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32 C. 771=9 C. W. N. 621 =2 Cr. L. J. 342.

he was satisfied that there was a likelihood of a breach of the peace. In the present case there being no record of the result of the local investigation made by the Magistrate himself, there is nothing to which reference can be made.

We, therefore, make the Rule absolute and direct that the final order of the Magistrate must be set aside. We think it must follow that the order as to costs must also be set aside, and we set it aside accordingly.

Rule absolute.

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32 C. 775 (=9 C. W. N. 807=2 Cr. L. J. 368=1 C. L. J. 469.)

[775] CRIMINAL REVISION.

Before Mr. Justice Henderson and Mr. Justice Geidt.

BABURAM RAI *v.* EMPEROR.*

[28th March, 1905.]

Cheating—Cheating by personation—Penal Code (Act XLV of 1860), ss. 415, 419—Personation—Minors.

On an application by the *kurta* of a joint Hindu family, in his representative character, to withdraw certain surplus sale-proceeds standing to their credit in the Treasury, the Collector directed him either to file a power of attorney or to cause all the other members to appear and admit his authority to sign on their behalf.

They all appeared in person before the sheristadar, except two minors who were personated by other persons, and signed receipts for the money and caused the personators to sign in the names of the minors.

Thereupon the Collector, after inspecting the signatures, issued a bill in their favour for the amount due, which they withdrew :

***Held* that upon the facts the offence of cheating was not made out.**

***Reg.* v. *Longhurst* (1) *In re Loothy Bewa* (2) referred to.**

[Ref. 2 C. L. J. 524=3 Cr. L. J. 160.]

RULE granted to Baburam Rai and six others.

The first six petitioners were, together with two other persons named Thakur Pershad Rai and Rajnarain Rai, the minor sons of a deceased recorded proprietor, members of a joint Hindu family, of which the petitioner, Ramdihal Rai, was the *kurta*. The seventh petitioner was one Jagdawan, who was alleged to have personated Rajnarain.

On the 24th September 1896 the shares of the first six petitioners and the minors in mouza Manhari Narhar were sold for arrears of revenue, and the surplus sale-proceeds deposited to their credit in the Treasury. On the 9th June 1899 an application signed by Ramdihal Rai, but purporting to have been made on behalf of all the members of the joint-family, was filed before the Collector of Darbhanga for the withdrawal of the surplus amount. After some preliminary office reports he was directed by the Collector either to file a power of attorney **[776]** empowering him to sign for the others, or to cause all of them to appear and admit his authority to sign on their behalf. On the 10th August an application was filed, purporting to be made by all the eight members of the joint family, in which they stated that Ramdihal signed with their

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* Criminal Revision No. 95 of 1905, against the order passed by E. P. Chapman, Sessions Judge of Tirhoot, dated January 18, 1905.

(1) Unreported. (2) (1869) 11 W. R. Cr. 24.

permission, and that, as he was the *kurta*, a power of attorney was not necessary. After some further explanation the Collector passed an order on the 4th September, as appeared from the order sheet, for payment of the amount to the first six petitioners by name and to Thakur Pershad and Rajnarain. Two days later eight men, professing to be the applicants, appeared before the Collectorate sheristadar at the Treasury and signed their names in the order sheet and affixed their thumb impressions. The first six petitioners acted for themselves, while the accused Jagdawan and an unknown person personated Rajnarain and Thakur Pershad, respectively, and signed in their names, but attached their own thumb impressions. The signatures were translated into English, and the order sheet was then taken by the Collectorate mohurir to the Collector who, after inspecting the signatures and the impressions, drew a cheque on the Treasury in the names of all the eight, and then noted on the order sheet "Bill issued in my presence."

On the 29th June 1904, Thakur Pershad filed an application for the withdrawal of his share of the surplus proceeds, but upon an inquiry being held he, on the 25th July, prayed that the case might be struck off as the money had already been duly taken out by Thakur Pershad as *kurta*. The Collector, however, on the 1st August, ordered a judicial enquiry under s. 476 of the Criminal Procedure Code, and ultimately sanction was accorded for the prosecution of the seven petitioners. They were accordingly tried and convicted by the Deputy Magistrate of Durbhanga on the 23rd December under s. 419 of the Penal Code, and sentenced to various terms of imprisonment. On appeal the Sessions Judge of Tirhoot affirmed the convictions, but modified some of the sentences.

The petitioners then obtained this Rule on the District Magistrate of Durbhunga to show cause why the convictions in this case should not be set aside on the ground that, upon the facts found, no offence had been committed.

