District Judge to do what is above directed, and their Lordships, under the circumstances, are of opinion that if any application should be made under the provisions of the Code of Civil Procedure for the appointment of a manager or receiver of the estate during the inquiry and taking the accounts, and until the partition, it would be a proper case for granting it. Their Lordships will humbly advise Her Majesty to reverse the decrees of the lower Courts, and to make a decree remanding the suit to the effect and containing the directions before stated. The costs of these appeals and of the cross appeal are to be paid by Jowahir Singh.

Appeals allowed.
Cross appeal dismissed.

Solicitors for Pirthi Pal Singh and Uman Pershad Singh: Messrs. *T. L. Wilson & Co.*

Solicitors for Thakur Jowahir Singh: Messrs. *Barrow & Rogers.*

C. B.

FULL BENCH.

Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Wilson, Mr. Justice Tottenham, Mr. Justice Norris and Mr. Justice Ghose.

HARADHAN MAITI (APPELLANT) *v.* QUEEN-EMPRESS (RESPONDENT).* 1887 *June* 4

Forgery—Intention—Penal Code, s. 466.

Where a document is made for the purpose of being used to deceive a Court of Justice it is made *with the intention* of being used for that purpose.

A person, therefore, who, at the request of another sent to trap him, fabricates a document purporting to be a notice under the seal and signature of a Deputy Collector, he being informed that the notice was required by such other person for the purpose of being used in a pending suit (there being, however, in reality no such suit in existence), is guilty of forgery, it not being necessary that the intention of fraudulently using the document should exist in the mind of any other person than the person fabricating the document.

ONE Haradhan Maiti was charged and tried before a Court of Sessions, sitting with Assessors, under s. 466 of the Penal

* Full Bench on Criminal Appeal No. 192 of 1887, against the order passed by F. Cowley, Esq., Officiating Sessions Judge of Midnapore, dated the 23rd of March, 1887.

1887

HARADHAN MAITI v. QUEEN-EMPRESS.

Code with having committed forgery of a document purporting to have been made by a public servant in his official capacity, and under ss. 109 and 466 of the Penal Code with having abetted by conspiracy the offence of forgery.

The facts were that, in accordance with a pre-concerted plan, a sub-inspector of police sent a constable in disguise, named Maslanddeen, to the house of Haradhan, instructing him to persuade Haradhan (who was alleged to be a professional forger) to forge a certain notice purporting to issue from the office of a Deputy Collector; and that, in obedience to these instructions, Maslanddeen, taking with him an original notice addressed to one Mannu issuing from the office of a Deputy Collector, went to the house of Haradhan, and after telling him that he required the notice for the purpose of a suit then pending between himself and a ryot (there being in reality no such suit in existence), and that he wished it to run in his name and not, as in the original, in the name of Mannu, arranged that the forged notice should be prepared and ready for delivery on the next day, and that Rs. 25 should be paid for the work. On the next day payment was made in rupees, some of which had been previously marked, and the sum paid was made over by Haradhan to his father. After this payment had been made, and before the original and forged notices were made over by Haradhan to Maslanddeen, a sub-inspector and his constables, at a signal arranged and given by Maslanddeen, appeared on the scene and arrested Haradhan, finding both the original and forged notice on his person and the marked rupees on the person of his father; and on a search being made in the house of Haradhan papers, on which rough copies of the original notice appeared, were found. At the trial the prisoner produced no evidence. The Judge, concurring with the assessors, found Haradhan guilty of an offence under s. 466 of the Penal Code, and sentenced him to seven years' rigorous imprisonment.

The prisoner appealed to the High Court. The case came on before Sir Comer Petheram, C.J., and Mr. Justice Ghose, who found the facts to be as stated above, but, doubting whether

the prisoner could be convicted of forgery on those facts, referred the question to a Full Bench.

The *Deputy Legal Remembrancer* (Mr. *Kilby*) for the Crown.—The receipt of money by the accused to imitate a document bearing a Munsiff's seal and signature, and the fact that he made the document in order that it might be used to obtain a decree for the person who had paid him to make it, show that the document was a false one within the definition of s. 464 of the Penal Code, and that the making of such a document was forgery within the meaning of s. 463, inasmuch as it was made with the intent that fraud might be committed. The offence is made up of the act of making the document and the fraudulent intent. The fact that the person who paid the accused to make the document had no intention of using it fraudulently does not affect the accused; his intention was undoubtedly fraudulent, and it is only his intention that the law refers to. I submit that the law does not require that it shall be possible that a fraud can be committed where the intention is clear. In *Reg.* v. *Tytley* (1), where drugs were sold to a woman in order that she might procure abortion, it was held that, although the woman was not in the condition necessary and had no intention to use the drugs, but had only been employed by the police to trap the accused, the accused, having sold the drugs with the intent they should be so used, was guilty—*R.* v. *Nash* (2). Maule, J., says that it is not necessary to show an intent to defraud any particular person; and in *R.* v. *Holden* (3) and *R.* v. *Marcus* (4) there was no person who could have been defrauded.

