution of the bond, and asked that the decree should be made payable by instalments, and that this was not allowed. The literal translation of the operative part is as follows :—"Therefore, the order is that the defendant do pay to the plaintiff Rs. 396-10-0 in respect of the bond, and if it be not paid, then the mortgaged land, given as security, is to be given into the possession of the plaintiff until the sum due be discharged. The defendant to bear all costs."

The above question was referred for our consideration having regard to the apparently conflicting decisions in *Navlu* v. *Rághu* and *Dattátraya* v. *A'naji*. We are unable to see that these decisions do, in fact, conflict, as each turned upon the particular terms of the decree with which the Court had to deal in these cases.

In *Rávji* v. *Káluram*(3) a Full Bench of this Court decided that the filing of a redemption suit like the present was the proper course for a mortgagor to adopt who desired to avail himself of the right to redeem reserved to him by such a decree as the one before us. All that the Court in such redemption suit is at

(1) I. L. R., 8 Bom., 303. (2) P. J., 1886, p. 237.
(3) 12 Bom. H. C. Rep., 160.

1892.

BÁMBHAT v. RÁGHO KRISHNA DESHPA'NDE.

liberty to do is to construe the decree in the former suit, to ascertain its intention from the expressions contained in it, and to give effect to that intention when so ascertained. In construing the above decree we do not find in it any substantial difference to distinguish it from the decrees which the Court had to consider in *Navle* v. *Rágha*(1) and *Tátya* v. *Bápu*(2). The omission from it of the word "said" before the words "sum due" does not appear to us to alter the sense of the decree. We consider that the decrees in those cases were correctly construed.

In the case of *Dattátraya* v. *A'náji (supra)* the decree simply awarded possession of the mortgaged property to the mortgagee, and differs in that respect from the decree with which this reference deals.

We answer the question submitted to us in the negative.

(1) I. L. R., 8 Bom., 303. (2) I. L. R., 7 Bom., 330.

APPELLATE CRIMINAL.

Before Mr. Justice Jardine and Mr. Justice Telang.

QUEEN-EMPRESS v. MONA PUNA*

1892.
February 4.

Evidence—Admissibility—Indian Evidence Act (I of 1872), Sec. 118—Evidence of a witness illegally pardoned by the police—Meaning of "accused" in Section 342 of the Code of Criminal Procedure (Act X of 1882).

During the course of a police investigation into a case of house-breaking and theft, several persons were arrested, one of whom, named Hari, made certain disclosures to the police, and pointed out several houses which had been broken into by his accomplices. Thereupon the police discharged him, and made him a witness. At the trial he gave evidence against his accomplices, who were all convicted.

Held, that the evidence of Hari was admissible under section 118 of the Indian Evidence Act, though he had been illegally discharged by the police.

Held, also, that by the word "accused" in section 342 of the Code of Criminal Procedure (Act X of 1882) is meant a person over whom the Magistrate or other Court is exercising jurisdiction.

APPEAL from the conviction and sentence recorded by W. H. Hamilton, Presidency Magistrate, in the case of *Queen-Empress* v. *Mona Puna and others*.

The material facts of this case are as follows :—

The police received information that the house of Mrs. Britto, a resident of Dádar, had been broken into and property worth Rs. 410 stolen.

* Criminal Appeal, No. 317 of 1891.