

Under the Act of 1869, it is clearly a promissory note and, as such, is not admissible in evidence, not being duly stamped. I would dismiss the application with costs.

Muttusami Ayyar, J.—I concur.

NOTES.

[See the case of (1882) 5 Mad. 394 F.B. where it was held that the proper stamp was that under the law at the time of execution while the penalty was to be levied according to the law at the time of enforcement.]

[254] APPELLATE CRIMINAL.

The 8th August, 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE.

Sundriah.....(Prisoner) Appellant

versus

The Queen.*

Criminal Procedure Code, Section 473—Perjury, charge of—Contradictory statements—Trial before Sessions Court before which one of such statements was made—Conviction quashed.

A prisoner who had made certain contradictory statements on oath before a Magistrate and a Court of Sessions respectively was convicted by the same Court of Sessions on a charge, in the alternative, of giving false evidence either before the Magistrate or before the Court of Session.

Held that the Court was precluded by Section 473 of the Criminal Procedure Code from trying the charge.

THE facts of this case appear in the following **Judgment** of the Court :—

The prisoner was not represented.

Turner, C. J.—The appellant has been convicted on a charge of having given false evidence in the alternative, either before the Second-class Magistrate or the Court of Session, the statements made on each of these occasions, and on which perjury is alleged, being directly contradictory the one of the other.

Although the Judge has expressed his opinion, and probably on good grounds, that the statement made to the committing Magistrate was the one of the two statements which was false, there was no amendment of the charge originally framed, and on that the appellant was convicted. He pleads in appeal, *inter alia*, that the Sessions Court was precluded by the terms of Section 473, *Code of Criminal Procedure*, from trying the charge.

I must allow the validity of the plea. I set aside the conviction and commitment and order that the appellant be tried by a Magistrate in the district having first-class powers. If he should be again convicted and sentenced, the Magistrate will take into account the imprisonment he has already suffered.

NOTES.

[See (1892) 14 All. 354 where previous authorities are collected.]

* Appeal No. 328 of 1881 against the sentence passed by C. G. Plumer, Sessions Judge of North Arcot, dated 4th July 1881.