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ination of the witnesses. In Russell, On the power and duty of Arbitrators, the result of the cases now on the point is given thus: "as joint arbitrators must all act, so they must all act together. They must each be present at every meeting, and the witnesses and the parties must be examined in the presence of them all: for the parties are entitled to have recourse to the arguments, experience, and judgment of each arbitrator at every stage of the proceedings brought to bear on the minds of his fellow judges, so that by conference they shall mutually assist each other in arriving together at a just decision." I have been referred to the case of *Nand Ram* v. *Fakir Chand*(1), where it was held that the presence of all the arbitrators at all the meetings is essential to the validity of the award. I think that it may be gathered from the provisions of s. 510 that such was the intention of the Legislature, for it is provided that if any one of the arbitrators dies or refuses to act, the Court may either appoint a new arbitrator or supersede the arbitration, in other words the remaining arbitrators cannot act alone. One of the arbitrators having been guilty of misconduct in absenting himself from the meetings, and the other two arbitrators having been guilty of misconduct in examining witnesses in the absence of the third arbitrator, the award should, on the application of the defendants, have been set aside.

I reverse the decree of the District Munsif and direct him to readmit the suit to his file and dispose of it according to law.

The petitioners are entitled to their costs in this Court.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

1888. Sept. 9, 20.

QUEEN-EMPRESS

against

KUNJU NAYAR.*

Penal Code, ss. 417, 463, 464, 465, 511—*Forgery—False document—Fraudulent entry in a book of account.*

Prisoner was requested to make an entry in a book of account belonging to the complainant to the effect that he was indebted to the complainant in a certain sum found due on a settlement of accounts: instead of making this entry as requested,

(1) I.L.R., 7 All., 523. * Criminal Appeal No. 283 of 1888.

prisoner entered in a language not known to complainant that this sum had been paid to complainant. He was convicted of forgery under s. 465 of the Penal Code.

Held, that the offance was not forgery but an attempt to cheat.

APPEAL from the conviction and sentence passed by the Sessions Judge of South Malabar (L. Moore) in case No. 23 of 1888.

The prisoner sent his petition of appeal from jail and was not represented.

The Court (Muttusami Ayyar and Shephard, JJ.) delivered the following

JUDGMENT:—The prisoner has been convicted of forgery under the following circumstances:—

The complainant, a timber merchant, had been advancing money to the prisoner to supply him with timber, and accounts had to be settled between them.

The parties met, and the complainant handed to the prisoner the account book kept by him to see how the account stood. The prisoner, after looking at the book, said that he owed Rs. 33-5-3 to the complainant and was thereupon asked by him to make an entry to that effect in the book. Although the book was kept in Tamil, complainant being a Tamil man not knowing Malayalam, prisoner made an entry in Malayalam to the effect that Rs. 33-5-3 had been received on the 5th April, and all previous accounts settled by timber supplied on the 16th April. The Sessions Judge, with the assessors, finds that the entry is false in fact, and the Sessions Judge is of opinion that the making such false entry constitutes an offence under s. 465 of the Indian Penal Code. We are unable to agree in this opinion. In order that a document should be a false document within the meaning of s. 464 of the Indian Penal Code, it must appear that it was made with the intention of inducing the belief that such document was made by or by the authority of one who did not make it or give such authority. There is nothing on the face of this entry in the complainant's book to make it appear that the writing was made or authorized by him. The entry was not signed by the complainant and contained no indication that he acknowledged it as his own statement. We cannot, therefore, say that the entry is a document which was made by the prisoner with the intention denoted by the first clause of s. 464 or caused by him to be signed or executed within the meaning of the third clause of that section. Being of opinion that the prisoner was wrongly con-

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victed of forgery, we must set aside the conviction under s. 465. But, as the finding is that the prisoner intended to defraud the complainant by means of the false entry, we convict him of an attempt to cheat, ss. 417 and 511 of the Penal Code, and reduce the sentence to one of six months' rigorous imprisonment.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

1888. August 3.

AITHALA (DEFENDANT No. 2), APPELLANT,

and

SUBBANNA (PETITIONER), RESPONDENT.*

Civil Procedure Code, s. 586, applies to orders in execution of decrees in Small Cause Suits.

No second appeal lies from an order passed in execution of a decree in a suit of the nature cognizable by a Small Cause Court where the subject matter of the suit does not exceed 500 Rs.

APPEAL from an order of J. W. Best, District Judge of South Canara, reversing an order of K. Krishna Rau, District Munsif of Udipi, in execution of the decree in suit No. 115 of 1876.

The facts appear sufficiently for the purpose of this report from the judgment of the Court (Muttusami Ayyar and Wilkinson, JJ.).

Ramachandra Rau Saheb for appellant.

Subba Rau for respondent.

JUDGMENT:—The preliminary objection is taken that no second appeal is allowed by the Code of Civil Procedure from the order made by the District Judge. It is provided by s. 586 that no second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes when the amount or value of the subject matter of the original suit does not exceed Rs. 500. It is conceded that the decree under execution directed the defendant to pay the plaintiff a sum of money less than Rs. 500, and that it contained no direction for the sale of any immovable property. It is clear, therefore, that it was a decree passed in a suit

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* Appeal against Appellate Order No. 4 of 1888.