

APPELLATE CRIMINAL.

1886
August 9.*Before Mr. Justice Straight, Offg. Chief Justice.*QUEEN-EMPRESS *v.* ISMAIL KHAN AND OTHERS.*Act XLV of 1860 (Penal Code), ss. 459, 460.*

Ss. 459 and 460 of the Penal Code provide for a compound offence, the governing incident of which is that either a "lurking house-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. The sections must be construed strictly and they are not applicable where the principal act done by the accused person amounts to no more than a mere attempt to commit lurking house-trespass or house-breaking.

THIS was an appeal from a judgment and order of Mr. T. R. Wyer, Sessions Judge of Meerut, dated the 8th June, 1886, convicting the appellant Ismail Khan under ss. 459 and 511 of the Penal Code, and the other two appellants under ss. 460 and 511 of the same enactment.

The facts of this case are stated in the judgment of the Court.

The appellants were not represented.

The *Government Pleader (Ram Prasad)*, for the Crown.

STRAIGHT, Offg. C. J.—In this case the evidence against the appellants was, that on the early morning of the 13th April last, they were disturbed by a chaukidar while engaged in making a hole in the wall of the house of the complainant. Immediately upon being so disturbed they attempted to make their escape, the appellant Ismail Khan firing off a pistol, in what manner and direction it does not appear from the evidence, and the other two appellants attempting to prevent their apprehension by using their *lathis*. It is not suggested that these latter two appellants inflicted any serious hurt upon the police officers, and I do not think that any grave importance attaches to that part of the case. The learned Sessions Judge has convicted the appellant Ismail Khan of attempting to commit the offence provided for in s. 459, Indian Penal Code, and he has convicted the other two appellants of an attempt to commit the offence provided for in s. 460 of the same Act. I am very clearly of opinion that neither of these convictions can stand. Ss. 459 and 460 provide for a compound offence, the governing incident of which is that either "a lurking house

1886

QUEEN-
EMPERESS
v.
ISMAIL
KHAN.

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,

1886
August 12.

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.