

## APPELLATE CRIMINAL.

*Before Chitty and Walmsley JJ.*

CAUSLEY

v.

EMPEROR.\*

1915

Dec. 20.

*Forgery—Signing certificate of purchase of arms and ammunitions in false names and giving wrong addresses—Person legally entitled to possess the same—Act “fraudulent” if not “dishonest”—Penal Code (Act XLV 1860) ss. 23, 24, 463 to 465.*

A person lawfully entitled to possess arms and ammunitions signing the prescribed certificate of purchase of the same in the name of another with an address not his own, and thereby deceiving the gunsmith and the Government and defeating the object of the certificate, commits forgery: his act having been done “fraudulently,” if not “dishonestly.”

*Reg. v. Toshack* (1), *Empress v. Dhunum Kaze* (2) and *Queen-Empress v. Abbas Ali* (3) followed.

ON the 1st April 1915 the appellant, an European lad of 15 or 16 years, purchased from Messrs. Rodda & Co., in the town of Calcutta, a revolver and 50 cartridges and signed the upper portion of the certificate of purchase in the name and address of “C. O.,—24-1, Ripon Street.” On the 1st and 8th July 1915 he made two similar purchases of a revolver and 100 cartridges from Messrs. Walter Locke & Co., and a revolver and 25 cartridges from Messrs. Lyon and Lyon, both local gunsmiths, and signed the same portion of the certificate in the names, with the addresses, of P. L. M.—56, Ripon Street and “R. S.—Banali Indigo Factory, Bhagalpore,” respectively.

\*Criminal Appeal, No. 921 of 1915, against the order of J. Camell, Offg. Presidency Magistrate, Southern Division, Calcutta, dated Sep. 16, 1915.

(1) (1845) 1 Den. C. C. R. 492.      (2) (1882) I. L. R. 9 Calc. 53.

(3) (1897) I. L. R. 25 Calc. 512.

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It appeared that gun dealers have to deposit with the Customs authorities the sum of Rs. 15 for every revolver imported by them, that an intending purchaser, if requiring arms or ammunitions for his own use, has to sign the upper portion of a certificate of purchase with his address, stating the purpose for which the arms and ammunitions are required. A transcript of the certificate is sent to the Arms Act Department, which verifies it through the local police. If the arms, etc., are found to be in the possession of a person legally entitled to hold them and his name and address have been correctly given, the police report verification to the Customs authorities, and the dealer is entitled to a refund of the Rs. 15 less an *ad valorem* duty of 10 per cent., though sometimes the refund is made in anticipation of the police verification, but subject to return, if the verification has failed. There was evidence that the deposits made by the three firms in respect of the revolvers sold to the appellant had been declared by the Collector to have been forfeited by reason of the appellant's action in giving wrong names and addresses. Both *C. O.* and *P. L. M.* were examined at the trial and denied having authorized the appellant to purchase any revolvers or cartridges for them. *R. S.* of Bhagalpore was not called, and there was nothing to show whether there was any such real person. The witnesses examined from the above firms stated that they understood that the articles were purchased by the appellant for his own use, and that otherwise they would have required a letter of authority from the real purchasers, but they admitted that if the appellant had bought the revolvers and cartridges in his own name, he would have got them without any difficulty. None of the revolvers or cartridges were found in the house of the appellant when searched, and he refused to disclose what he had done with them.

The appellant was tried by the Second Presidency Magistrate on charges under ss. 417, 465 and 471 of the Penal Code in respect of each of the three purchases made by him, but on objection being taken on the ground of misjoinder, during the argument on the case, the Magistrate struck out the charge under s. 417, giving the appellant an opportunity of recalling the prosecution witnesses for cross-examination which he, however, declined. He was convicted, on the 16th September 1915, on the three charges under s. 465, and sentenced to eight months' rigorous imprisonment on each count. His appeal to the High Court was admitted on the question of sentence only, but was ultimately heard on the merits.

