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ordinate judge was entirely right, and that the decision of the High Court was wrong in holding that less than the entirety of the estate was sold.

Their Lordships therefore will humbly advise Her Majesty that the decision of the High Court varying the decision of the subordinate judge be reversed, that the appeal to the High Court be dismissed with costs, and that the decree of the subordinate judge be reinstated, and their Lordships give the appellant the costs of this appeal.

Solicitors for the appellant, *Messrs. Rowcliffes, Rawle & Co.*

APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Wilkinson.

1888. Nov. 15, 20.

QUEEN-EMPRESS

against

RAMASAMI.*

Penal Code, ss. 95, 477—Destruction of a valuable security—Unstamped document purporting to be a valuable security—Act causing slight harm.

A, having had certain transactions with B, wrote out a rough account showing his indebtedness to B and signed the total. The paper was not stamped. B afterwards presented it to A and demanded payment of the total amount. A paid part only and after an altercation tore up the paper:

Held, that the act of tearing up the paper constituted the offence of destroying a valuable security, and the harm caused was such that a person of ordinary sense and temper would complain of it.

APPEAL against the conviction and sentence of C. Ramachandra Ayyar, Acting Sessions Judge of Nellore, in Sessions case No. 26 of 1888.

The appellant was a sub-overseer on the Nellore Railway and the complainant was a contractor employed by him on railway work. The appellant having become indebted to the complainant to the amount of Rs. 164, wrote a rough account containing figures only with no particulars, and signed the total. This document he handed to the complainant, and promised to pay the money due on

* Criminal Appeal No. 447 of 1888.

the receipt of final bills for the work done. The document was not the stamped. The complainant some time afterwards presented this document to the appellant for payment; but the appellant paid only Rs. 25, saying that that was all that was due on it. The complainant then asked him either to pay the whole debt or return the paper, whereupon an altercation took place and the appellant tore the paper into four fragments and threw them down. Three of these fragments were produced in court: they contained the appellant's signature to the total of Rs. 164, but not the name of the complainant.

The appellant was convicted by the Sessions Court of the offence of destroying a valuable security and sentenced to one year's simple imprisonment and a fine of Rs. 200.

Mr. *Grant* for appellant argued that by reason of the document in question being valueless for want of a one anna stamp the offence charged had not been committed, and that in any case the harm caused was so slight as to render s. 95 of the Indian Penal Code applicable to the case.

The *Acting Government Pleader (Subramanya Ayyar)* for the Crown *contra*, referred to *ex-parte Kapalavaya Saraya*(1) and High Court Proceedings 5th August 1873(2).

The Court (Collins, C.J., and Wilkinson, J.) delivered the following

JUDGMENT:—The appellant has been found guilty under s. 477, Indian Penal Code, and sentenced to simple imprisonment for one year, and a fine of Rs. 200. The Judge finds that the accused tore up an account in the handwriting of the accused and signed by him, which showed a balance of Rs. 164 in favor of the complainant, the first witness, and that he did so with the intention of defrauding the first witness.

On behalf of the appellant it is contended that the document which appellant tore up is not a valuable security, inasmuch as it was not stamped as required by law, and therefore was inadmissible for the enforcement of any legal claim. It appears to us, however, that the document, though not a valuable security, is one which purports to be a valuable security. It is in the handwriting of the accused and shows, according to the evidence of the first witness, which the Judge accepted, that a sum of Rs. 164 was

(1) 2 M.H.C.R., 247. (2) 7 M.H.C.R., App. XXVI.

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due by defendant to the first witness. All that we have to consider here is the document in its present state. Though unstamped and therefore inadmissible in evidence in support of a legal claim, it undoubtedly purports to be a valuable security, that is, a document whereby the accused acknowledged that he lay under a legal liability. It has been laid down in England (see 2 East's Pleas of the Crown, p. 955) that forgery may be committed of a promissory note on unstamped paper even though the law prohibits the affixing of the stamp afterwards. All the Judges agreed that it was not necessary to constitute forgery that the instrument should be available in support of a claim in a court of law: that though a compulsory payment by course of law could not have been enforced for want of the proper stamp, yet a man might equally be defrauded by a voluntary payment being lost to him. The principles there laid down are equally applicable to cases falling under s. 477 in consequence of the use of the words "purports to be." To show the fallacy of the argument we may take the case of a duly stamped and executed deed of sale or mortgage torn up while the party was on the way to the registration office. It could hardly be maintained that because the document for want of registration did not create any legal right therefore the wanton destroyer of it could not be held liable under s. 477.

It is then argued that the act of the accused was intended to cause such slight harm that no person of ordinary sense and temper would complain of it. We are unable to accede to this argument. Section 95, Indian Penal Code, was only intended to provide for those cases which fall within the letter, but not within the spirit of the penal law. The tearing up by the prisoner of an account in his own handwriting and signed by him, showing advances made by the first witness, repayments made by him, and the balance due by him to the first witness, he having just made a payment to first witness of a sum far short of the amount actually due, cannot in our judgment be considered to be an act to which the provisions of s. 95 apply.

On the merits we consider that the charge was amply made out by the evidence for the prosecution, and we therefore confirm the finding of the Judge. We do not, however, consider that the case was one which called for such a severe sentence as that pronounced by the Judge.

The appellant has been on bail since the 11th October. We

therefore alter the sentence of imprisonment to one of simple imprisonment for one month from this date, and we confirm that part of the sentence which imposes a fine of Rs. 200, but direct that only 139 of the sum, if paid, be given to the complainant, and we further direct that, if such fine be not paid, the appellant be further simply imprisoned for one month.

APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.

QUEEN-EMPRESS

against

APPASAMI.*

1889. Jan. 18.

Penal Code, ss. 415, 419, 463—Cheating by personation—Forgery.

A falsely represented himself to be B at a university examination, got a hall ticket under B's name, and headed and signed answer papers to questions with B's name:

Held, that A committed the offences of forgery and cheating by personation.

APPEAL against the conviction and sentence of R. Sewell, Sessions Judge of Bellary, in Sessions case No. 47 of 1888. The Sessions Judge recorded the following findings on the evidence :—

"That the appellant falsely represented himself to be one Vellore Absalom David at the University Matriculation and First in Arts examinations held at Bellary in December 1887, got a hall ticket under that name, sat under that name in the hall, and for three-and-a-half days wrote answer papers to questions, signing his name 'V. A. David' and attesting the papers in the heading provided as being the papers of Vellore Absalom David."

Upon these findings the Sessions Judge following the decision of the High Court of Madras under similar circumstances in criminal appeal No. 103 of 1871, in preference to that of the High Court of Allahabad in *Empress* v. *Dwarka Prasad*(1), convicted the appellant of personation and forgery under ss. 415 and 463 of the Penal Code.

* Criminal Appeal No. 525 of 1888. (1) I.L.R., 6 All., 97.