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belong to the first petitioner he has a present right to their immediate possession.

The chief questions then, are (1) whether the bamboos do, in fact, belong to the first petitioner or to Government; (2) whether, if they do not belong to the first petitioner he *bonâ fide* believed that they did. In regard to this the fact that his grandfather planted the trees, (if it be a fact) and that he long enjoyed the produce (if he did do so) would be matters of great importance from which to draw an inference as to his honesty. On the other hand, if these are not proved, and if the land is shown not to belong to him, then the fact that he knew that the Revenue authorities had decided against his claim after enquiry and examination of records and had warned him not to interfere with the bamboos would be important in judging of the *bona fides* of his alleged belief.

We set aside the order of the Head Assistant Magistrate confirming the conviction and we direct that the Head Assistant Magistrate to restore the appeal to his file and dispose of it a fresh in accordance with law. He will also reconsider in the light of our observations the petitioner's application for the admission of further evidence. The accused will remain on the same bail pending the disposal of the case by the Head Assistant Magistrate.

APPELLATE CRIMINAL.

Before Mr. Justice Boddam.

1904. December 1.

KAMATCHINATHAN CHETTY (ACCUSED), PETITIONER,

v.

EMPEROR (RESPONDENT).*

Indian Penal Code—Act XLV of 1860, s. 193—Giving false evidence—Deposition of witness upon which assignment of perjury based not taken in manner required by law—Conviction—Unsustainability of.

A was convicted of giving false evidence in a judicial proceeding. It was proved that after his evidence had been recorded, his deposition upon which the

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* Criminal Revision Case No. 368 of 1904, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the judgment of W. W. Phillips, Esq., Sessions Judge of Tinnevelly, in Criminal Appeal No. 51 of 1904, presented against the conviction and sentence of E. W. Legh, Esq., Sub-Divisional First-class Magistrate, Tuticorin, in Calendar Case No. 55 of 1904.

assignments of perjury were based was read over to him by the Court clerk, in a place where neither the Judge nor vakils were present:

Held, that the conviction could not be sustained. The deposition upon which the prosecution was based not being properly taken in accordance with law, should not have been admitted in evidence.

CHARGE of giving false evidence. The accused, who was the first defendant in Original Suit No. 230 of 1902 in the Munsif's Court, was convicted by the Sub-Divisional Magistrate of Tuticorin, of giving false evidence in that suit. The conviction was confirmed by the District Judge.

Against his conviction the accused preferred a criminal revision petition to the High Court on the following *inter alia* grounds:—

(1) The conviction of the accused is illegal.

(2) The prosecution of the accused for statements alleged to be made in a deposition not taken in accordance with law is unsustainable.

(3) Exhibit A not having been taken down by the Munsif in his own hand as the law directs nor having been interpreted to the accused and certified to be correct in accordance with the provisions of the Code, the lower Courts erred in admitting it in evidence and acting on it.

V. Krishnaswami Ayyar and *S. Srinivasa Ayyar* for the petitioner.

Public Prosecutor in support of the conviction.

ORDER.—I am of opinion that this conviction cannot be sustained. The proper proof of the statement on oath of a witness is his deposition taken in the manner required by the Civil Procedure Code.

In this case that which purports to be the deposition of the accused given in the civil suit and upon which this prosecution is based was not properly taken in accordance with the requirements of the Civil Procedure Code. By the Code it is provided that the evidence given by a witness after being taken down in writing "shall be read over in the presence of the Judge and of the witness and also in the presence of the parties or their pleaders and the Judge shall, if necessary, correct the same and sign it." In this case it is proved that the witness was taken aside by the clerk and his evidence read over to him in a place where neither the Judge nor the vakils were present and one of the most important safeguards as to the correctness or otherwise of the deposition was omitted. The Judge is required to be present in

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order that he may correct any inaccuracy or mistake in the deposition and may not depend upon the carelessness, forgetfulness or wilful misrepresentation of another as to whether any and what corrections should be made. The vakils are required to be present that they may call the attention of the witness to any statement appearing in the deposition which may or may not require correction. The document purporting to be a deposition read over and signed without these requirements being complied with is not a deposition and should not have been admitted as such. Without it there is no evidence of the statement on *oath* of the accused upon which the assignments of perjury are based for no oral or secondary evidence was admissible (inasmuch as the actual words purport to have been recorded) as long as the document containing them exists.

In these circumstances the perjury alleged was not proved and the accused should have been acquitted.

I allow this petition and set aside the conviction and sentence passed upon the petitioner and acquit him. The bail must be discharged.

APPELLATE CRIMINAL.

Before Sir Arnold White, Chief Justice.

1904. December 15.

CHINNATHAMBI MUDALI (COMPLAINANT), PETITIONER,

v.

SALLA GURUSAMY CHETTY (ACCUSED), COUNTER-PETITIONER.*

Criminal Procedure Code—Act V of 1898, s. 259—Complaint—Absence of complainant at hearing—Discharge of accused—Revival of proceedings on fresh complaint—Jurisdiction.

Where an order of discharge under section 259 of the Code of Criminal Procedure has been passed by a Magistrate, such order will not preclude him from proceeding with the case on a fresh complaint.

An order of discharge under section 259 of the Code of Criminal Procedure is not an acquittal nor has it the effect of an acquittal under section 403.

* Criminal Revision Case No. 477 of 1904, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the order of Mr. M. Azizudin, Presidency Magistrate, Black Town, in Application No. 9745 of 1904.