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our opinion that the proceeding of the District Judge, in subsequently admitting a review of his decision in appeal, on the ground that it was necessary to determine, as between Lakshmibai and Balkrishna, whether or not Balkrishna was entitled to call himself a representative of the deceased respondent, was not such a proceeding as is contemplated by the law, and that his decision, that Balkrishna had not been adopted out of the deceased respondent's family, is extrajudicial and of no effect. Lakshmibai and Balkrishna were placed upon the record merely for the purpose of defending the appeal, and it may be that either of them, or that neither of them, is the legal representative of the deceased respondent. The merits of their respective claims was not a question into which the District Judge was called upon to inquire. The District Judge, in appeal, confirmed the decree which had been obtained by the original respondent. The decree in appeal does not, and cannot, determine whether Lakshmi, or Balkrishna, or a third party, is the legal representative, to whom the decree has been transferred by operation of law. That is a question which will have to be determined under s. 232, whenever application is made for execution. With these observations we confirm the order appealed against, with costs.

*Order confirmed.*

4 B. 657.

[657] APPELLATE CRIMINAL.

*Before Mr. Justice Kemball and Mr. Justice F. D. Melville.*

EMPRESS v. SHANKAR.\* [19th July, 1880.]

*Falsification of record in order to conceal negligence—Forgery—Fraud—Indian Penal Code (XLV of 1860), ss. 463, 464.*

Falsification of a record made in order to conceal a previous act of negligence not amounting to fraud, does not amount to forgery within the meaning of ss. 463 and 464 of the Indian Penal Code (Act XLV of 1860.)

[N.F., 11 Cr. L.J. 185=4 Ind. Cas. 1089=U.B.R. 1909, 4th Qr., Penal Code, 29; R., Rat. Unrep. Crim. Cases, 595 (597).]

THE accused was convicted by A. L. Spens, Sessions Judge of North Kanara, of forgery, and sentenced to undergo rigorous imprisonment for eighteen months and to pay a fine of Rs. 200, or, in default, to suffer additional similar imprisonment for six months.

The facts of the case, in so far as they are material for the purpose of this report, are as follows:—

The accused Shankar was an officiating forester of the Sidapur Taluka of the district of North Kanara. It was part of his duty to sell wood from the Government forest, and pass receipts to the purchasers, stating the quantity of wood sold and the price for which it was sold. In the performance of this duty the accused, on the 7th of February 1879, sold by auction the wood of a tree standing in the forest to one Ramaya, passing to him a receipt worded thus:—"That Ramaya bin Parmaya had bought khandis 0-1-3-9 of blackwood, in one piece, at an auction for Rs. 2-8-0, that the sale had been sanctioned by Mr. Stobie, Assistant Conservator of Forests, and that the wood had been handed

\* Criminal Appeal No. 96 of 1880.

over to Ramaya." On the 19th September following, the acting mamlatdar of Sidapur, on receipt of some information, went to Ramaya's village, and made an estimate of the wood sold and the wood which he found in Ramaya's possession. Suspecting that the wood sold was in excess of that mentioned in the receipt, the mamlatdar obtained that receipt from Ramaya, and made it over to the permanent mamlatdar the next day, when he delivered over charge to him of the Sidapur Taluka. A short time afterwards the mamlatdar examined the forest day-book kept in his office, and found under date the 7th February 1879, the day of the sale, [658] that the entry '0-1-3-9' had been altered to '2-1-3-9.' The accused was charged with having made this alteration, and convicted of forgery under s. 464 of the Indian Penal Code.

It was in evidence that the accused called on the acting mamlatdar immediately after his visit to Ramaya's village, and being called on to explain the matter, stated that there was probably a mistake in the figures in the receipt; that he went to the mamlatdar's office on a Sunday, and obtained possession of the forest day-book from karkun Krishnarav in the presence of another karkun Vamanrav; that he copied the entry relating to the sale in question, and produced the copy to the acting mamlatdar. The copy made by him showed the quantity of wood sold as khandis 2-1-3-9 and the price Rs. 2-8-0. The Sessions Judge also held it proved that the outward and inward files, to which the accused had access, contained the item as altered; while the records of the transaction sent to his superiors, and to which he had no access, contained the original entry of '0-1-3-9.'

Upon the whole of the evidence, and having special regard to the circumstances mentioned above and the statements made by the accused before the committing Magistrate and the Sessions Judge, the latter found the accused guilty of forgery.

The prisoner appealed to the High Court.