[777] Mr. *P. L. Roy* (with him Babu *Baldeo Narain Singh*) for the petitioners. No offence is made out on the facts found. It is clear on the finding of the Judge that the petitioners were entitled to draw the money. The Collector had no authority in law to withhold payment. There was no fraud or dishonesty on the part of the petitioners. At most, the Collector having illegally refused to pay the money, they resorted to a trick to get the order of payment. Their acts cannot, therefore, be brought within the definition of cheating in s. 415 of the Penal Code. False personation in a suit or criminal proceeding is punishable under s. 205 of the Penal Code, and similar conduct in registration proceedings is penal under s. 82 (*d*) of the Registration Act: but in neither of these two cases is fraud or dishonesty an ingredient in the offence. False personation in a case of cheating, unless it leads to deprivation of property by deception or has the effect of defrauding any person by the same means, is not punishable under the Penal Code: *In re Loothy Bewa* (1). The cases quoted by the Court below were with regard to forgery, and in every one of them some advantage accrued to the accused, to which he was not entitled, by reason of the fraud practised. In the present case the petitioners obtained nothing to which they were not entitled.

The Deputy Legal Remembrancer (Mr. *Douglas White*) for the Crown. *The cheque, which the Collector issued, must be regarded in the light of property. The petitioners were told that, unless all the members of the*

(1) (1869) 11 W. R. Cr. 24.

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family gave their authority, the Collector would not pay, and yet they got two persons to represent the minors and thus procured the order for payment. There may have been no dishonesty, but there was fraud : see *Empress* v. *Dhunum Kazee* (1), *Queen-Empress* v. *Abbas Ali* (2), *Queen-Empress* v. *Ganesh Khanderao* (3), *Queen-Empress* v. *Soshi Bhushan* (4), *Queen-Empress* v. *Muhammad Saeed Khan* (5).

HENDERSON, J. The question raised upon this Rule is whether, upon the facts found, the petitioners were rightly convicted of cheating by personation under s. 419 of the Penal Code.

[778] The facts found are these :—In the Treasury at Durbhunga there was a sum of Rs. 207 due to the petitioners and to two other persons, Thakur Pershad and Rajnarain, who were minors. The petitioners and these two persons were members of a joint Hindu family, of which the petitioner, Ramdihal, was the *kurta*. Ramdihal having applied for payment of this sum to him as representing the family, the Collector on the 2nd August made an order directing him to produce a power of attorney from the others or to cause them to appear and admit his authority to sign on their behalf. On the 10th August Ramdihal filed a petition before the Collector representing that the family being joint no power of attorney was necessary to enable him to draw the money, but no notice was taken of the petition. On the 6th September the petitioners and two other persons, who put themselves forward as being Thakur Pershad and Rajnarain, presented themselves at the Treasury, and a receipt for the money was signed by the petitioners for themselves and by the other two persons in the names of the minors, and upon this being done the money was paid over. That Thakur Pershad and Rajnarain were personated admits of no doubt. It has been specifically found that the family was joint and that the petitioner, Ramdihal, was authorised in any case to draw the money on behalf of the family including Thakur Pershad and Rajnarain ; the other members of the family having authorized Ramdihal to take the money and sign for all.

Upon these facts the petitioners and one Jagdawan Sing, who personated one of the minors, were convicted under s. 419 of the Indian Penal Code of cheating by personation, and sentenced to undergo terms of imprisonment, and some of them were also sentenced to pay a fine. The question to be determined is whether upon these facts the petitioners were rightly convicted.

A person is said to cheat, if by deceiving another person, he fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or intentionally induces the person so deceived to do anything which he would not do were he not so deceived, and which act causes or is likely to cause damage or harm to that person in body, mind, reputation or property. In either case some one must be deceived, and here the Collector is **[779]** found to have been deceived by the personation of the two minors. In the former case it is necessary that the person deceived should be fraudulently or dishonestly induced to deliver up property. The word "fradulently" is defined by section 25 of the Penal Code thus :—"A person is said to do a thing fraudulently, if he does that thing with intent to defraud, but not otherwise." This definition is, obviously, imperfect as it leaves undetermined the

(1) (1882) I. L. R. 9 Cal. 53, 61.
(2) (1896) I. L. R. 25 Cal. 512.
(3) (1889) I. L. R. 13 Bom. 506, 514.
(4) (1893) I. L. R. 15 All. 210, 218.
(5) (1898) I. L. R. 21 All. 113.

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word " defraud." The word " fraudulently " being used in the section together with the word " dishonestly" must mean, if it is to have any meaning at all, something different from " dishonestly." A person is said to do a thing " dishonestly " if he does it with the intention of causing wrongful gain to one person or wrongful loss to another. " Wrongful gain " is defined to be " gain by unlawful means of property to which the person gaining it is not legally entitled," and " wrongful loss " is " the loss by unlawful means of property to which the person losing it is legally entitled."

