

APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.

QUEEN-EMPRESS

against

VENKAYYA.*

1888.
Feb. 22.
March 13.

Regulation IV, 1816—Power of Village Munsif to administer oath to witness—Criminal Procedure Code, s. 195—Sanction for prosecution of witness for perjury by Village Munsif.

V was tried and convicted under s. 193 of the Penal Code for giving false evidence before the court of a village munsif in a suit in which V was defendant. The village munsif sanctioned the prosecution of V under s. 195 of the Code of Criminal Procedure. On appeal the Sessions Judge acquitted V on the grounds that a village munsif had no power to administer an oath to V (the case not being one in which either party was willing to allow the cause to be settled by the oath of the other) and because s. 195 of the Code of Criminal Procedure did not apply :

Held that both objections to the conviction were bad in law.

IN calendar case 49 of 1887 Raman Venkayya was convicted by the Joint Magistrate of Godávári (G. Hamnett) and sentenced under s. 193 of the Penal Code to three months' rigorous imprisonment.

On appeal, the Sessions Judge (A. L. Lister) acquitted the accused on the 12th December 1887.

On the 20th January 1888 the records were called for by the High Court.

The facts are set in the judgment of the Court.

The Public Prosecutor (Mr. Powell) in support of the conviction.

The Court (Collins, C.J., and Parker, J.) delivered the following

JUDGMENT:—The accused in this case was sued by the complainant before a village munsif for the rent of a house. He persisted in denying the execution of the rent bond, and the village munsif after warning him of the consequence of committing perjury, put him on solemn affirmation and examined him. In

* Criminal Revision Case No. 21 of 1888.

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the result the village munsif found that he had executed the rent bond and gave sanction for a criminal prosecution.

The Acting Joint Magistrate convicted the accused under s. 193, Indian Penal Code, and sentenced him to three months' rigorous imprisonment. On appeal the Sessions Judge reversed the conviction on the grounds:—

- (1) That a village munsif acting under Regulation IV of 1816 is not empowered to administer an oath to a party unless either party is willing to let the cause be settled by the oath of the other, hence that the defendant was not legally bound to make a declaration upon any subject (s. 191, Indian Penal Code).
- (2) That as nothing in the Criminal Procedure Code applies to heads of villages such functionaries cannot give the sanction required by s. 195, Criminal Procedure Code.

The case was called up by the High Court on revision. The accused did not appear, but the Public Prosecutor contended that the accused had been properly convicted. Section 15, Regulation IV of 1816 empowers a village munsif to require the attendance of any person in his village who may be named as a witness by a party and cl. 4 of the same section gives a village munsif authority at his discretion to cause an oath to be administered to a witness.

In the case under consideration the defendant was present at the inquiry and it is not shown that he objected to be called as a witness or to be examined. We apprehend there is nothing in the Regulation to prevent a village munsif examining as a witness any person who is present and who may not have been summoned—nor is there anything to prevent one party naming another party as a witness if he so pleases. The case referred to by the Sessions Judge in paragraph 4 of his judgment is altogether different and relates to the settlement of the cause by the oath of either party, and without trial by the village munsif on the merits (s. 14, cl. 3). We are of opinion that it was competent to the village munsif under the circumstances to examine the defendant as a witness, and that once sworn the defendant was legally bound to speak the truth (see also s. 118, Evidence Act).

A village munsif trying a cause is a Court, and though nothing in the Code of Criminal Procedure applies to heads of villages the limitation in s. 195, cl. (b) is on the powers of the Courts which are governed by the Procedure Code in the entertainment

of complaints. The section merely prohibits the entertainment of a complaint in a Court governed by the Procedure Code without a sanction.

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We set aside the acquittal and direct the Sessions Judge to rehear the appeal.

APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Kernan, Mr. Justice Muttusami Ayyar, and Mr. Justice Parker.

REFERENCE UNDER THE STAMP ACT, s. 46.*

1888.
March 23.

Stamp Act, ss. 3 (10), 55, 57—Duly stamped—Document issued without endorsement required by rules passed and published under ss. 55 and 57.

The omission of a stamp vendor to endorse on a stamped paper the particulars required by rule (9) of the revised rules published under ss. 55 and 57 of the Indian Stamp Act, 1879, by the Government of Madras, with the approval of the Governor-General in Council, does not render a document "not duly stamped" within the meaning of s. 3 (10) of the Indian Stamp Act, 1879.

REFERENCE under s. 46 of the Indian Stamp Act, 1879, by the Board of Revenue.

The case was stated by the Secretary to the Board of Revenue as follows:—

"The enclosed agreement was executed by the toddy farmer of Sidhout on a stamp paper supplied to him by the Tahsildar. By an oversight the usual endorsement required by rule 9 (a) of the Madras Government Notification, No. 129, dated 24th July 1883, was not made on the document. The question for decision is—Whether the omission of the endorsement renders the document not duly stamped.

"On the one hand it may be urged that 'duly stamped' means 'stamped in accordance with the law,' s. 3 (10) of the Act. The rules framed under s. 55 have the force of law (s. 57), and one of those rules is that above referred to which prescribes that the stamp vendor 'shall write on the back of every stamp paper which he sells' a certain endorsement. It may be argued that this is a

* Referred Case 5 of 1888.