

In the present case it is clear that the offence of which the prisoner, Pitam Rai, has been convicted consisted only of making a false charge. He instituted no criminal proceedings on such false charge. The case therefore was triable by the Magistrate, and there was no necessity for a commitment to the Court of Session.

These observations dispose of the only legal point referred to by the Sessions Judge. On the merits of the case I do not wish to express any opinion. The case will go back to the Sessions Judge for disposal according to law.

APPELLATE CRIMINAL.

Before Mr. Justice Mahmood.

EMPRESS OF INDIA v. FATEH AND ANOTHER.

Forgery—Using a “forged” document—Using “false” evidence—“Dishonestly”—“Fraudulently”—Correction of mistake in document—Act XLV of 1860 (Penal Code), ss. 24, 25, 196, 464, 470 471—Further inquiry by Appellate Court—Act X. of 1872 (Criminal Procedure Code), s. 232.

The vendees of a plot of land altered the number by which the land was described in the deed of sale, doing so because such number was not the right number. Having made this alteration they used the deed of sale as evidence in a suit. *Held* that the alteration of the deed did not amount to “forgery” within the meaning of s. 463 of the Indian Penal Code, nor could the deed after the alteration be designated a “forged document” as contemplated by s. 470, the intention to cause wrongful loss or wrongful gain or to defraud being wanting; nor could it be said that in using the deed, the vendees were “dishonestly” or “fraudulently” using as genuine a “forged document,” and therefore the use by the vendees of the deed did not constitute an offence under s. 471 of the Indian Penal Code. Further, that their use of it did not render them liable to conviction under s. 196 of that Code.

Observations as to the exercise by an Appellate Court of the powers conferred on it by s. 232 of Act X. of 1872 (Criminal Procedure Code).

THIS was an appeal from a judgment of conviction of Mr. H. G. Keene, Sessions Judge of Saharanpur, dated the 10th July, 1882. The facts of the case are sufficiently stated in the judgment of the High Court.

Mr. Carapiet, for the appellants.

The Senior Government Pleader (Lala Jwala Prasad), for the Crown.

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MAHMOOD, J.—The prisoners appellants in this case have been convicted by the Sessions Judge under s. 471 of the Indian Penal Code. The facts from which the case has arisen may be briefly stated.

Bakhshi and Harnam, two brothers, owned certain land in common with some other persons. Harnam executed a registered deed of sale on the 3rd June, 1881, purporting to convey the entire land above mentioned to the prisoners, Fateh and Harbhuj in lieu of Rs. 900. The sale-deed describes the four boundaries of the property sold. Thereupon Bakhshi and his co-sharers objected to the sale, and stating themselves to be the owners of shares in the property, sued the vendees for their shares, designating the property sold as plot No. 272. The suit was resisted by the prisoners vendees on the ground of the sale-deed, which was produced by them in the Court, and was found to describe the property sold as plot No. 272.

It was, however, subsequently found that the copy of the sale-deed kept in the registration office described the property sold as plot No. 10 and not as plot No. 272. The rest of the original deed produced corresponded with the registration office copy. Bakhshi and his co-sharers succeeded in their suit, and the prisoners were thereupon committed by the Civil Court to the Magistrate, who committed them to the Court of the Sessions Judge to take their trial on a charge of using a forged document, within the meaning of s. 471, Indian Penal Code, and a second charge under s. 193, Indian Penal Code. On the evidence produced in the case, the learned Sessions Judge, agreeing with the assessors, has found that the original sale-deed had been tampered with after its registration, that is to say, the figure "272," as representing the number of the plot sold, had been substituted for the figure "10," which originally stood in the deed. Such an alteration was no doubt easily feasible in the Hindustani characters, and on the merits of the evidence produced I agree with the learned Sessions Judge in the conclusions at which he has arrived upon this point.

But I am of opinion that the facts proved in this case do not constitute the offence of which the prisoners have been convicted.

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To ascertain the nature of the offence punishable under s. 471 of the Indian Penal Code, it is necessary to consider some of the provisions of the Code which precede that section. S. 463 defines the offence of "forgery," but that definition depends upon the meaning to be attached to the expression "makes a false document," which is explained in s. 464. The next section (465) provides the punishment for the offence of forgery; s. 470 defines a "forged document," with reference to the provisions of s. 464; and s. 471 provides the same punishment for using a forged document as for forgery itself. In all these definitions the most important point is that the act which is said to constitute forgery should have amounted to making a false document within the meaning of s. 464. But in the definitions given in that section the words "dishonestly or fraudulently" uniformly occur; they are the most important, and must be understood in the sense in which they are defined in the Code. The words occur also in s. 471.

The questions then which require determination in this case are:—

(i) Did the substitution of the figure "272" for the figure "10" in the sale-deed of 3rd June, 1881, amount to making a false document within the meaning of s. 464? (ii) Did the alteration so made render the sale-deed a forged document within the meaning of s. 470? (iii) Did the prisoners use the document fraudulently or dishonestly within the meaning of s. 471?

It seems to me that the answers to these questions depend upon the meaning of the words "dishonestly" and "fraudulently." S. 23 of the Code defines "wrongful gain" and "wrongful loss." The next section 24 provides that "whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing *dishonestly*." S. 25 lays down that "a person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise."

Now in the present case there is no question that the substitution of the figure "272" where the figure "10" stood before in the original sale-deed had not the effect of confounding the identity of the property sold and of which the four boundaries are clearly stated in the sale-deed. Indeed it has been shown that plot No. 10

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was not the plot included in those boundaries but plot No. 272 is so included. All that could have been intended by the alteration in the sale-deed was to substitute the right number for the wrong number. The identity of the property which the deed of sale purported to convey could not possibly be affected by the alteration of the figures, and the substitution of one number for the other could not possibly defraud any one or have the effect of causing wrongful loss or wrongful gain to any person. If the object of the alteration were to make it appear that the property intended to be conveyed by the sale-deed was other than that which it actually did purport to convey, the case would of course have been different; but such is not the case for the prosecution. All that the prisoners have been convicted of is, that subsequent to the registration of the sale-deed they substituted the right number of the plot sold for the wrong number. The identity of the property which the sale-deed purported to convey being unaffected, the alteration cannot fall under the definition of making a false document within the meaning of s. 464, Indian Penal Code. However foolish or blameable the conduct of the prisoners may be, the alteration cannot be called "forgery" within the meaning of s. 463, nor can the sale-deed after the alteration be designated "a forged document" as contemplated by s. 470 of the Penal Code, the most important element of the offence, namely wrongful loss or wrongful gain, or the intent to defraud being totally wanting in the case. Nor can it be held that in producing the sale-deed in the Civil Courts the prisoners were fraudulently or dishonestly using as genuine a document which they knew to be a "forged document" within the contemplation of the law. The conviction therefore under s. 471, Indian Penal Code, cannot stand.

But I am asked by the learned Government pleader to consider whether the conviction cannot be sustained under s. 196, Indian Penal Code. That section must be read with s. 192, which defines the offence of fabricating false evidence. It seems to me that even under that section the correction of a mistake in a document cannot be taken to be "a false entry" or "false statement," nor can it be said that the intention was to cause any person "to entertain an erroneous opinion touching any point material to the result" of a proceeding. In the present case the alteration of the number

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 sustain 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.

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

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