Present: Pereira J.

1912.

THE KING *v.* PEIRIS.

118—D. C. (Crim.) Colombo, 3,337.

Forgery—Forging initials of addressee in delivery book by letter peon—Intention to defraud—Evidence Ordinance, s. 15—Evidence led against accused on charges on another indictment to prove that act was not done accidentally.

The accused, who was entrusted with a letter in which was enclosed a sum of money, misappropriated the money and forged the initials of the peon of the addressee in the delivery book. It was contended that the accused could not be said to be guilty of forgery, inasmuch as in forging the initials the accused could not be said to have intended to defraud anybody, as the misappropriation had already been committed.

Held, that the accused was guilty of forgery.

"The accused by his act of making a false entry in the delivery book deceived Mr. van Twest into the belief that he had duly delivered the letter; and the advantage that he gained was immunity, temporary though it be, from detection, arrest, or other legal process. The elements of deception and advantage are here, and they constitute fraud."

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The accused in this case was charged on another indictment with two other offences similar to those with which he was charged in this case. Counsel for the Crown was allowed, on the supposed authority of section 15 of the Evidence Ordinance, to lead evidence on that indictment as evidence against the accused on the charge in this case.

Held, that the evidence was wrongly admitted. "There was no pretence on the part of the accused that his act of misappropriating the Rs. 4·75 or of forging the initials was accidental, and it was manifest that the acts themselves in nature were such as to exclude altogether the idea of accident."

THE facts appear from the judgment.

A. St. V. Jayewardene, for the accused, appellant.

De Saram, C.C., for the Crown.

Cur. adv. vult.

November 25, 1912. PEREIRA J.—

In this case the accused has been convicted of forgery and criminal breach of trust and sentenced to six months' rigorous imprisonment on each count, the sentences to run consecutively. The case for the prosecution is that the accused was entrusted by Messrs. Forbes & Walker with a letter, in which was enclosed Rs. 4·75, to be taken and delivered to Mr. Wickwar, a gentleman in the Surveyor-General's Office, and that the accused misappropriated the money and forged in the delivery book the initials "W.S.," to indicate that the letter had been delivered to and taken charge of by one Wijesinghe Sarnelis, a peon in the Surveyor-General's Office. Mr. van Twest, a clerk of Forbes & Walker, on seeing these initials was satisfied that the letter had been duly delivered, and the misappropriation of the money thus remained undetected.

Counsel for the accused argued that, assuming the facts to be as stated by the Crown, the accused could not be said to be guilty of forgery, inasmuch as in forging the initials of Sarnelis the accused could not be said to have intended to defraud anybody, as the misappropriation of the Rs. 4·75 had already been committed. He cited the case of *Mukerjee v. Emperor* [1] in support of his contention. In that case it was held that the alteration of accounts so as to show the receipt of a sum of money criminally misappropriated in order to remove evidence of such misappropriation was not an offence under section 465 of the Indian Penal Code, there being no intention to commit fraud. Section 465 of the Indian Code is the section that penalizes forgery. The Court in that case observed that the real purpose of the accused was not to defraud, but to remove the evidence of crime. Can the same be said of the purpose of the accused in the present case? In the Indian case there is ing

[1] *I. L. R. 36 Cal. 955.*

to show at what stage of the proceedings the alleged forgery was detected, or what the advantage was that the accused gained or intended to gain thereby, independently, of course, of the advantage of " removing the evidence of crime," for which, as pointed out by Sir Lawrence Jenkins C.J., the accused was triable under another section of the Code, namely, section 201. The Chief Justice further observed: " As to whether or not there is an intent to defraud in any particular case manifestly must depend on the actual circumstances of that case," and on that ground he distinguished the case from the cases of *Sarkar v. Queen Empress*[1] and *Emperor v. Rash Behair Das.*[2] Now, the term " fraudulently " is defined by the Penal Code to mean " with intent to defraud," and it has been laid down that " where there is an intention to deceive, and by means of the deceit to obtain an advantage, there is fraud " (see the case of *Mohammed Sand Khan* [3]). In the present case the accused by his act of making a false entry in the delivery book deceived Mr. van Twest into the belief that he had duly delivered the letter; and the advantage that he gained was immunity, temporary though it be, from detection, arrest, or other legal process. The elements of deception and advantage are here, and they constitute fraud. The appellant's counsel has further taken exception to a large volume of evidence admitted by the District Judge. It appears that the accused stood charged on another indictment with two other offences similar to those with which he was charged in this case. Counsel for the Crown was allowed to lead evidence on that indictment as evidence against the accused on the charges in this case, and a mass of evidence on charges totally unconnected with the charges in this case was accepted. This was done on the authority, it is said, of section 15 of the Evidence Ordinance, which enacts that " when there is a question whether an act was accidental or intentional or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences in each of which the person doing the act was concerned is relevant." Now, there was no pretence on the part of the accused that his act of misappropriating the sum of Rs. 4·75 or of forging the initials of Sarnelis was accidental, and it was manifest that the acts themselves in nature were such as to exclude altogether the idea of accident, and the reception of the mass of evidence that I have referred to was, to say the least, grossly irregular. In his judgment the District Judge says that this evidence contributes a " very strong point against the truth of accused's evidence regarding the sum of Rs. 4·75."

In these circumstances, I am obliged to observe that, in spite of the asseverations of the learned Judge, it is with difficulty and utmost reluctance that I make up my mind to acquit him altogether of unconscious bias. In view, however, of the evidence mentioned

[1] *(1894) I. L. R. 22 Cal. 312.* [2] *(1908) I. L. R. 35 Cal. 450.*
[3] *(1898) 21 All. 113, 115.*

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above, I have made a special effort to form an independent opinion on the evidence led on the charges in the present indictment, and the conclusion I have arrived at is adverse to the accused. A strong point against the accused is that he not only pointed out the peon Hendrick as the person to whom he delivered the letter, but he pointed out one Croos as a person who was present at the delivery of the letter, and it has been conclusively shown that Croos had not even attended office on August 12. It is said that it has not been clearly shown that the initials forged by the accused were the initials of the name of the peon Sarnelis. I think there is sufficient to indicate this, but, in any case, forgery may be committed by the making of a false document in the name even of a fictitious person.

I affirm the conviction and sentence.

Conviction affirmed.