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THE QUEEN v. KAPURALA.

(Crown Case reserved.)

Forgery—Attesting forged signature—Abetment of forgery—Ceylon Penal Code, ss. 452 and 453.

Held by BONSER, C.J., and WITHERS, J., *dissentiente* LAWRIE, J., that a witness who attests a document knowing that the signature of the maker of the document is a forgery, is not guilty of forgery. *Semble*, he may be guilty of abetment of forgery.

THE case reserved by WITHERS, J., for the consideration and opinion of the Full Court, was as follows :—

“ The accused Punchirala Vederalage Kapurala, of Kelegamtulana in the Eppawala korale of the Province of Anuradhapura, was convicted before me of forgery.

“ The documents alleged to be forged are two duplicate cattle vouchers, Nos. 36 and 38. The former document purports to record the sale of a buffalo by one Bairalage Punchirala, of Tamuttegama in the place aforesaid, to one Simeon Perera, of Welitara in Alutkuru korale, on the 4th day of September, 1895, at a village called Tamuttegama, in the Province of Anuradhapura. The latter document purports to record the sale of a buffalo by one Mudiānselage Ukkurala, of Dematawewa in the said Kelegamtulana, to one Simeon Perera, of Welitara aforesaid, on the same day at the same place.

“ At the alleged date of the alleged offence, viz., the 4th September, 1895, the accused was an arachchi, and the said village of Tamuttegama was then in his jurisdiction. It was the duty of the accused, as such arachchi, to attest the sales of cattle by people resident in his jurisdiction. It was his duty to prepare lists of cattle owned by residents in his jurisdiction.

“ He had prepared such a list for the year 1895, which contained a description of two buffaloes answering to the description of the animals in the impeached documents, as belonging respectively to people bearing the names of the respective vendors in the two documents. It was proved that the particulars under the various heads in both documents were in the handwriting of the accused. It was further proved that the attestation in both documents was in his handwriting.

“ Beyond these facts, and the fact that he had those documents in his possession and custody, and that when called upon to do so he handed them in one day in October, 1895, to the Government Agent or his Assistant, it was not proved that the prisoner had signed the name of the vendor in either document, or put

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“ the mark of the vendee named in them. Nor beyond these
“ facts was it proved that he had done any act against the 2nd
“ and 3rd sub-sections of section 453 of the Penal Code.

“ One Bairalage Punchirala, of the village of Tamuttegama afore-
“ said, was called to prove that he was the only person of that
“ name in that village, and he deposed that the name of Punchirala
“ as vendor in duplicate cattle voucher No. 36, was not signed by
“ him or by his authority.

“ One Mudianselage Ukkurala, of Dematawewa aforesaid, was
“ called to prove that he was the only person of that name in that
“ village, and he deposed that the name of Ukkurala, as vendor in
“ duplicate cattle voucher No. 38, was not signed by him or by his
“ authority.

“ I put to the jury at the close of my charge several questions
“ and directions.

“ It must be taken that the jury found that the prisoner
“ dishonestly and fraudulently attested the two impeached
“ documents, intending it to be believed that the documents were
“ signed by or by the authority of the vendors respectively named
“ in them, by whom or whose authority he knew that the documents
“ were not so signed.

“ This being so, was the prisoner guilty of the offence of forging
“ those documents ?

“ If not, he must be adjudicated not guilty and acquitted.

“ If he was, the verdict will stand. The documents with their
“ translations are appended.

“ From the first, the accused asserted that the duplicates were
“ genuine, but he called no evidence, and did not give evidence at
“ the trial on his own behalf.”

Dornhorst, for the prisoner. There is no evidence of making a document or part of a document as required by section 452 of the Penal Code. Attestation is not making. Garth, C.J., in *re Riaset Ali* (1 L. R. 7 Cal. 352), defines the scope of the word “making” in the definition of forgery, and attesting is clearly excluded. Guilty attestation may perhaps make prisoner liable for abetment of forgery. Mere attestation is not “signing, sealing, or executing,” which imply acts of parties to the document. [*Per Curiam*.—Is a notary attesting a notarial document guilty of forgery?] He is not. [*Per Curiam*.—If accused was present aiding and abetting, he would be liable as principal.] But there is no evidence of that.

Ramanathan, S.-G., for the Crown. The attestation in this case is required by law, and such attestation is a material and necessary part of the document, without which it would be

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incomplete and worthless, so that even if he did not make a document he has made part of a document. Did vendor or vendee by signing make the document? No; it was incomplete, and till signed by the accused and his signature made it complete, so that he executed the document.

Dornhorst, in reply. It would be a contradiction in terms to say that a witness executed a document. "Executing," says Wharton, "is signing, sealing, and delivering in the presence of witnesses, so that a witness is not a person executing." A person may be guilty of the forgery of even an incomplete and worthless document, provided other conditions and the elements of forgery are present.

Cur. adv. vult.

On 8th April the following judgments were delivered:—

BONSER, C.J.—

The question in this case may be strictly stated thus:—Is a witness who attests a document, knowing that the signature of the maker of the document is a forgery, guilty of forgery? It was argued by the Solicitor-General that he is; he fraudulently signs the document with the intention of causing it to be believed that such document was signed by a person whom he knew did not sign it. But a fallacy seems to me to lurk in this use of the word "sign." The attesting witness does not sign the document in the same sense as the maker of the document does—indeed, he cannot, strictly speaking, be said to sign it at all. What he does is to sign a part of the document, viz., the attestation clause. In my opinion the word "sign," when it occurs in the first clause of section 453 of the Penal Code, refers to one and the same act of signing. In other words, the intent must be to cause it to be believed that the signature which was really affixed by the accused was affixed by or with the authority of some other person. That seems to have been the view of the meaning of this clause, which was taken by Garth, C.J. of Calcutta, in *Empress v. Riasset Ali* (7 Cal. 352). It may be that in the present case the prisoner was guilty of some other offence in doing what he did, e.g., abetment of forgery, but I am of opinion that he was not on the facts stated guilty of forgery, and the question must be answered in the negative.

