

1890.

QUEEN-
EMPERESS
v.
KHANDIA
BIN PANDU.

may be taken into consideration under section 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 section 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 section 3 of the Act, as was pointed out in *Imperatrix v. Bayaji*⁽¹⁾, and they could not, 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.

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

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Candy.

VENKTESH RA'MKRISHNA, (ORIGINAL PLAINTIFF), APPELLANT,
v. MHAL PAI BIN NA'RU PAI AND OTHERS, (ORIGINAL DEFENDANTS).*

1890.

July 7.

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

* Appeal from order, No. 34 of 1889.

1890.

VENKTESH
RAMERISHNA
v.
MHAL PAI
BIN NARU
PAI.

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 immovable property other than the land on which the arrear is due. In the former case the land is sold freed from all incumbrances created by the occupant. In the latter case the rights of incumbrancers are not touched.

APPEAL from the order of remand made by G. McCorkell, District Judge of Kánara, 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' incumbrances.

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 incumbrances 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 section 56 of the Land Revenue Code.

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.

Nárāyan Ganesh Chandāvárkar 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 hold-

ing. 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⁾.

Shántáram Náráyan for respondent:—The charges in question do not constitute a paramount charge provided for in Chapter 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.

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 section 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 section 187 of the Code, which occurs in Chapter XI, all charges payable or leviable under the Code must be levied under "the

(1) 5 Bom. H. C. Rep., at pp. 49, 50, O. C. J.

1890.

VENKTESH
RĀMKRISHNAv.
MĪAL PAI
BIN NĀRU
PAI.

foregoing provisions" of the chapter. In section 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 section 150, which is one of the sections in Chapter XI; and that section provides the following methods of recovery, among others:—*viz.*, by forfeiture of the occupancy or alienated holding in respect of which the arrear of land revenue is due under section 153, and by sale of the defaulter's immoveable property under section 155. If the former method is adopted, then, under section 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 sections 56 and 57. If the latter is adopted, then the Collector may, under section 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 section 56. In the latter case, the rights of incumbrancers are not touched.

The effect of section 187 of the Code is clearly to make applicable the provisions of sections 153 and 56, and also of section 155, to sales for the recovery of charges assessed under section 122. And the question is, whether, in the present case, the Collector declared the occupancy of the land in suit forfeited to Government under section 153 and thereupon sold it under section 56; or whether he sold only the right, title and interest of the occupant, under section 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.