

for the plaintiffs and that the third defendant was only a benami payee for them and therefore they were entitled to sue. The plaintiffs were entitled to sue the first defendant and to claim that in giving the note in the name of the third defendant he intended to and in law did, in fact, renew the note to whoever was his creditor and that the third defendant's name was intended merely as the ostensible creditor and he alone was entitled to dispute the plaintiff's right to sue him upon it. The second and third defendants were properly joined in order that the plaintiffs might prove their case and that the decree might bind them. There was no misjoinder, nor was the action one that could not be sustained, nor was it barred. I set aside the decree of the District Munsif and remand the case for disposal according to law. Costs will abide and follow the event.

RAMA-
KRISHNA
RAJU
v.
KATTA
VENKATA
SWAMY.

APPELLATE CRIMINAL.

Before Mr. Justice Boddam and Mr. Justice Moore.

SUPPA TEVAN AND OTHERS (PRISONERS), APPELLANTS,

v.

EMPEROR, RESPONDENT.*

1905
July 19.

Penal Code—Act XLV of 1860, s. 193—'Judicial proceeding'—Oaths Act X of 1872, ss. 4, 5—Criminal Procedure Code—Act V of 1898, s. 164—Magistrate empowered to administer oath when taking statements under s. 164 of the Criminal Procedure Code.

A Magistrate taking statements under section 164 of the Code of Criminal Procedure is acting in discharge of duties imposed on him by law and is empowered to administer an oath under sections 4 and 5 of the Oaths Act. An investigation under Chapter XIV of the Code of Criminal Procedure is a stage of a judicial proceeding and a person making on oath a false statement in the course of such investigation commits an offence under section 193 of the Penal Code.

Queen-Empress v. Alagu Kone, (I.L.R., 16 Mad., 421), followed.

IN the course of an investigation under Chapter XIV of the Code of Criminal Procedure, by the Station-house Officer of Bodinayakanur in a case of alleged murder, the Sub-Magistrate of Uthamapalayam, under section 164 of the Code of Criminal

* Criminal Appeals Nos. 142 to 144 and 147 of 1905, presented against the sentences of H. Moberly, Esq., Sessions Judge of Madura, in case No. 3 of the Calendar for 1905.

SUPPA
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Procedure, took statements on oath from the accused which implicated the first prosecution witness in the murder. The result of the investigation was that the charge against the first prosecution witness was thrown out as false. Sanction was subsequently given to prosecute the accused for having given false evidence in making statements to the Magistrate that they had seen the first prosecution witness murder the deceased.

The Sessions Judge convicted them of offences under section 193 of the Penal Code.

The accused preferred this appeal.

Mr. *John Adam* and *K. N. Ayya* for appellants.

The Public Prosecutor in support of the conviction.

JUDGMENT.—The first ground of appeal is that the Sub-Magistrate of Uthamapalayam when taking down statements under section 164, Criminal Procedure Code, was not authorized to administer an oath to the persons examined by him. Following the decision in *Queen-Empress v. Alagu Kone*(1), we hold that he was so entitled. The Sub-Magistrate is a Court and when he took down statements under this section he was acting in discharge of a duty imposed on him by law and was consequently under section 4, Act X of 1873, authorized to administer an oath. The appellants were persons to whom an oath might be administered, because they were persons who could lawfully be examined by the Sub-Magistrate under section 164, Criminal Procedure Code (*vide* section 5, Oaths Act). It is further urged that the conviction of the appellants under section 193 of the Penal Code was not legal. In the face of the provisions of the explanation attached to that section we cannot accept this contention. An investigation under Chapter XIV of the Criminal Procedure Code is a stage of a judicial proceeding and therefore when the appellants made on oath statements which they knew to be false before the Magistrate conducting that investigation they gave false evidence (*vide* illustration appended to explanation 2) and committed an offence under section 193, Penal Code.

On the merits we are satisfied that the appellants have been rightly convicted. The sentences are not too severe. These appeals are dismissed.

(1) I.L.R., 16 Mad., 421.