The 401st Section, Civil Procedure Code,* declares that, subject to the rules in the sections following, any suit may be brought by a pauper. The generality of the provision embraces minors [4] as well as persons of full age. Although the consent of a minor to the institution of a suit by a next friend is immaterial (*Lindsey* v. *Tyrrell*, 11 B. L. R., 373), and a suit may be instituted on his behalf whether he consents or not, the suit is, in fact, brought in his name and is treated as a suit brought by him. It cannot be denied that his circumstances must be considered, for, if he has funds available, there would be no reason for allowing him to sue *in formâ pauperis*. There is no rule which requires that the circumstances of the next friend should be considered. In *Golaupmonee Dossee* v. *Prosonomoye Dossee* (11 B. L. R., 373) it was held that an infant may sue *in formâ pauperis* by a next friend who is also a pauper. The Court of the Sadr Adalut of this Presidency held that the circumstance that the next friend was possessed of means did not disentitle a minor to sue *in formâ pauperis*.

Inasmuch as there is in the Civil Procedure Code no rule which prohibits the minor from suing *in forma pauperis* when the next friend has substantial means, or which declares that he is entitled to sue in that form only when he cannot obtain a next friend possessed of substantial means, we are constrained to hold that the ground on which the application was refused was not good in law.

The order is set aside and the Judge is directed to hear the application. The cost of the application to this Court will abide and follow the result.

[3 Mad. 4.]

APPELLATE CRIMINAL.

The 8th March, 1881.

PRESENT:

SIR CHARLES A. TURNER, KT., C.J., AND MR. JUSTICE KINDERSLEY.

Regina

versus

Padala Venkatasami and another.

Making copy of intended false document—Forgery—Attempt to commit—Abetment of.

To prepare in conjunction with others a copy of an intended false document, and to buy a stamped paper for the purpose of writing such false document, and to ask for information as to a fact to be inserted in such false document do not [5] constitute forgery nor an attempt to commit forgery under the Penal Code, but are facts which would support a conviction for abetment of forgery as being acts done to facilitate the commission of the offence.

THE facts of this case are fully set out in the order of the High Court (TURNER, C. J., and KINDERSLEY, J.) passed on revising the calendar of the Sessions Court of Vizagapatam in this case.

The prisoners did not appeal.

Suits may be brought *in forma pauperis.*

*[Sec. 401 :—Subject to the following rules, any suit may be brought by a pauper.

Explanation.—A person is a "pauper" when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject-matter of the suit.]

Order.—In this case the two accused were charged, the first with forging a valuable security, and the second with abetment, offences punishable under Sections 467 and 109 of the Indian Penal Code respectively. The first accused was convicted and sentenced by the Sessions Judge to undergo two years' rigorous imprisonment, and the second accused was discharged.

The High Court observe that the first accused, intending to procure the preparation of a forged document, had a copy prepared, procured a stamp paper on which the document was to be written, and applied to a witness to furnish him with a Telugu date corresponding with an English date; it may be presumed for insertion in the document he intended to get written. The witness very properly secured the papers and took them to the Subordinate Magistrate.

The prisoner has been convicted of forgery, the Sessions Judge holding that a copy is a part of a forged document.

The High Court are of opinion that the conviction as it stands could not be sustained. Although the copy was a false document it was not the purpose of the prisoner to use it with any of the intents necessary to constitute it a forged document, and it cannot be considered a part of the document which the prisoner intended to forge. Neither can the prisoner in the Court's opinion be convicted of an attempt to commit forgery, inasmuch as although he had an intention and made the preparation to commit, he had not proceeded so far as to do an act towards the commission of the offence.

The law is lucidly stated in Mr. Mayne's Commentaries citing the words of an American ruling:

"But in the preparation for the attempt and the attempt itself there is a wide difference. The preparation consists in devising or arranging means or measures necessary for the commission of the offence; the attempt is the direct movement towards the **[6]** commission after preparations are made," and Mr. Mayne refers to illustrations C and D to Section 307 of the Indian Penal Code.

The law allows a *locus pœnitentiæ* and will not hold that a person has attempted a crime until he has passed beyond the stage of preparation.

But the evidence on the record would support a conviction for abetment of forgery under Section 116* of the Indian Penal Code. The accused admits that he conspired with other persons to prepare a document, purporting to be a valuable security, which he knew would be a false document, and must have known was to be used for purposes of fraud, and that to that end he prepared a draft which he was about to copy on a stamp of sufficiently early date procured for the purpose, and that, in order to complete the instrument, he applied to a witness to supply the Telugu date corresponding with the English date, which it was intended the forgery should bear.

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*[Sec. 116:—Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence, for a term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both; and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for the offence, or with such fine as is provided for the offence, or with both.]

Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.

If the abettor or the person abetted be a public servant, whose duty it is to prevent the offence.

On these facts it may be found that he conspired to commit the offence, and did an act which facilitated the commission of the offence and thereby facilitated it. Inasmuch as the sentence is not in excess of that to which the accused would be subject for abetment of the forgery of a valuable security the conviction is affirmed.

[3 Mad. 6.]

APPELLATE CIVIL.

The 14th March, 1881.

PRESENT:

MR. JUSTICE INNES AND MR. JUSTICE KERNAN.

Viranna and others.....(Plaintiffs) Petitioners

versus

Nagayyah.....(Defendant) Counter-Petitioner.*

Malicious prosecution—Civil Suit without prior prosecution of Defendant—Compounding Offence.

A criminal prosecution for an offence under Section 211, Indian Penal Code (false charge), is not a condition precedent to the right to sue for damages.

The bringing of a Civil Suit imports no corrupt agreement or compounding of the offence in such a case.

Shama Churn Bose v. *Bhola Nath Dutt* followed (6 W.R., Civ. Ref., 9).

[7] IN this case the plaintiffs sued for damages for malicious prosecution.

The defendant lodged a complaint against plaintiffs, before the Sub-Magistrate of Tenali in 1878, and the plaintiffs were convicted under Sections 143 and 379 of the Penal Code of being members of an unlawful assembly and of theft. On appeal this conviction was quashed by the Joint Magistrate.

The Munsif found that the complaint was false and gave the plaintiffs Rs. 200 damages.

The defendant appealed.

The material portion of the Judgment in appeal was as follows:—

"The decision in the case must primarily depend on whether the defendant had reasonable and probable cause for instituting the prosecution in the Court of the Second-class Magistrate. That he had is supported by the finding of that Magistrate; that he had not may be gathered from the judgment of the Joint Magistrate. The facts are very similar to those in Appeal 73 of 1866, *Bapuraju* v. *Chinna Vencaya* (3 M. H. C. R., 238), in which the Judge remarked: 'We do not know of any instance of a suit of this kind being successfully maintained after the conviction of the plaintiffs by the sentence of one competent tribunal.'

"There is, however, another objection to the recovery of damages by plaintiffs. Their allegation is that the defendant, with intent to cause injury to them, falsely charged them with having committed an offence, and if he did

*C. M. P. 648 of 1880 against the decree of D. Buick, Acting District Judge of Kistna, reversing the decree of the District Munsif of Guntur, dated 23rd August, 1880.