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trespass" or "house-breaking" must have been completed, in order to make a person who accompanies that offence either by causing grievous hurt or attempt to cause death or grievous hurt responsible under those sections. In other words, the causing of the grievous hurt, or the attempt to cause death or grievous hurt, must be done in the course of the commission of the offence of lurking house-trespass or house-breaking, and at the time when such lurking house-trespass or house-breaking is being committed. The provisions of these sections being of a highly penal nature, and inflicting very severe punishment upon conviction, it is necessary that they should be construed strictly; and in my opinion it was not contemplated that where the principal act done by the accused person amounts to no more than a mere attempt to commit the offences of lurking house-trespass or house-breaking, the section should be applicable. The convictions as recorded by the Judge are quashed, and I direct that they be recorded under ss. 452 and 511 of the Indian Penal Code, that is, for attempted house-breaking by night. The sentence passed on the prisoner Ismail Khan will be altered to transportation for the term of seven years. Inayat and Gullarh will be rigorously imprisoned for the term of five years. Such sentences to commence from the date of their conviction in the Sessions Court.

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APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Tyrrell.

PARAM SUKH AND OTHERS (DECREE-HOLDERS) *v.* RAM DAYAL (JUDGMENT-DEBTOR).*

Privy Council decree—Execution for costs—Rate of exchange—Civil Procedure Code, s. 610—Meaning of "for the time being."

Under the last paragraph of s. 610 of the Civil Procedure Code, the amount payable must be estimated at the rate of exchange "for the time being fixed by the Secretary of State for India in Council," and the words "for the time being" mean the year in which the amount is realized or paid or execution taken out, and not the year in which the decree was passed.

The decree-holders under a decree passed by Her Majesty in Council having taken out execution for a sum of £119-11, under s. 610 of the Civil Procedure

* First Appeal No. 132 of 1886, from an order of Lala Banwari Lal, Subordinate Judge of Aligarh, dated the 6th April, 1886.

Cole,—*held* that, the rate of exchange being fixed yearly by the Secretary of State for India in Council, the rate of exchange on the date of the application for execution was the proper rate of exchange the decree-holders were entitled to.

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THE appellants, in whose favour a decree had been made by Her Majesty in Council, dated the 12th December, 1884, which awarded them £119-11 as costs, applied, on the 6th January, 1886, to the High Court, under s. 610 of the Civil Procedure Code, for transmission of the decree to the Court of first instance for execution. This application was granted, and the decree was transmitted accordingly to the Subordinate Judge of Aligarh. In their application for execution the appellants, with reference to s. 610 of the Civil Procedure Code, estimated the sum of £119-11 at the rate of exchange current at the date of the application, and they claimed pleader's fees in respect of the application and also in respect of the application to the High Court.

The respondent—the judgment-debtor—objected that the sum of £119-11 should be estimated at the rate of exchange current at the date of the decree, and that no pleader's fees were chargeable under the existing practice in respect of applications for execution of decrees.

The Subordinate Judge held that the rate of exchange prevailing at the date of the decree, and not that prevailing at the date of the application for execution, was applicable, and further, that pleader's fees should not be allowed. On the latter point the Subordinate Judge observed as follows :—"I hold that the pleader's fee for execution of the decree should not be allowed separately to the decree holders on account of this Court and the High Court. The fee received, at the rate of 5 per cent., at the time of the institution of the suit or appeal, was sufficient; for under para. 67, Circular Order No. 7 of 1882, a pleader, already engaged, is bound to prosecute the suit till the end of it, and to make an application for execution of the decree; and the order of the High Court does not provide that the pleader's fee for the application, which was filed in the High Court on the 6th January, 1886, under s. 610 of the Code of Civil Procedure, should be awarded."

The appellants contended that the Subordinate Judge was wrong in applying the rate of exchange prevailing at the date of

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the decree, and that costs of execution incurred in the High Court and the Court below ought to have been awarded.

With reference to the latter contention, the Court (Oldfield and Tyrrell, JJ.) called for a report from the office as to the practice in allowing pleaders' fees on applications for execution made to the High Court of decrees of that Court and of the Privy Council, with reference to rule 67, p. 257, General Rules and Circulars (Civil), N.-W. P.