No one appeared for the prisoner.

The judgment of the Court (PETHERAM, C.J., WILSON, J., TOTTENHAM, J., NORRIS, J., and GHOSE, J.) was delivered by

PETHERAM, C.J.—This case of Haradhan Maiti is a case in which Mr. Justice Ghose and myself had doubts as to the legality of the conviction, because we felt that a question might arise whether, upon the facts which were found, the offence of forgery had been committed. I do not think we had any doubt that the facts

(1) 14 Cox. C. C., 502.
(2) 2 Den. C. C., 492 (499).
(3) Russ & R., 154.
(4) 2 C & K., 356.

1887

HARADHAN MAITI v. QUEEN-EMPRESS.

were correctly found by the assessors and the Judge, and that the conclusion of fact at which they arrived was correct; the only doubt we felt was whether those facts amounted to a crime.

The facts of the case are that in some town a person resided who was suspected of being a professional forger, and upon that suspicion the Sheristadar of the Judge's Court and the police set a trap to catch him, and the trap which they set for him was that they took him a notice which had been used in some suit and asked him to prepare a notice like it, that is, to make an exact imitation of it in that form, only changing one or two names, and they told him that their object in having the imitation of the notice made was that it should be used in the proceedings in a certain case for the purpose of deceiving the Court; so that they employed him to forge, or rather to make, a document for the purpose, as he understood them, of its being used to deceive the Court.

It is perfectly clear that, if the persons who employed the prisoner to make this imitation had been persons who were parties to a real suit and they had gone to him to prepare this document in order that they might be able to deceive the Court in that suit, and he had made the document for the purpose of its being so used, he would have been guilty of forgery. But the doubt we had was whether a person could be guilty of forging a document when the document was never intended to be used at all and represented absolutely nothing; in other words, whether the person who was the agent of the other for the purpose of making the document could have a wicked intention when the person who employed him, the principal, had no such intention. Feeling that doubt we decided that the case had better be argued before five Judges, in order that the matter might be considered and laid at rest once for all, and upon a consideration of the question we have all come to the conclusion that the facts are sufficient to sustain a conviction, and we rely upon the case of *Reg.* v. *Hillman* (1). In that case the offence with which the prisoner was charged was that of supplying a noxious drug to enable a woman to procure abortion. The facts proved were that he had supplied a drug,

(1) 1 Leigh & Cave C. C., 343.

the effect of which, if it had been taken by a woman with child, would have been to cause abortion; but that the drug was purchased by a person whose object in purchasing it was to entrap the prisoner, and there being in fact no woman with child to whom it was intended to give the drug for the purpose of procuring abortion. In that case the same question arose, namely, whether the offence of supplying a drug to obtain abortion was committed when there was, in effect, no intention to obtain abortion. In that case the judgment of the Court was given by Sir William Erle, who was then Chief Justice of the Common Pleas, and than whom no greater authority ever sat on the English Bench, and what he says is: "The question asked of us is whether the intention of any other person than the defendant is necessary to the commission of the offence made punishable under this Statute (24 and 25 Vic., c. 100, s. 59). We are all of opinion that that question should be answered in the negative. The Statute is directed against the supplying of any substance with the intention that it shall be employed in procuring abortion. The prisoner, in this case, supplied the substance, and intended that it should be employed to procure abortion. He knew of his own intention that it should be so employed, and is, therefore, within the words of the Statute, as we construe them. He is also, in our opinion, within the mischief of the Statute, and ought to be convicted."

It seems to us that that case is absolutely on all fours with the present, because Sir William Erle there says, in effect, that where the drug was supplied for the purpose of its being used to procure abortion that is equivalent to supplying it with the intention to procure abortion. In the case before us this particular document was made for the purpose of being used to deceive the Court, and, being made for that purpose, we may, for the same reason as that on which it was held that an offence had been committed in the other case, say that it was made with the intention of being used for that purpose, and therefore we think that the offence was committed and that the prisoner comes within the *mischief* of the Statute; and as we feel no doubt that the facts found were correctly found by the Judge and the assessors, we confirm the conviction and dismiss the appeal.

T. A. P. *Appeal dismissed.*