1882

EMPRESS OF INDIA. v. FATEH.

brought the deed in accordance with the fact: it did not (in the face of the specification of the four boundaries) alter the identity of the property sold, and the point, *viz.*, the correct number at which the property stood in the *khasra*, was not material to the result of the civil suit.

I find that the Magistrate had committed the case to the Sessions Court on two charges, the first relating to the alteration in the sale-deed, and the second charge under s. 193 relating to making false entries in the *khasra abadi*. The learned Sessions Judge has hardly noticed the second charge in his judgment, beyond a remark that it was uncertain what the original entries in the *khasra* were. The prosecution do not appear to have insisted upon the second charge, or to have supported it by evidence. The learned Sessions Judge appears to have taken all the evidence produced by the prosecution, and that evidence is wholly inadequate to sustain a conviction on the second charge. Nor is it pointed out what further evidence would be forthcoming against the prisoners appellants. When persons accused of an offence are committed to the Court of Session under distinctly framed charges, and that Court takes all the evidence produced by the prosecution, and that evidence fails to sustains the charge, this Court will not, except in very exceptional circumstances, direct that further inquiry should be made or that additional evidence should be taken. The powers conferred by s. 282, Criminal Procedure Code, are not, in my opinion, intended to be exercised in cases like the present, in which the prosecution having had ample opportunities to produce evidence have done so, and that entire evidence falls short of sustaining the charge. It was for the prosecution to have made out their case, but they have failed in doing so. For these reasons I quash the convictions and direct that the prisoners appellants Fateh and Harbhaj be immediately released.

Convictions quashed.

1882
October 5.

Before Mr. Justice Mahmood.

EMPRESS OF INDIA *v.* JIWANAND.

Forgery--Making false entries in account-book with the intention of concealing criminal breach of trust—Act XLV of 1860 (*Penal Code*), *ss.* 24, 25, 465.

Where a clerk, who had committed criminal breach of trust, subsequently made false entries in an account-book, with the intention of concealing such

1882

EMPRESS OF INDIA v. JIWANAND.

offence, *held* that the making of such entries did not constitute the offence of forgery, and he had therefore been improperly convicted under s. 465 of the Indian Penal Code.

Queen v. *Jageshur Pershad* (1) and *Queen* v. *Lal Gumul* (2) followed.

THIS was an appeal from a judgment of conviction of Lieutenant-General the Hon'ble Sir H. Ramsay, C.B., K.C.S.I., Commissioner of Kumaun, dated the 28th July 1882. The appellant had been convicted and sentenced for two offences, *viz.*, criminal beach of trust as a clerk (s. 408 of the Indian Penal Code) and forgery (s. 465, *id.*). It appeared that he had been intrusted as a clerk with certain moneys; that it was his duty to pay such moneys into the Government treasury; that he had not done so, but had misappropriated them; and that shortly before the misappropriations were discovered, he had entered the misappropriated items in the "chalan-book" or "pass-book," and had signed the name of the treasury Tahvildar to such items, thereby making it appear that such items had been paid into the treasury.

Mr. *S. [illegible]*, for the appellant, contended that the falsification of the "chalan-book" and the fabrication of the Tahvildar's signature were not acts constituting the offence of forgery, inasmuch as they were not done "dishonestly" or "fraudulently" within the meaning of ss. 24 and 25 of the Indian Penal Code, but with the intention of concealing the fact that the appellant had been guilty of criminal misappropriation. He cited *Queen* v. *Jageshur Pershad* (1) and *Queen* v. *Lal Gumul* (2).

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), for the Crown, contended that, assuming that the prisoner had acted with the intention of evading detection, yet his acts were "dishonest" and "fraudulent," within the meaning of the Code.

MAHMOOD, J.—In a recent case (3) I have fully stated my view that to constitute the offence of "forgery" under s. 465, which must be read with ss. 463 and 464, Indian Penal Code, a "dishonest" or "fraudulent" intent is absolutely essential. And these two words must not be understood in the vague and indefinite sense in which they are ordinarily used in English parlance. The

(1) N.-W. P. H. C. Rep., 1874, p. 56. (2) N.-W. P. H. C. Rep., 1870, p. 11.
(3) *Empress* v. *Fatteh*, *ante* p. 217.

1882

EMPRESS OF INDIA v. JIWANAND.

words have been clearly defined in ss 24 and 25 of the Penal Code, and the former of those sections must be read with the preceding s. 23. The question then arises whether the alterations, interpolations, or false entries made by the prisoner in the "chalan-book" were made with such an intent as would bring them within the definition of forgery. In other words, did the prisoner intend to cause wrongful loss or wrongful gain to any person, or did he intend to defraud any one.

It is clear that intention, *ex necessitate rei,* relates to some future occurrence and not to the past. It cannot be said when wrongful loss or wrongful gain has already been caused, or a person has already defrauded, anything can be subsequently done which could be dictated with the intention to cause that which has already occurred. In the present case it is not even asserted by the prosecution that the object of the prisoner in making the interpolations was to cause any loss or to defraud any one in the future. Even if such were the case for the prosecution, I should hold that there is no evidence to warrant such a hypothesis. All that the circumstances of the case warrant, and, indeed, all that can be said against the prisoner in regard to the alterations and interpolations, is that he intended by those falsifications to escape the punishment and disgrace which the expected discovery of the deficit would involve. Such an intention does not, in the eye of the law, render the case one of forgery. The law has been clearly explained by Pearson, J., in the case of *Queen* v. *Jageshur Pershad* (1), in which that learned Judge held that falsifications of office records, made in order to conceal previous acts of fraud or negligence, do not amount to forgery, as no one would be defrauded or injured by them. A similar rule was adopted by Turner and Spankie, JJ., in the case of *Queen* v. *Lal Gumul* (2). Adhering to these rulings, I hold that the falsification of the "chalan-book" made by the prisoner in this case, however blameable it may be, did not constitute the offence of forgery, and that his conviction under s. 465, Indian Penal Code, was therefore illegal. Confirming the conviction and sentence of the prisoner-appellant, Jiwanand, under s. 408, Indian Penal Code, I quash the convictions and sentence passed by the Sessions Judge under s. 465.

(1) N.-W. P. H. C. Rep., 1874, p. 56. (2) N.-W. P. H. C. Rep., 1870, p. 11.