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witnesses, to attest the immediate demand, it would suffice for both demands, and there would be no necessity for the other.' That being so, we think that the contention raised before us on behalf of the appellant fails; because in this case it is not shown that the first *tahib* was made in the presence of either the seller, or the purchaser, or at the premises which constituted the subject of the sale. The appeal will be dismissed with costs.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Mitter and Mr. Justice Norris.

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 April 17.

JAN MAHOMED AND JABAR MAHOMED (APPELLANTS) v. QUEEN EMPRESS (RESPONDENTS) AND WARI MEAH v. QUEEN EMPRESS.*

Penal Code, ss. 24, 25, 464, 467, 471—Using as genuine a forged document with intent to defraud—A sunnud conferring a title of dignity is not a valuable security.

The accused in order to obtain a recognition from a Settlement Officer that they were entitled to the title of "Loskur" filed a *sunnud* before that officer purporting to grant that title. This document was found not to be genuine. The Sessions Judge convicted the accused under ss. 471, 464 of the Penal Code. *Held on appeal*, that even supposing the accused had used the document knowing it not to be genuine, they could not be found guilty, as the intention of the accused was not to cause wrongful gain or wrongful loss to any one; their intention being to produce a false belief in the mind of the Settlement Officer that they were entitled to the dignity of "Loskur," and that this could not be said to constitute "an intention to defraud."

A *sunnud* conferring a title of dignity on a person is not a valuable security within the meaning of the Penal Code.

On the 4th March 1883 Jan Mahomed and Jabar Mahomed presented a petition to the Settlement Officer of Cachar in which they stated that their father Rizak Mahomed had received from the Rajah of Cachar a *sunnud* conferring on him the title of "Loskur" and that this *sunnud* had been lost, and asked that certain respectable people living in the neighbourhood might be examined, and that the petitioners' title might be recognized in the new settlement. Subsequently on the 31st August they filed another

* Criminal Appeals Nos. 87 and 104 of 1884, against the judgment of H. Muspratt, Esq., Sessions Judge of Cachar, dated the 16th January 1884

petition to the same end, with a *sunnud* which they stated was in the name of their grandfather, and further stated that the petition of the 4th March was incorrect. The *sunnud* then filed purported to bear the seal of the Rajah of Cachar.

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On the matter coming up before the Deputy Collector, Jan Mahomed and Jabar Mahomed were committed to the Sessions and charged under ss. 464 and 471 of the Penal Code ; and at the same time he sent up one Waris Meah for having used as genuine a true pottah, but to which an addition had been made after his name of the letter signifying the title of "Loskur" and with having filed it before the Settlement Officer with the same view in end as the two other accused in the case firstly mentioned.

The Sessions Judge found (agreeing with the assessors) that the appearance of the paper led to the conclusion that it was not so old as it purported to be, and that the seal, when compared with a seal of the Rajah on a true *sunnud* filed in Court, was obviously a forgery and bore no resemblance to the true seal ; and holding that the *sunnud* was a "valuable security," as the Rajah sold the titles to persons under these *sunnuds*, and that the accused in filing the *sunnud* acted fraudulently, as they filed the *sunnud* with intent to defraud the Settlement Officer into the belief that the forged *sunnud* was a true document and that they were entitled to be called "Loskur" in the new settlement papers, convicted them of fraudulently using as genuine a document which was a valuable security and which they knew to be a forged document and sentenced them each to rigorous imprisonment for 18 months, under ss. 471 and 464 of the Penal Code.

With regard to the case against Waris Meah, the Sessions Judge, agreeing with the assessors, found that the accused had attempted by forgery to defraud the Settlement Officer and to make him believe that his title of "Loskur" had been recognized by the Rajah of Cachar, and that the said title should by right be entered in the new settlement, and that the pottah was a valuable security and gave to the accused a legal right to the land ; he therefore convicted him of using as genuine a forged document which he knew to be a forged document and under ss. 471 read with 467 of the Penal Code sentenced him to

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six months rigorous imprisonment and a fine of Rs. 50 ; or in default to a further period of six months.

The prisoners in these two cases appealed to the High Court.

No one appeared for the prisoners.

The judgments of the Court were delivered by

MITTER, J.—I do not think there is sufficient evidence in this case to prove that the Exhibit A is a false document. The Sessions Judge has relied upon some *roobakarees* which, on their bare production only, cannot be treated as evidence. Excluding these, the conviction stands mainly upon two grounds: 1st, on a comparison of the seal upon the Exhibit A with that of another document proved to have been executed by the Rajah of Cachar—the Sessions Judge is of opinion that the two impressions of the seals do not tally; 2ndly, the appearance of the paper shows that it is not so old as it purports to be.

These grounds are in my opinion insufficient to support the conviction. It may be that the Rajah changed his seal, and this circumstance may account for the difference between the impressions of the seals.

The second ground is based upon mere conjecture. Then even granting that the Exhibit A is a forgery, I do not think that it has been shown that the appellants know it to be so. Further on accepting all the facts as correctly found by the Sessions Judge, I do not think that the appellants are guilty of any offence under the Penal Code. The facts are simply these: The appellants in order to get a recognition from a Settlement Officer that they are entitled to the title of "Loskur" produced a *sunnud* purporting to have been granted by the Rajah of Cachar. The document is found not to be genuine. The question is, supposing the appellants used this document knowing it to be not genuine with intent to obtain recognition of their alleged "Loskur" title from the Settlement Officer, is it an offence under s. 471 of the Indian Penal Code or under any other penal law of the country? The Sessions Judge found the appellants guilty under s. 471 of the Indian Penal Code. In using this document if they had no fraudulent or dishonest intention, they cannot be guilty under s. 471 of the Indian Penal Code.

Section 24 of the Code defines the word "dishonestly." It is to the following effect: "Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing 'dishonestly.' Now the intention of the appellants was not to cause wrongful gain, or wrongful loss to any person."

The word "fraudulently" is thus defined in s. 25 of the Code: "A person is said to do a thing 'fraudulently' if he does that thing with intent to defraud, but not otherwise."

In this case evidently the intention of the appellants was to produce a false belief in the mind of the Settlement Officer that they are entitled to the dignity of "Loskur," and in order to produce this belief they produced the *sunnud* "A" which has been found to be not genuine. Without defining precisely what would constitute "an intent to defraud," we are clear that it cannot be held in this case that the appellants produced the *sunnud* to "defraud" the Settlement Officer, and therefore it cannot be said that they used the document "fraudulently," as defined in s. 25 of the Indian Penal Code. We are, therefore, unable to agree with the Sessions Judge that the appellants are guilty under s. 471 of the Indian Penal Code. Nor does the act of the appellants in our opinion amount to any other offence. We therefore set aside the conviction and acquit the appellants.

MITTER, J.—In the appeal by Waris Meah, which is against the conviction by the same Sessions Judge, the same question of law arises. For the reasons given in Appeal No. 87 we are of opinion in this case also that taking the facts found by the lower Court as correct, the appellant is not guilty of any offence. The Sessions Judge has convicted the appellant of using a document which he finds to be a valuable security. The document in question in this case is a *sunnud* of a similar description conferring a certain dignity upon the grantee. A document of this description cannot in our opinion be held to be a valuable security, as defined in the Indian Penal Code. We therefore set aside the conviction of the appellant in this appeal also.

Appeals allowed.

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