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*Mr. Eardley Norton* (with him *Babu Santosh Kumar Bose*), for the appellant. The appeal was admitted only on a question of sentence, but I am entitled to be heard on the merits. The appellant filled in the upper portion of the certificates in the names and addresses of others, and the question is whether this amounts to forgery within sections 463 and 464 of the Penal Code. His intention was not to make the firms part with the arms, as he could have got them in his own name, but only to avoid being traced in possession of them. This is not a criminal intention. Refers to Mayne's Criminal Law, 3rd Edition, p. 818. The document was not a false one: *Queen v. Martin* (1), *Reg. v. Inder* (2). The cases cited by the Magistrate, *Queen-Empress v. Abbas Ali* (3) and *Empress v. Dhunum Kaze* (4), are distinguishable. In the first the accused could not have got the appointment without the certificate, and in the other there was guilty knowledge or intention, which is absent here. It is

(1) (1879) 5. Q. B. D. 34.

(3) (1897) I. L. R. 25 Calc. 512.

(2) (1848) 1 Den. C. C. R. 325.

(4) (1882) I. L. R. 9 Calc. 53.

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not shown that the appellant knew about the deposit or its forfeiture.

*The Deputy Legal Rememberancer (Mr. Orr)*, for the Crown. There was an intention to commit fraud by making the firms part with the revolvers and cartridges which they would not have done if they had known he was giving wrong names and addresses. The fact of giving false names shows guilty knowledge: *Emperor v. Wyndham* (1), *Queen-Empress v. Abbas Ali* (2) and *Empress v. Dhunum Kaze* (3). The document was a false one, as it was signed in an assumed name, and it is immaterial that he could have got the arms in his own name: see Halsbury's Laws of England, Vol. IX, p. 729, *Reg. v. Toshack* (4), *Rex v. Marshall* (5), *Rex v. Francis* (6), *Rex v. Whiley* (7).

*Babu Santosh Kumar Bose*, in reply. Intention to commit fraud must be proved *aliunde*. In the English cases cited for the Crown such intention was specifically found.

*Cur. adv. vult.*

CHITTY AND WALMSLEY JJ. In this case the appellant, P. L. Causley, was found guilty on three charges under section 465 of the Indian Penal Code and sentenced to two years' rigorous imprisonment, *i.e.*, eight months on each charge. The appellant is stated in the Magistrate's judgment to be a lad of 16 or 17 years of age. We are told by his mother that he is only 15. The appeal was admitted on the question of sentence, but has been argued before us also on the question of law arising in the case. The facts are not in dispute. They are fully set out in the judgment of the

(1) Unreported.

(4) (1845) 1 Den. C. C. R. 492.

(2) (1897) I. L. R. 25 Calc. 512.

(5) (1804) Russ. & Ry. 75.

(3) (1882) I. L. R. 9 Calc. 53.

(6) (1811) Russ. & Ry. 209.

(7) (1805) Russ. & Ry. 90.

Magistrate and need not be re-stated here. The question is whether the signing of the certificates in a false name and giving in each case an address, which was not his, amounts to forgery on the part of the appellant. It may be that the action of the appellant was not "dishonest," taking that word in the sense ascribed to it by the Indian Penal Code, sections 23 and 24. There can, however, be no doubt he acted "fraudulently." His intention was undoubtedly to deceive both the firms, who sold him these revolvers and ammunition, and also the Government, which has prescribed the formalities to be observed in such sales. He must be taken to have known that the certificate was required for the identification of the purchaser and the weapons purchased. This purpose he deliberately defeated by his action in making out false certificates. His acts come directly within the definition of forgery as contained in sections 463 and 464 of the Indian Penal Code. The cases of *Reg. v. Toshack* (1), *Empress v. Dhunum Kasee* (2), and *Queen-Empress v. Abbas Ali* (3), are in point and support the view which we take in this case. The conviction must, therefore, be upheld.

With regard to the sentence, we take into consideration the extreme youth of the appellant. On the other hand, the offence is a very serious one and it has been aggravated in his case by the fact that he has declined to give any information regarding the revolvers purchased by him, or the use to which they have been put. We think, however, that he will be sufficiently punished if he be kept in jail for one year, that is to say, for four months on each charge, and we reduce the term of imprisonment accordingly.

E. H. M.

*Conviction upheld.*

(1) (1845) 1 Den. C. C. R. 492. (2) (1882) I. L. R. 9 Calc. 53.

(3) (1897) I. L. R. 25 Calc. 512.