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SHAMA SOONDARY v. HURRO SOONDARY.

account of any error, defect, or irregularity not affecting the merits of the case or the jurisdiction of the Court." This provision is a re-enactment of s. 350, Act VIII of 1859. But while the Act of 1859 was in force, the Court Fees Act of 1870 was passed, and s. 12 of that Act just quoted clearly made it the duty of a superior or Appellate Court to take action for the protection of the revenue, and to dismiss the suit, if the party in default did not pay in the deficient court-fee.

That was clearly an exception to s. 350, Act VIII of 1859. The Code of 1877 has merely followed in the steps of the Act of 1859. Section 12 of the Court Fees Act is still in force, and must be read with s. 578 of Act X of 1877 in the same manner as it was read with s. 350, Act VIII of 1859. We are, therefore, of opinion, that the judgment of the Court below is right, and we dismiss this special appeal with costs.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Prinsep.

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June 3.

IN THE MATTER OF THE PETITION OF RIASAT ALI, *alias* BABU MIYA, *alias* BODIUZZUMA.

THE EMPRESS *v.* RIASAT ALI, *alias* BABU MIYA, *alias* BODIUZZUMA.*

Forgery—Attempt to commit Forgery—Indian Penal Code (Act XLV of 1860), ss. 465 and 511.

A person cannot be convicted of an attempt to commit an offence under s. 511 of the Indian Penal Code, unless the offence would have been committed if the attempt charged had succeeded.

A prisoner who was charged with attempting to commit forgery of a valuable security, was found guilty by the jury of attempting to commit forgery. The jury explained their finding by saying that the prisoner had ordered certain receipt forms to be printed similar to those used by the Bengal Coal Company, and that one of these forms had actually been printed and the

* Criminal Appeal, No. 61 of 1881, against the order of W. H. Page, Esq., Officiating Sessions Judge of Burdwan, dated the 9th December 1880.

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proof corrected by him; that the prisoner had had an intention of making such addition to the printed form as would make it a false document; and that he did this dishonestly and with intent to commit fraud. The Sessions Judge sentenced the prisoner to rigorous imprisonment for one year under ss. 465 and 511 of the Indian Penal Code for attempting to commit forgery.

Held, that the conviction was wrong, and must be set aside.

IN this case the prisoner was charged with cheating under ss. 417, 419 of the Indian Penal Code; with attempting to cheat under the same sections and s. 511; with abetment of forgery under ss. 109, 116, and 465; and with attempting to commit forgery of valuable securities for the purpose of cheating, ss. 467, 468, and 511. The prisoner pleaded not guilty. From the evidence it appeared, that the prisoner had given orders to the Burdwan Press to print one hundred receipt forms similar to those formerly used by the Bengal Coal Company; that he corrected one proof of those forms, and was suggesting further corrections in a second proof in order to assimilate the form to that at present used by the Company, when he was arrested by the police. The prosecution alleged that the prisoner intended to make use of these receipts and represent them to be those of the Bengal Coal Company for the purpose of cheating. The Sessions Judge considered that there was no ground for proceeding on the first and second charges, as there was in his opinion no evidence of deception having been used when the printer of the Burdwan Press agreed to receive the money and to print the forms, and on those two charges, he directed the jury to return a verdict of not guilty. On the other two charges, the jury were unanimous in finding the prisoner guilty of an attempt to commit forgery; not guilty of an attempt to forge a valuable security; and not guilty of abetment of forgery. When asked to explain the facts upon which they found the prisoner guilty, the jury said that the prisoner did order the receipt forms to be printed; that, though the form actually printed was not a document within the meaning of s. 29 of the Penal Code, the prisoner had an intention of making such addition to it as would make it a false document; and that he did this dishonestly and with intent to commit fraud. The prisoner was sentenced, under ss. 465 and

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511 of the Penal Code, to be rigorously imprisoned for one year. The prisoner appealed to the High Court.

Moonshee *Serajul Islam* for the prisoner.

No one appeared for the Crown.

The judgments of the Court (GARTH, C. J., and PRINSEP, J.) were as follows:—

GARTH, C. J.—The prisoner in this case was charged with an attempt to commit forgery, and the facts proved were, that he gave orders to the Burdwan Press to print one hundred receipt forms similar to those which were formerly used by the Bengal Coal Company; that he corrected one proof of those forms, and was suggesting further corrections in a second proof in order to assimilate the form to that now used by the Company, when he was arrested by the police. The jury found him guilty of an attempt to commit forgery, "in that he dishonestly and with the intent to commit fraud caused a document to be printed with the intention of making such an addition to it as would make it a false document."

Assuming this finding of the jury, as to what the prisoner actually did, to be correct, the question is, whether he could be legally convicted of an attempt to commit forgery? The definition of forgery in ss. 463 and 464 of the Indian Penal Code, so far as it is necessary to refer to it for our present purpose, is as follows:—Section 463 says, "Whoever makes a false document, or part of a document, with intent to commit fraud, commits forgery." And by s. 464 a person is said to "make a false document who dishonestly makes or executes a document, or part of a document, with the intention of causing it to be believed that such document, or part of a document, was made, sealed or signed by or by the authority of a person, by whom, or by whose authority, he knows that it was not made, sealed or signed."

