

executing the decree, and not by a separate suit. Ram Bakhsh, plaintiff, has appealed against this decree. I am of opinion that the plaintiff, as the holder of the decree by assignment, can only recover the amount under it by executing the decree, and not by a separate suit; and, so far, I concur with the lower Court; but it appears to me that he is entitled to have a decree declaring that the assignment to him by Kashi Nath of his rights under the decree of this Court is a valid assignment, and gives him a right to execute it; and that the Court's order under s. 232, which disallowed the execution, was an improper one. A suit for this relief is certainly maintainable, for there is no appeal from orders under s. 232, Civil Procedure Code; and there would be no remedy if a suit was not allowed; and looking at the plaint and the issues on which the parties were divided, and the fact that the Court, which refused his application for execution, referred him to the Civil Court, this relief may, I think, be properly given in this suit, and there is no question as to the fact that the assignment was made by Kashi Nath in favour of the plaintiff. The decree of the lower appellate Court will be modified accordingly. The plaintiff will pay Kashi Nath's costs in all Courts. The other parties will pay their own cost.

MAHMOOD, J.—I concur in the order proposed by my learned brother Oldfield, and also in the reasons which he has given. I need only add that the reason why this suit is maintainable is, that the present plaintiff never having been accepted on the record as holder of the decree, the questions which were disposed of by the Court executing the decree, as between the plaintiff and the judgment-debtor, cannot be regarded as questions within s. 244 of the Civil Procedure Code. These observations apply to the connected cases also.

APPELLATE CRIMINAL.

Before Mr. Justice Brodhurst.

QUEEN-EMPRESS *v.* SHEO DAYAL.

Act XLV of 1860 (Penal Code), ss. 24, 25, 471—Fraudulently using as genuine a forged document—"Dishonestly"—"Fraudulently."

In a trial upon a charge, under s. 471 of the Penal Code, of fraudulently or dishonestly using as genuine documents known to be forged, it was found that four forged receipts for the payment of rent, used by the prisoner, had been fabricated in lieu of genuine receipts which had been lost.

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RAM BAKHSH
v.
PANNA LAL.

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QUEEN-
EMPERESS

v.

SHEO DAYAL.

Held that, with reference to the definitions of the terms "dishonestly" and "fraudulently" in ss. 24 and 25 of the Penal Code, the prisoner, upon the facts as found, had not committed the offence punishable under s. 471.

THIS was an appeal from an order of Mr. G. J. Nicholls, Officiating Sessions Judge of Azamgarh, dated the 18th November, 1884, convicting the appellant of the offence of fraudulently using as genuine a forged document.

The appellant was convicted of fraudulently using as genuine four documents purporting to be receipts for the payment of money, knowing such documents to be forged. It appeared that the appellant, claiming to be the occupancy-tenant of certain land, applied in the Revenue Court to recover the occupancy of the land, alleging that two of the proprietors of the estate in which such land was situate, called Faiz Ali and Ramdaur Singh, had wrongfully dispossessed him. In the course of the proceedings he produced four receipts for the payment of rent, which were forged. It was in respect of these documents that the appellant had been convicted of an offence under s. 471 of the Penal Code.

The assessors found as a fact, and the Sessions Judge agreed with them, that the forged receipts had been fabricated in lieu of genuine receipts which had been lost. The assessors were of opinion, on this finding, that the appellant had committed no offence in using them as he did. The Sessions Judge differed with the assessors on this point, observing as follows:—"It amounts to forgery, if the false document be made with intent to support any claim or title. Even if a man has a legal claim or title to property, he will be guilty of forgery if he counterfeits documents in order to support it."

Munshi Kashi Prasad, for the appellant.

The *Junior Government Pleader* (Babu Dwarka Nuth Banarji), for the Crown.

BRODHURST, J.—The Sessions Judge, differing from the assessors, has convicted Sheo Dayal *alias* Sur Dayal, under s. 471 of the Indian Penal Code, and has sentenced him to two years' rigorous imprisonment. In the appeal it is pointed out that the Judge has in his judgment recorded that the receipts "have been fabricated, it may be granted, in lieu of genuine receipts which have been lost," and that the accused "has to all appearance been cruelly

injured, and that he has met the violence and perjury of Faiz Ali and Ramdaur Singh by concocting new receipts to supply the want caused by his losing his genuine ones."

The Judge has observed:—"It amounts to forgery if the false document be made with intent to support any claim or title. Even if a man has a legal claim or title to property, he will be guilty of forgery if he counterfeits documents in order to support it." The Judge, apparently, has overlooked s. 464 of the Penal Code, which shows that the "false document" referred to in s. 463 must, to constitute forgery, have been made "dishonestly or fraudulently." "Dishonestly" and "fraudulently" are defined in ss. 24 and 25 of the Penal Code respectively, and, with reference to those definitions, the accused, on the findings of the Judge, as contained in the extracts above given, did not commit the offence of which he has been convicted. The conviction and sentence are therefore annulled, and the prisoner-appellant will be immediately released.

Conviction set aside.

FULL BENCH.

Before Sir W. Comer Petheram, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Mahmood.

QUEEN-EMPRESS v. RAMZAN AND OTHERS. ^c

Act XLV of 1860 (Penal Code), ss. 79, 296—Disturbing a religious assembly—Muhammadan Law—Hanafia and Shiafia Schools—Right to say 'amen' loudly during worship—Act VI of 1871 (Bengal Civil Courts Act), s. 24—Act I of 1872 (Evidence Act), s. 57 (1)—Muhammadan Ecclesiastical Law—Judicial notice.

A *masjid* was used by the members of a sect of Muhammadans called the Hanifis, according to whose tenets the word "amen" should be spoken in a low tone of voice. While the Hanifis were at prayers, R, a Muhammadan of another sect, entered the *masjid*, and in the course of the prayers, according to the tenets of his sect, called out "amen" in a loud tone of voice. For this act he was convicted of voluntarily disturbing an assembly engaged in religious worship, an offence punishable under s. 296 of the Penal Code.

The Full Bench (MAHMOOD, J., dissenting) ordered the case to be retried, and that, in re-trying it, the Magistrate should have regard to the following questions, namely, (1) Was there an assembly lawfully engaged in the performance of religious worship? (2) Was such assembly, in fact, disturbed by the accused? (3) Was such disturbance caused by acts and conduct on the part of the accused by which he intended to cause such disturbance, or which acts and conduct, at the time of such acts and conduct, he knew or believed to be likely to cause disturbance?

1885

QUEEN-
EMPRESS

v.

SHEO DAYAL.

1885

March 7.