

The case of *Chandika Singh v. Pohkar Singh* <sup>(1)</sup> was relied on by the District Judge; but that merely establishes that, where the mortgage is joint, the mortgagee cannot by settling with one of the mortgagors proceed by foreclosure against the interests of the other mortgagors, but must make the former a party, and the money so paid must be placed to the credit of their joint account. Here, however, the parties had severed their interests, and the mortgagee has chosen to recognize that partition as shown by his allowing two of them to redeem their two-third shares and by giving them possession. The plaintiff's right to redeem his one-third is, therefore, perfectly distinct from the former transaction, and there is no longer any joint account to which the sums paid on the former occasion can be credited.

We must, therefore, vary the decree by disallowing Rs. 189-13-4 which the District Judge has allowed the plaintiff in taking the account by way of set-off, and substituting the sum of Rs. 570-10-8 for the sum of Rs. 380-12 found due by the plaintiff by the District Judge and as a necessary consequence disallowing mesne profits. The time for redemption to be extended to three months from the date of this decree. Appellant to have his costs of this appeal in proportion. Parties to pay their own costs in the Courts below.

*Decree varied.*

(1) I. L. R., 2 All., 906.

## APPELLATE CRIMINAL.

*Before Mr. Justice Birdwood and Mr. Justice Parsons.*

QUEEN-EMPRESS *v.* ABA'JI RA'MCHANDRA.\*

*Penal Code Act (XLV of 1860), Sec. 475—Possession of papers bearing counterfeit marks or devices—Charge under Section 475 how to be framed—Misdirection—Evidence—Forgery.*

During the course of a police investigation into a complaint of theft the house of the accused was searched and a bundle of papers, about 58 in number, were found which were alleged to be forgeries or preparations for forgeries. The accused was thereupon committed to the Court of Session on a charge under section 475 of the Indian Penal Code. A few days before the trial of the accused the

\* Criminal Appeal, No. 235 of 1890.

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police searched the house of one Shivlingápa, who was a witness for the defence, and there discovered a batch of suspicious papers which were produced at the trial, and put in as evidence against the accused. The accused was convicted of the offence under section 475 of the Indian Penal Code and sentenced to transportation for life.

*Held*, reversing the conviction and sentence, that the suspicious papers found in Shivlingápa's house were not admissible in evidence against the accused.

*Held*, further, that the Judge's direction to the jury regarding those papers, that they established a connection between the accused and many of the witnesses belonging to the same faction, and that they showed the extent to which the practice of forgery had gone in the village, and that in this way they were relevant to the question of guilty knowledge and intention—was a misdirection which prejudiced the accused.

In the trial of an accused person on a charge under section 475 of the Indian Penal Code, the charge should be so framed as to specify distinctly that part of the section which is applicable to the case, and should distinctly specify the particular papers bearing a counterfeit mark or device which the accused was alleged to have had in his possession with the intent mentioned in the section.

APPEAL from the conviction and sentence recorded by Dr. A. D. Pollen, Sessions Judge of Belgaum, in *Queen-Empress v. Abáji Rámchandra*.

In consequence of a complaint by one Nágápa, charging the accused Abáji Rámchandra with theft of a stamp paper, the police searched the house of the accused at Mugli on the 18th August, 1889. They discovered a bundle of papers, about 58 in number, including the missing stamp paper, in a cupboard in a central room of the house. Most of these papers were alleged to be forgeries or preparations for forgeries.

The accused was thereupon committed for trial to the Sessions Court at Belgaum on the following charge:—

“That he on or about the 18th day of August, 1889, was in possession of Exhibits 1 to 5 (*and other papers shown to him*) upon which the seal and writing of the Desái of Wantasauri had been counterfeited with intent to forge a valuable security and thereby committed an offence under section 475 of the Indian Penal Code.”

On the 28th of April, 1890,—that is, a few days before the commencement of the trial of the accused,—the police having

received an anonymous petition searched the house of one Shivlingápa, a witness for the defence, and found there a batch of suspicious papers, about 128 in number. These papers were produced at the trial and put in evidence against the accused.

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The Sessions Judge, in his charge to the jury, made the following remarks with respect to these papers:—

“I must next call the jury’s attention to the bundle of papers found on the 28th April last in the house of Shivlingápa. It is not pretended that they were found in possession of the accused, but it is urged that they establish a connection between the accused and many of his witnesses belonging to the same faction, and that they show the extent to which the practice of forgery has gone in the village of Mugli, and that in this way they are relevant to the question of guilty knowledge and intention.

“I feel it impossible to shut out evidence on this branch of the case, as it seemed to me of the utmost importance, in connection with the accused’s guilt or innocence, to ascertain the truth if possible. This has greatly lengthened and complicated the enquiry, but the case would have been incomplete, had not this new discovery been thoroughly investigated.

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“These papers must be carefully examined by the jury, as some of them undoubtedly throw much light on the connection of the different parties concerned and on the case generally.

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“Only those papers bearing directly or indirectly on the present case have been read out to the jury, but there are a number of other papers, more or less suspicious, in the bundle found in Shivlingápa’s house, and they are all filed in this case and are laid before the jury.”

The accused was found guilty of the offence charged under section 475 of the Indian Penal Code, and sentenced to transportation for life.

