

“attains his majority, you should give back to me the properties that have fallen to my share, and I and my son will pay you back, without interest, the debts discharged by you. In the event of my not being delivered of a male issue, you are at liberty to enjoy the whole of the properties and cultivate for me the aforesaid  $\frac{1}{4}$  cawni of land during the rest of my lifetime. This deed of settlement I execute with my free will and consent. In case I act contrary to the provisions stipulated herein, I am entitled only to the  $\frac{1}{4}$  cawni set apart to me.”

REFERENCE  
UNDER STAMP  
ACT, s. 49.

Counsel were not instructed.

JUDGMENT.—The deed is not an instrument of gift but purports to transfer to Chidambaram Pillai the property of the executant's husband, subject to the payment of his debts. It also purports to reserve  $\frac{1}{4}$  cawni for the maintenance of the executant and provides for the retransfer of the property in case she should give birth to a son. There is nothing to show that the value of the interest transferred exceeded Rs. 64. The value of the property cannot be taken as the value of the interest actually transferred. We are unable to hold that the document is liable to stamp duty.

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## APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

vs.

ALAGU KONE.\*

1892.  
September 21.  
October 5.

*Criminal Procedure Code—Act X of 1882, s. 164—Oaths Act—*

*Act X of 1873, ss. 4, 14.*

A Magistrate, acting under Criminal Procedure Code, s. 164, has power to administer an oath, and a charge of perjury can be framed with regard to statements made before him on oath when he is so acting.

APPEAL by Government against a judgment of acquittal by H. S. Wynne, Additional Sessions Judge of Madura.

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\* Criminal Appeal No. 295 of 1892.

QUEEN-  
EMRESS  
P.  
ARAGU KONE.

The accused was charged under Penal Code, s. 193.

The charge was framed in the alternative, and it appeared that during a police investigation the accused had made a statement on solemn affirmation before a Magistrate, who recorded it, to the effect that he had been an eye-witness of a murder. The persons implicated by the statement having been put on their trial, he withdrew his statement alleging it to have been made through fear of the police and that he knew nothing at all about the occurrence, and these were the statements in respect of one of which the offence of perjury was charged to have been committed.

The Sessions Judge was of opinion that the Magistrate, before whom the first of these statements was made, had no power to administer a solemn affirmation in holding an inquiry under Criminal Procedure Code, s. 159, and recording statements under section 164. He accordingly held that the charge was not substantiated and acquitted the accused.

The present appeal was preferred by Government.

The *Acting Government Pleader and Public Prosecutor* (*Subramanya Ayyar*) for the Crown.

The accused was not represented.

JUDGMENT.—We have no doubt that the statement A was really taken under the provisions of section 164 of the Code of Criminal Procedure and the only question is whether the Magistrate acting under that section had power to administer an oath.

The Additional Sessions Judge has distinguished this case from that of *Emress v. Malka*(1) on the ground that, under Act X of 1872, the Magistrate was empowered by law (section 331) to administer an oath. That section was not re-enacted in the present Code, since under the Indian Oaths Act X of 1873, all Courts are authorized to administer oaths (section 4), while section 14 of the same Act imposes the obligation to state the truth. The term "Court" includes all Magistrates (section 3 of the Indian Evidence Act).

The direction in section 164 that the statement shall be recorded in one of the manners prescribed for recording evidence is merely a direction as to procedure. The statement itself was one which the law (section 164, Criminal Procedure Code), permitted to be made before the Court by a witness, and is therefore

(1) I.L.R., 2 Bom., 643.

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.

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## 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.

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(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.