

1890.
 GOVERDHAN-
 DÁS
 GOCELDÁS
 TEJPÁL
 v.
 THE BANK OF
 BENGAL.

The only declaration to which the plaintiff is entitled is to a declaration that he, in common with Ebji Sewji and the shroffs who paid the bills for Rs. 15,000, can share proportionately in any surplus which may remain out of the proceeds of the mortgaged premises after the defendant's 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.*

REVISIONAL CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Candy.

QUEEN-EMPRESS v. KHANDIA BIN PA'NDU.*

1890.
 July 3.

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

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

Held that the conviction was bad. Under section 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 section 3 of the Act; and they could not, therefore, alone form the basis of a conviction.

THIS was an application under section 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.

Nagindás Tulsidás for the applicant:—The confessions of the fellow-prisoners are no evidence against the accused. They

* Criminal Revision, No. 106 of 1890.

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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).*

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.

1890.

July 7.

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.