Against this conviction and sentence the accused appealed to the High Court.

*Branson* (with him *Mánekhsháh Jehángirsháh*) for the accused:—The documents found in Shivlingápa’s house are not

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admissible in evidence against the accused. They have no bearing whatever on the main question whether on the 18th August, 1889, the accused was or was not in possession of papers bearing counterfeit seals or devices with the intent to commit forgeries. The Sessions Judge has misdirected the jury on this point, and the misdirection has prejudiced the accused. The charge proved against the accused is, moreover, exceedingly vague. It does not specify the particular papers which the accused is alleged to have had in his possession with intent to commit forgeries.

*Shántárám Náráyan*, Government Pleader, for the Crown:—The papers found in Shivlingápa's house were admitted in evidence to show that the witnesses for the defence were themselves implicated in forgery. I cannot say that they are relevant to the question of guilty knowledge. Even if these papers be excluded from consideration, there is enough material on the record to sustain the conviction. There should at least be a retrial—*The Queen-Empress v. O'Hara.*<sup>(1)</sup>

BIRDWOOD, J.:—The accused was tried for an offence, under section 475 of the Indian Penal Code, in respect of certain papers found in his possession on the 18th August, 1889. He was committed for trial in November, 1889, and the trial commenced in the Court of Session on the 1st May, 1890. On the 28th April, 1890, certain papers were found in the house of Shivlingápa, one of the witnesses for the defence, and these papers, some of which are alleged to be forgeries, were tendered at the trial as evidence for the prosecution, and the Sessions Judge admitted them as evidence against the accused. In the record of his charge to the jury we find the following directions with respect to these papers:—

“The jury must further bear in mind the circumstances attending the sale and delivery of possession” (that is, of the house in which the papers were found in August, 1889), “the persons who were said to be present on the two occasions, and their connection with the accused, and also their connection with the suspicious documents subsequently discovered by the police on the 28th April last.

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(1) I. L. R., Calc., 642.

"I must next call the jury's attention to the bundle of papers found on the 28th April last in the house of Shivlingápa. It is not pretended that they were found in possession of the accused, but it is urged that they establish a connection between the accused and many of the witnesses belonging to the same faction, and that they show the extent to which the practice of forgery has gone in the village of Mugli, and that in this way they were relevant to the question of guilty knowledge and intention.

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"These papers must be carefully examined by the jury, as some of them undoubtedly throw much light on the connection of the different parties concerned and on the case generally \*"

\* \* \* Only those papers bearing directly and indirectly on the present case have been read out to the jury, but there are a number of other papers, more or less suspicious, in the bundle found in Shivlingápa's house, and they are all filed in this case and are laid before the jury."

We are clearly of opinion that the papers in question ought never to have been admitted in evidence, and that the Judge's directions to the jury regarding them are wrong and must necessarily have prejudiced the accused. The discovery in April, 1890, of certain suspicious documents in the possession of a person whose only connection with the accused is that he is called as his witness and is alleged to belong to the same faction, can be no evidence against the accused. The circumstance that forgery was common in the village, and that Shivlingápa was in April, 1890, in possession of forged documents, cannot rightly be regard-

Aug. . . . any way, the question whether, on the 18th when found in his house with such intent as is the documents section 475 of the Indian Penal Code. contemplated in

The charge framed in this case is far too vague to the accused the possession of Exhibits 1 to 5 and other papers. The "other papers" referred to comprise no less than 53 documents which were put in at the trial. From a charge so framed accused could not have learnt what case he had to meet, the

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except as regards the Exhibits 1 to 5. The charge should have been framed in the terms of that part of section 475 of the Indian Penal Code which was applicable to the case, and should have distinctly specified the particular papers bearing a counterfeit mark or device which it was alleged that the accused had in his possession with the intent mentioned in the section. Evidence should then have been admitted in respect of those papers alone. We reverse the conviction and sentence and order that the accused be retried by the Court of Sessions with a new jury.

*Conviction and sentence reversed, and retrial ordered.*

## APPELLATE CRIMINAL.

*Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Birdwood and Mr. Justice Parsons.*

QUEEN-EMPRESS v. KHANDU VALAD BHAVA'NI.\*

*Indian Penal Code (Act XLV of 1860), Sec. 307—Attempt to murder—Murder.*

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The accused struck the deceased three blows on the head with a stick, with the intention of killing him. The deceased fell down senseless on the ground. The accused, believing that he was dead, set fire to the hut in which he was lying, with a view to remove all evidence of the crime. The medical evidence showed that the blows struck by the accused were not likely to cause death, and did not cause death, and that death was really caused by injuries from burning when the accused set fire to the hut.

*Held* (PARSONS, J., dissenting) that the accused was guilty of attempt to murder under section 307 of the Indian Penal Code.

*Per* PARSONS, J. :—The accused was guilty of murder under section 302 of the Indian Penal Code.

THIS was a reference, under section 374 of the Criminal Procedure (Act X of 1882), for confirmation of death passed on the accused.

The accused struck his father-in-law three blows on the head with a stick, with the intention of killing him. He fell down senseless on the ground. The accused, thinking that he was dead, put under his head a box of fir wood, and set fire to the hut, in which he was lying, with the intention of removing all evidence of the crime.

\* Confirmation Case, No. 12 of 1890.