LAWRIE, J.—

In a case tried before my brother Withers at the Kandy sessions, the jury found that the prisoner "dishonestly or fraudulently" attested two documents intending it to be believed that these

“documents were signed by, or by the authority of, the vendors respectively named in them, by whom or by whose authority he knew that the documents were not signed.” My brother referred to the Full Court the question of law—whether, this being so, the prisoner was guilty of the offence of forging these documents? The essence of forgery is the use in a writing of another’s name; such use as to cause it to be believed that the other signed a document which he did not sign. It seems to me that this fraudulent use of another’s name may be made in many ways, notably in two ways: first, by writing the other person’s name with the intention of causing it to be believed that that other person wrote it; and secondly, by writing his own name as attesting or certifying that the other signature is genuine. It is here urged that our Penal Code, in defining and dealing with forgery or making of false documents, omits to notice or to punish those who dishonestly and fraudulently with their own names falsely attest to a signature which is not signed, and which is known by them not to be the signature it pretends to be. I understand that by the common law of England several persons who by signing take a part in making a false document are all guilty of forgery. That is, if I in England were to write my name as witness to a signature purporting to be that of the Chief Justice, when I knew that the writer of that signature was not the Chief Justice, I would be guilty of making part of a false document, and punishable for forgery. It is contended that that is not the law of Ceylon: that by the Penal Code the only way of committing forgery is by writing a name with the intention of causing it to be believed that that very signature was written by or by the authority of a person by whom it was not written. Now, in the case before us, it is plain that the only signature written by the prisoner was his own, and that he did not intend it to be believed that that signature was written by any one else. What he did intend to cause to be believed was that a signature appearing on another part of the document was written by a person who in fact did not write it. It is in my opinion that this later case is dealt with by the 453rd section: “A person is said to make a false document who dishonestly or fraudulently signs a document with the intention of causing it to be believed that the document was signed by a person by whom he knows it was not signed,” seems to me to include the case where there are two signatures, the one false the other genuine, but written with the fraudulent intent to cause it to be believed that the false signature is genuine. In my opinion the words of section 453 are wide enough to treat this case, that the construction put on this section by the Solicitor-

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General is reasonable. I am aware that Sir Richard Garth, Chief Justice of Bengal, in a case reported in 7 *Cal. Rep.* p. 335, read the corresponding section of the Indian Penal Code differently. He said : " What constitutes a false document is not the writing of any " number of words that are in themselves innocent, but the affixing " the seal or signature of some person to the document knowing " that seal or signature is not his, and that he gave no authority to " sign it." This, however, was *obiter dictum*, not essential to the decision of the case before him ; but that still more the opinion of the rest of this Court, that the 453rd section does include the offence committed by the prisoner, necessarily makes me distrustful of the soundness of the opinion I have formed on repeated consideration of the section. I am of opinion that by our law there expressed the person who attested by his own signature, another signature not written by himself, but which he knew was not written by the man whose signature it purports to be, is guilty of making a false document and liable to punishment for forgery.

WITHERS, J.—

The accused has been convicted of forging a document, and the question is, Do the facts found support the verdict? What is the law applicable? The document impeached is known as a duplicate cattle voucher. It is intended by law at once to record and to vouch the disposal of a head of cattle in the manner expressed on the face of it. On one side of the document is a column containing the required particulars of the transaction to be recorded and attested therein. On the same side are spaces for the signature or mark of the vendor and purchaser and two witnesses. On the other side is a space for the official attestation. It is a composite document, which is only complete when the parties to the transaction, the ordinary witness and the official attesting witness, have put their signs or marks. It was found in this case that the signatures of the vendors of the two impeached documents were forged, but it was not found that the prisoner had forged them. It was found that he filled in and signed that part of the document which it was his duty to fill in and sign, and that he dishonestly filled in and signed it with the intention of having it believed that the *vendor's* signature was genuine when he knew that it was not. What is the law? Section 453 of the Ceylon Penal Code enacts : " A person is said to make a false document " who dishonestly or fraudulently makes, signs, seals, or executes " a document or part of a document, or makes any mark

“denoting the execution of a document, with the intention
“of causing it to be believed that such document or part
“of a document was made, signed, sealed, or executed by
“or by the authority of a person by whom or by whose
“authority he knows that it was not made, signed, sealed,
“or executed, or at a time at which he knows that it was
“not made, signed, sealed, or executed.” Now, the prisoner’s
own signature purported to be his own and was his own,
but he had no right to put it, for by putting it he was consciously
testifying to a lie in the shape of a fictitious sale, without the
authority of the vendor named in the document. Does the 453rd
section contemplate the case of the attestation of a forgery, which is
really the case before us? In my opinion, according to this section,
forgery attaches only to what the man himself makes, signs, seals,
or executes. It may be the whole of a document, or it may be a
part. If the accused had been a private person having the same
name as the headman prisoner, and had put his own name intending
it to be believed that it was the headman prisoner’s name, that
would have been forgery under this section, but this is not imputed
to him. Now I will assume that filling in the particulars by the
prisoner was making part of the document. They were in his
handwriting, and he never intended to induce any one to suppose
they were not in his handwriting. It is true he was not authorized
to write those particulars by the person most concerned in the matter,
but I understand the Ordinance to say that the part made and the
part signed by the person charged must be a forgery, and not
another part of the same document which the person has not made
or not signed, &c. The question must be answered in the negative.

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