

## [APPELLATE CRIMINAL JURISDICTION.]

1874.  
February 19.REG. V. BHAVÁNISHANKAR *et al.*.....*Forgery—Intention to defraud—Wrongful gain or wrongful loss—Avoidance of litigation no fraud on the Stamp Revenue.*

A signed *B*'s name to petitions presented by *C* to the Mámlatdár, requesting his summary assistance, under Regulation 17 of 1827, for the recovery of rents from *B*'s tenants.

*Held* that even if *A* had no authority from *B* to sign his name, and if *A* wished to deceive the Mámlatdár into the belief that it was *B* himself who had signed the petitions, still, if there had been no intention to defraud anybody, or if no wrongful gain or wrongful loss could have been caused to *A* or *B*, *A*'s act did not constitute forgery within the meaning of the Indian Penal Code.

Avoidance of litigation is no wrongful loss to Government.

**T**HIS was an application for the exercise of the High Court's extraordinary jurisdiction.

The accused, Bhavánishankar, was charged with having committed the offence of forgery and of fraudulently using, as genuine, forged documents, and the other accused, with having abetted the offence of fraudulently using, as genuine, forged documents, and of intentionally giving false information to a public servant, &c. The case was tried before J. W. Walker, Acting Assistant Session Judge of Ahmedabad, who sentenced the first prisoner to one year's rigorous imprisonment, and the second to nine months on each head. The prisoners appealed to the Session Judge, who upheld the conviction, but reduced the sentence of imprisonment on each head to six months against the first prisoner, and to three months against the second prisoner.

The facts, in so far as they are material, are as follows:—

The first accused, Bhavánishankar, was the manager of an estate farmed by one Dalsukhrám Hargovan from the Koth Darbár. The second accused was a peon whose duty it was to act under the orders of the first. Rents due from thirty-two tenants on the estate falling into arrears, petitions bearing Dalsukhrám's signature in the handwriting of Bhavánishankar were presented to the Mámlatdár, requesting his sum

1874

REG.

v.  
BHAVA'NI-  
SHANKAR.

mary assistance under Regulation XVII. of 1827. The signature on each of them was made exactly as it would have been made by Dalsukhrám himself, and the petitions were lodged on the last day they could have been lodged.

The effect of the evidence for the prosecution was that Bhavánishankar had no authority from Dalsukhrám to sign his name, although Dalsukhrám himself deposed to the contrary, that he, Bhavánishankar, intended to deceive the Mámlatdár into the belief that Dalsukhrám, and not he, was the real signer of the petitions, and that if Bhavánishankar had not lodged the petitions on the day he did, Dalsukhrám would have been compelled to file regular suits in the civil court for the recovery of the rents due to him.

The Session Judge found it proved on the evidence that Bhavánishankar unauthorizedly signed Dalsukhrám's name intending to deceive the Mámlatdár. He argued that the prisoner intended to cause wrongful gain to his master, and corresponding wrongful loss to Government, who would have got their Stamp revenue if regular suits had had to be filed in the civil courts. The prisoner's intention was therefore dishonest.

The application was heard by MELVILL and NA'NA' BHA'I HA'RIDA'S, J.J.

*Taylor* (with him *Jefferson and Payne*) for the appellants.

*Dhirajlál Mathurádás*, Government Pleader, for the Crown.

PER CURIAM :—We think that this prosecution was instituted, at all events, against the first prisoner, without any sufficient grounds, and that his act cannot, without an extreme straining of the law, be brought within the definition of forgery.

There can be no question, but that, if the first prisoner had Dalsukhrám's authority to present petitions in his name, or *boná fide* believed that he had such authority, he was not guilty of forgery. Dalsukhrám was called for the prosecu-

tion to prove that the prisoner had no such authority. He, however, gave evidence in favour of the prisoner ; but, although there was no evidence to contradict him, the Sessions Court refused to give to the prisoner the benefit of his testimony.

1874

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 REG.  
 v.  
 BHAVA'NI-  
 SHANKAR.

It seems to us that the prosecution was bound to show that the prisoner acted without Dalsukhrám's authority, and that it has given no evidence whatever to prove this.

But, even assuming that the prisoner had no authority, he cannot be found guilty, unless he signed the petitions "dishonestly or fraudulently (a)." The Assistant Session Judge considered that the mere intention to deceive the Mámlatdár was sufficient to make the act fraudulent within the meaning of that section. We do not think that this is so. As said by CRESSWELL, J., in *Reg. v. Marcus* (b), in order to constitute in point of law an intent to defraud, there must be a possibility of some person being defrauded by the forgery, or, as he explains his meaning, in his subsequent remarks, there must be a possibility of some person being not only deceived but injured by the forgery. The Sessions Judge seems to have been sensible of the necessity of finding that there was an intention to cause wrongful gain or wrongful loss to some person. It could not be held that any wrongful gain or loss could have been caused to the prisoner or to Dalsukhrám. The act was done for the benefit of Dalsukhrám, but it is not suggested that he was not legally entitled to the rents which it was the prisoner's object to recover from the tenants. But the Session Judge argued that, if the petitions had not been received and acted upon, Dalsukhrám would have been obliged to sue his tenants in a civil court, and that consequently the Government have been defrauded of the Stamp revenue which would have been paid in the suit. It is sufficient for us to say that we are not disposed to regard litigation as a machinery invented for the benefit of the revenue, or to consider that avoidance of litigation is a wrongful loss to the Government within the meaning of the Penal Code, or in any other sense.

(a) Indian Penal Code, s. 464.

(b) 2 C. & 356. <sup>K</sup>

1874.

REG.

2.

BHAVANT-  
SHANKAR

We reverse the conviction and sentence on the first prisoner and the conviction and sentence passed upon the second prisoner under Sections 471 and 109 of the Indian Penal Code. On the facts found by the Courts below, we cannot interfere with the conviction recorded against the second prisoner under Section 182 of the Indian Penal Code, but we remit so much of the sentence as has not been already undergone.

*Order accordingly.*

APPELLATE CIVIL JURISDICTION.

January 21.

*Special Appeal No. 468 of 1872.*

VITHAL KRISHNA JOSHI.....*Plaintiff and Appellant.*

ANANT RA'MCHANDRA.....*Defendant and Respondent.*

*Village Priest—Disturbance of office—Fees, action for loss of.*

A suit for damages may be brought by a person holding the office of village priest by prescription against an intruder who deprives him of the exercise and benefits of that office.

**T**HIS was a special appeal from the decision of H. J. Parsons, Assistant Judge at Ratnagiri, reversing the decree of the Subordinate Judge of Malwan.

Vithal Krishna Joshi brought this suit against Anant Rámchandra to establish his right to a half share in the *Joshi-pan* and *Bhatpan Watan* in the village of Rede and to recover profits wrongfully received by the defendant. Anant Rámchandra denied the plaintiff's right to the alleged half share in the *Watan*. The Subordinate Judge held the plaintiff's right to be a half sharer in the *Watan* proved, but rejected his claim to the profits. In appeal, the Assistant Judge reversed his decree and threw out the plaintiff's claim, on the ground of his failure to show that the defendant was under any obligation not to officiate as a priest in the village of Rede.

In special appeal, it was contended for the plaintiff, that, as he claimed an exclusive right to officiate as a priest in the village of Rede, and as his claim was quite in accordance with the custom of the country and the rulings of the High