

evidence within the definition of section 3 of the Indian Evidence Act. The person making it was a witness within the meaning of section 5 of the Oaths Act, and therefore one to whom an oath or affirmation might be administered.

QUEEN-
EMPRESS
v.
ALAGU KONE.

The case referred to, *Queen-Empress v. Bharna*(1), does not apply, as the ground of decision there was that the third-class Magistrate, who took the statement, had not authority to carry on the preliminary inquiry. Here the statement was taken by the Committing Magistrate in a stage of an inquiry which he was authorized to conduct under the Code of Criminal Procedure.

We must reverse the acquittal and direct that the case be retried.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

QUEEN-EMPRESS

v.

KHAJABHOY.*

1892.
December 15.

*Court Fees Act—Act VII of 1870, ss. 19, 31—Complaints made by
Municipal officers—Process fees.*

No process fee is leviable on complaints made by Municipal officers, and the accused are not liable to refund sums illegally levied from the complainants as process fees.

CASES referred for the order of the High Court under Criminal Procedure Code, s. 438, by C. Kough, District Magistrate of Kurnool.

Process fees were levied on complaints brought by the officers of the Municipality against various persons who were convicted by the Bench of Magistrates of Kurnool and were directed to refund the sums levied as process fees. The District Magistrate referring to a notification, dated 15th January 1890, published in the *Fort St. George Gazette* of the 20th idem, page 54, expressed the opinion that this order was illegal and accordingly reported the cases as above.

(1) I.L.R., 11 Bom., 702. * Criminal Revision Cases Nos. 613 to 632 of 1892.
See also G.O., No. 1471, dated 26th August 1889.

QUEEN-
EMPERESS
v.
KHAJABHOY.

Counsel were not instructed.

JUDGMENT.—Section 31 of the Court Fees Act must be read with section 19. No process fee is leviable under section 19 on complaints made by Municipal officers and we do not think that the accused were liable to refund, under section 31, what was illegally levied from the complainants.

The orders, so far as they direct the accused to pay the process fees, are set aside.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

NARAYANASAMI (PLAINTIFF), APPELLANT,

v.

NATESA (DEFENDANT NO. 2), RESPONDENT.*

1892.
March 25, 28.
April 12.

*Civil Procedure Code—Act XIV of 1882, ss. 206, 622—Amendment of decree—
Appeal—Revision—Review—Exercise of jurisdiction.*

The holder of a decree passed in a suit on a hypothecation bond, applied under Civil Procedure Code, s. 206, to have the decree amended by bringing the description of the land contained therein into accordance with that contained in the hypothecation bond and the Court made an order accordingly. On a revision petition preferred under Civil Procedure Code, s. 622, by the decree-holder :

Held, but on different reasoning by the two learned Judges constituting the Court, that the High Court had no power to interfere on revision.

PETITION under Civil Procedure Code; s. 622, praying the High Court to revise the order of N. R. Narasimiah, District Munsif of Tiruvalur, dated the 26th day of December 1889, made on miscellaneous petition No. 1509 of 1889.

Petition by a decree-holder for the amendment of a decree passed in a suit on a hypothecation bond by bringing the description of the hypothecated property contained in the decree into conformity with that contained in the hypothecation bond.

The District Munsif made an order as prayed and the defendant preferred this petition under Civil Procedure Code, s. 622, which came on for disposal before PARKER, J., who delivered judgment as follows:—

* Letters Patent Appeal No. 26 of 1891.