Now in this case the jury have not found that the receipt form in itself was a false document. If they had, they must have found the prisoner guilty of forgery, and not of the attempt to commit it. They considered, and rightly considered, as it seems to me, that without the addition of a seal or signature

purporting to be the seal or signature of the Bengal Coal Company, the printed form would not be a false document. Their view, as I understand it, was, that the commencing to print or write a document, which, when completed, was intended to be a false document, amounted, if coupled with the intent to defraud, to an attempt to commit forgery.

But it has been suggested, that the printing and correcting of a form which is intended by additions, which are to be made to it, to be a false document, is in itself the making of a part of a false document within the meaning of s. 464, and therefore amounts to forgery. If this were so, it seems to me that the mere printing or writing of a single word upon a piece of paper, however innocent the word might be, would be the making a part of a false document, if it were coupled with an intention to add such other words to it as would make it eventually a false document. In my opinion this is very far from the meaning of s. 464; and I think that such a construction of the section involves a misconception, not only of the word "make," but also of the sense in which the phrase "part of a document" is used in the section.

I consider that the "making" of a document, or part of a document, does not mean "writing" or "printing" it, but signing or otherwise executing it; as in legal phrase we speak of "making an indenture" or "making a promissory note," by which is not meant the writing out of the form of the instrument, but the sealing or signing it as a deed or note. The fact that the word "makes" is used in the section in conjunction with the words "signs," "seals" or "executes," or makes any mark "denoting the execution, &c.," seems to me very clearly to denote that this is its true meaning. What constitutes a false document, or part of a document, is not the writing of any number of words which in themselves are innocent, but the affixing the seal or signature of some person to the document, or part of a document, knowing that the seal or signature is not his, and that he gave no authority to affix it. In other words, the falsity consists in the document, or part of a document, being signed or sealed with the name or seal of a person who did not in fact sign or seal it.

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Referring then again to the finding of the jury, the question in this case seems to be, whether what the prisoner did, amounted to preparation only, or to an actual attempt to commit the offence.

In the case of *Reg.* v. *Cheeseman* (1), Lord Blackburn thus defines an attempt to commit a crime. He says :—"There is no doubt a difference between the preparation antecedent to an offence and the actual attempt; but if the actual transaction has commenced, which would have ended in the crime if not interrupted, there is clearly an attempt to commit the crime:" and in *M'Pherson's case* (2), Cockburn, C. J., says:—"The word attempt clearly conveys with it the idea, that if the attempt had succeeded, the offence charged would have been committed. An attempt must be to do that which, if successful, would amount to the felony charged." It seems to me, that this definition of an attempt to commit an offence is a sound one, and applying it to the present case, the question is, whether what the prisoner did amounted to an attempt to make a false document.

I have already said, that, in my opinion, the printed form was not in itself a false document, and that it would not have become a false document, or part of a document (according to the definition in s. 464), until the seal or signature of the Bengal Coal Company had been forged upon it, so as to make it appear that such seal or signature was that of the Bengal Coal Company. The prisoner, therefore, would not be guilty of the offence of forgery until the printed form had thus been converted into a false document; and for the same reason, I think that he would not be guilty of an attempt to commit forgery until he had done some act towards making one of the forms a false document. If, for instance, he had been caught in the act of writing the name of the Company upon the printed form, and had only completed a single letter of the name, I think that he would have been guilty of the offence charged, because (to use the words of Lord Blackburn) "the actual transaction would have commenced, which would have ended in the crime of forgery, if not interrupted." But as it was, all that he did

(1) Lee & Cave's Rep., 145. (2) Dears & B., 202.

consisted in mere preparation for the commission of the crime. He was no more guilty of an attempt to commit forgery in having the forms printed, than he would have been of an attempt to commit burglary by having a false key made of the house where he intended to commit the offence.

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I think, therefore, that the conviction should be set aside, and the prisoner discharged. He may think himself extremely fortunate that his premature arrest prevented him from completing what he evidently intended.

PRINSEP, J.—I concur in setting aside the verdict of the jury and the sentence passed on the appellant, because, in my opinion, the acts found by the jury to have been committed do not amount to an attempt, but at most only to a preparation to commit a forgery which might have proceeded no further. I agree in the opinion expressed by the Chief Justice regarding the legal definition of an attempt to commit an offence,—*viz.*, that there must be something "commenced which would have ended in the crime if not interrupted." The prisoner must, therefore, be acquitted and released.

Conviction set aside.

APPELLATE CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice McDonell.

JOTENDRO MOHUN TAGORE AND OTHERS (DEFENDANTS) *v.* JOGUL KISHORE (PLAINTIFF).*

1881
April 29.

Right, Title, and Interest, Sale of—Estate taken by Purchaser.

The test to be applied in order to determine the exact interest which passes at a sale under the words "right, title, and interest" of a Hindu widow in any properties, depends upon the question whether the suit in which the sale was directed was one brought against the widow upon a cause of action personal to herself, or one which affects the whole inheritance of the property in suit.

The principle in *Baijun Doobey v. Brij Bhookun Lall Awusti* (1) followed.

* Appeals from Original Decrees, Nos. 324 and 332 of 1879, and Nos. 38 and 74 of 1880, against the decree of Baboo Kristo Chunder Chatterjee, Subordinate Judge of Nuddea, dated the 12th of September 1879.

(1) L. R., 2 I. A., 275; S. C., I. L. R., 1 Calc., 133.