It having been conceded that the petitioner Ramdihal was authorized to draw the money due to the members of the family, it follows that he was legally entitled to the money and that the money was not property to which the Collector was legally entitled, for he could have been compelled, on proof of the authority, to pay it over to Ramdihal, and no doubt, had he realized that he would have been justified in paying it to Ramdihal on his sole receipt, he would have paid it. Therefore, it cannot be said that the Collector was dishonestly induced to part with the money. Apparently, however, the word " fraudulently " is not confined to transactions in which there is wrongful gain on the one hand, or wrongful loss on the other, either actual or intended. The word " defraud," which is not defined in the Code, may or may not imply deprivation, actual or intended. The Collector was undoubtedly deceived. He had refused to pay upon the receipt of Ramdihal and would not have paid but for the fact that the receipt purported to be, though in fact it was not, signed by all the persons entitled to the money ; but in the general acceptation of the word he was not defrauded.

He was, I think, induced by what may be described as a trick or a lie, which was acted, to deliver up property (which he had erroneously determined to retain, although he was not [780] legally entitled to do so) to the person who was legally entitled to receive it. The case is somewhat similar to a case in Madras, referred to in Mayne's Criminal Law of India, 2nd edition, p. 780, *Reg.* v. *Longhurst* (1). In that case the accused was indicted for obtaining a carriage from the prosecutor by a false pretence. He admitted the fact, but he said that the prosecutor owed him money (and this was admitted), and that he got the carriage in order to compel payment. In charging the jury Bittleston, J., said :—" If you think he (the accused) did not obtain it (the carriage) with the intention of keeping it, but of putting a screw upon the prosecutor, then I think he is not guilty of the offence. The prosecutor admits that there was a debt due and there is evidence of an arbitration between them as to a money dispute. If you think it was merely a trick resorted to for the purpose of pressure, then I recommend you to acquit. It is very dangerous to convict in a criminal charge where the case comes merely to a matter of civil dispute." That, however, was a case in 1860 before the Penal Code came into force and was tried according to the principles of English Law, and is not necessarily an authority on the construction of section 415 of the Penal Code. In a more recent case—*In re Loothy Bewa* (2) where one Koomaree, who had agreed to sell land, set out to register the conveyance, but fell ill on the way and sent on the defendant who, by personating her, had the deed registered in her name, it was held that the defendant had committed an offence under section 93 of the Registration Act (XX of 1866), but that he was not guilty of cheating by personation under section 419 of the Penal Code. It was considered that there was nothing to show that the prisoner intended to defraud or injure anyone in personating Koomaree and doing

(1) Unreported.

(2) (1869) 11 W. R. Cr. 24.

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an act which Koomaree, doubtless, would have done, had she not been prevented, by illness from going to the office of the Registrar in person.

In my opinion there was no intent to defraud the Collector in this case, and the facts found, therefore, do not come within the first part of section 415 by which cheating is defined; it not having been shown that the act was done fraudulently or [781] dishonestly. In the latter part of the section, however, the words "fraudulently" or "dishonestly" do not find a place, and may accordingly be disregarded in considering whether the facts found come within the latter part of the section. The words (omitting what is unnecessary) are "whoever, by deceiving any person, intentionally induces the person so deceived to do...anything which he would not do ..if he were not so deceived, and which act...causes, or is likely to cause, damage or harm to that person in body, mind, reputation or property is said to cheat." Here again there is no question that deception was intentionally practised and that the Collector was actually deceived, and in consequence of the deception he made over the money, which he would not have paid, but for the deception. But in my opinion it cannot be said, upon the facts found, that the act done, that is, the payment of the money, caused or was likely to cause damage or harm to the Collector in body, mind or reputation, for he was legally bound (though he was entitled to insist upon the authority being proved) to hand over the money to the person or persons authorised to receive it, and Ramdihal has been found to have been so authorized. In my opinion, therefore, the petitioners are not guilty of cheating by personation, and I would make the rule absolute, and setting aside the convictions and sentences, direct that the petitioners be discharged and the fines, if paid, be refunded.

GEIDT J, I entirely agree with the judgment just delivered by my learned brother. It seems clear that there was neither fraud nor dishonesty on the part of the petitioners, nor any harm nor likelihood of harm to the Collector in the petitioner's conduct. It cannot, therefore, be brought within the definition of cheating contained in section 415 of the Penal Code.

Had the false personation occurred in a suit or criminal proceeding, it would have been punishable by section 205 of the Penal Code. False personation in registration proceedings is also punishable by section 82 (*d*) of the Indian Registration Act of 1877. In neither of these cases is fraud or dishonesty an essential ingredient in the offence. But there is no similar provision, as far as I am aware, with regard to false personation in [782] proceedings before a Collector. I agree in making the rule absolute and in setting aside the convictions and sentences.

Rule absolute.

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32 C. 783 (=9 C. W. N. 810=2 Cr. L. J. 524.)

[783] CRIMINAL REVISION.

Before Mr. Justice Henderson and Mr. Justice Geidt.

AJAB LAL KHIRHER *v.* EMPEROR.*

[19th April, 1905.]

Criminal Court—Jurisdiction—Deputy Magistrate—District Magistrate—Subordinate Court—Cognizance—Process.

*Criminal Revision No. 175 of 1905, against the order of W. H. Vincent, Sessions Judge of Bhagalpore, dated Jan. 23, 1905.