The Registrar reported that "it is not the practice to allow any fees in cases of execution of—(i) decrees of this Court on its original side, (ii) decrees of the Privy Council. The orders in the former case and the decrees in the latter instance are merely transmitted to lower Courts for execution."

Babu *Jogindro Nath Chaudhri*, for the appellants.

The respondent did not appear.

OLDFIELD, J.—This appeal is preferred against the order of the Subordinate Judge of Aligarh, passed upon objections of the judgment-debtor, against whom a decree of the Privy Council was being executed. The decree-holders took out execution for a sum of £119-11 awarded to them, and the question is, at what rate of exchange that sum should be made available to the decree-holders in rupees.

It appears to me that, under the last paragraph of s. 610, the amount payable must be estimated at the rate of exchange "for the time being fixed by the Secretary of State for India in Council," and that the words "for the time being" mean the year in which the amount is realized, or paid, or execution taken out, and not the year in which the decree was passed. The rate of exchange being fixed yearly by the Secretary of State for India in Council, the rate of exchange on the date of the application for execution was the proper rate of exchange the decree-holders were entitled to. On this point, therefore, this appeal succeeds.

The appellants' pleader gives up the other plea as to the decree-holder's right to costs of execution.

The lower Court must be directed to proceed with the application for execution of decree in accordance with the view of the law recorded above.

The decree-holders appellants are entitled to the costs of this appeal, which are fixed at one gold mohur or Rs. 16.

TYRRELL, J.—I concur.

Appeal allowed.

APPELLATE CRIMINAL.

Before Sir John Edge, Kt., Chief Justice.

QUEEN-EMPRESS *v.* GIRDHARI LAL.

Act XLV of 1860 (*Penal Code*), *ss.* 24, 25, 218, 464, *clause* 3—*Forgery*—"*Dishonestly*"—"*Fraudulently*"—*Public servant framing incorrect record.*

A Treasury accountant was convicted of offences under ss. 218 and 465 of the Penal Code under the following circumstances:—A sum of Rs. 500, which was in the Treasury and was payable to a particular person through a Civil Court, was drawn out and paid away to other persons by means of forged cheques. After the withdrawal of the Rs. 500, but before such withdrawal had been discovered, the representative of the payee applied for payment. The prisoner then upon two occasions wrote reports to the effect that the Rs. 500 in question then stood at the payee's credit as a revenue deposit, and that it was about to be transferred to the Civil Court. Upon the first of these reports, an order was signed by the Treasury Officer for the transfer of the money to the Civil Court concerned, and to effect such transfer a cheque was prepared by the sale-muharrir, which, as originally drawn up, related to the sum of Rs. 500 already mentioned. The signature of the cheque by the Treasury Officer was delayed for some time, and meanwhile the cheque was altered by the prisoner in such a manner as to make it relate to another deposit of Rs. 500 which had been made subsequently to the above, and to the credit of another person. The result of this was the transfer of the second payee's Rs. 500 to the Civil Court, as if it had been the first Rs. 500, and to the credit of the first payee's representative. The prisoner was convicted under s. 465 of the Penal Code in respect of the cheque, and under s. 218 in respect of the two reports above referred to.

Held, with respect to the charge under s. 465, that the prisoner's immediate and more probable intention,—which alone, and not his remoter and less probable intention, should be attributed to him—was not to cause wrongful loss to the second payee by delaying payment of the Rs. 500 due to her, though the act might have caused her loss, but to conceal the previous fraudulent withdrawal of the first payee's Rs. 500; that under these circumstances he could not be said to have acted "dishonestly" or "fraudulently" within the meaning of s. 24 or s. 25 of the Penal Code; and that therefore his guilt under s. 465 had not been made out, and the conviction under that section must be set aside.

Held also that the prisoner's intention in making the false reports was to stave off the discovery of the previous fraud and save himself or the actual perpetrator of that fraud from legal punishment, and that having prepared the reports in a manner which he knew to be incorrect, he was rightly convicted under s. 218 of the Penal Code.