*Shantaram Narayan*, for the appellant.—There is no evidence to show that the sale by the accused to Ramaya was a fraudulent transaction. There was no irregularity of any kind, and there is nothing to show that Ramaya or the accused was to be unfairly benefited, or that Government was to be wrongfully made a loser. There is absolutely no evidence that the accused changed the cipher into figure 2; but assuming, for the sake of argument, that the accused did make the alteration, the accused has committed no forgery. Section 463 of the Indian Penal Code lays down a definition of forgery. The alteration alleged to have been made by the accused in this case was not made with any of the intents noted in this section. At the time when the alteration was made the accused had no intention to injure any one or to commit any fraud. The fraud, if any, had already been committed; and the accused, at most, could not have intended [659] more than a concealment of past fraud. We deny that there was any fraud. The committing Magistrate did not think there was any fraud in the sale; and Mr. Stobie thought the accused guilty of negligence merely in not taking the trouble of remeasuring the wood before allowing Ramaya to remove it.

*Nanabhar Haridas*, Government Pleader, for the Crown.—It may be taken as beyond dispute that the wood sold was in excess of that entered in the receipt given to Ramaya. The District Judge has found that it was over 2 khandis. If so, the transaction benefited Ramaya, and caused a wrongful loss to Government. The conduct of accused shows that he

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participated in this fraudulent transaction. When asked to explain by the acting mamlatdar, the accused suggests a mistake in the figures of the receipt, and the forest day-book is admitted to contain an altered figure. There is evidence to show that the accused did have access to the book; and it is only natural to infer that the alteration was made by the party most interested in making it. If the sale was not fraudulent I admit that the alteration by the accused was not forgery; but there is no reason to doubt that the sale was fraudulent.

### JUDGMENT.

The judgment of the Court was delivered by

KEMBALL, J.—The appellant has been found guilty, by both Judge and assessors, of forgery in having fraudulently cancelled a cipher in an entry in the taluka forest day-book, and altered the same into a "2" without lawful authority. That an alteration has been made, there is no doubt; but there is no direct evidence that it was made as alleged by the appellant, and his guilt has been assumed mainly on his examinations before the committing Magistrate and in the Sessions Court and upon the probabilities of the case. Both Judge and assessors have laid great stress on these examinations,—in fact, the Judge held that they formed very strong evidence of the appellant's guilt, and inserted a copy of each examination as part of his judgment. On this part of the case we may observe that, in our view of the circumstances, we are unable to concur in the conclusion drawn from the examinations, and we think it necessary to add that we cannot regard with approval the manner in which the examination in the Sessions Court was conducted.

[660] The whole case seems to us to turn on the question whether any fraud was perpetrated in the matter of the auction-sale; for in the absence of satisfactory evidence of such fraud, not only does the ground, on which the Judge based his assumption that appellant made the alteration, disappear, but, as was admitted by Mr. Nanabhai in argument, if the sale was free from fraud, the alteration of the books imputed to the appellant would not amount to forgery within the meaning of ss. 463 and 464 of the Indian Penal Code. On the point, then, of fraud, the case has been very fully argued before us and we have been unable to discover any evidence to support the conclusion arrived at by the Judge; the sale was made by public auction, and there is absolutely nothing to show, nor, indeed, is it even suggested, that appellant had any interest in either defrauding the Government or benefiting Ramaya, the purchaser. — We observe that the committing Magistrate was of opinion that the sale was not fraudulent, though his view was that appellant had entered a less quantity of wood in his report to save himself the trouble of having to explain why it fetched so little. The evidence as to the circumstances of the sale is not very clear; but it is not, we think, proved that the appellant knowingly made a false report on the point, and we incline to the view taken by his official superior, Mr. Stobie, that his fault was that of negligence in not having the wood re-measured prior to delivery, when he could have formed a correct estimate of the actual quantity sold. It may be that Ramaya had in his possession more wood than was entered in the report and other documents, though we do not with the Judge find it to be a matter beyond dispute that it was more than 2 khandis; however that may be, it is evident that a large portion of the tree, which it is said was included in the sale, was quite useless, and we see no reason to doubt the

correctness of the committing Magistrate's opinion, that a fair value for the wood was paid in the position it was in the jungle. No doubt the appellant has acted very foolishly after the acting mamlatdar commenced to make his inquiries, and a certain amount of suspicion, consequently, attached to him, though there is much in the argument that if he had had an interest in making the alteration he would hardly have gone about it in so very clumsy a way. On the whole, [661] we are of opinion that there is no sufficient ground for assuming that the appellant made the alteration in the forest book, and that, if he did do so, that his act was not forgery. For these reasons we reverse the conviction and sentence, and direct the appellant's discharge. The fine, if levied, to be repaid.

*Conviction reversed.*

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