APPELLATE CRIMINAL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Napier.

NALLURI CHENCHIAH AND THREE OTHERS (ACCUSED), PETITIONERS,

1919, January, 16.

v.

KING-EMPEROR.*

Criminal Procedure Code (V of 1898), ss. 239, 435, 436, 439—Evidence Act (1 of 1872) sec. 91—Civil Procedure Code (V of 1908), O. XVIII, rr. 5 and 6—Prosecution for perjury—Deposition of a witness not read over and interpreted to him before his signing it—Record, whether admissible in proof—Irregularity or illegality—Public policy—Joinder of persons in preliminary inquiry, whether prohibited—Discharge of accused by Sub-Magistrate—Power of Sessions Judge to direct committal for offences under ss. 471 and 193, Indian Penal Code.

Where a deposition of a witness is not read over and interpreted to him before it is signed by him, he cannot be prosecuted for perjury on such deposition under section 193 of the Indian Penal Code.

Omission to interpret and read over the deposition to the witness is not a mere irregularity but renders the record inadmissible in proof of the deposition under section 91 of the Evidence Act, as the guarantee provided by the law for its accuracy has been substantially ignored and it is dangerous and against public policy to make a witness liable on such a wholly unsafe record.

Bajra v. *Emperor* (1912) I.L.R., 34 Mad., 141, distinguished; *Meango* v. *Baviah* (1918) 45 I.C., 507, dissented from.

A Sessions Judge, acting under sections 435 and 436 of the Criminal Procedure Code, cannot direct committal to the Sessions Court of an accused who has been discharged by a Sub-Magistrate in a preliminary inquiry into offences under sections 193 and 471 of the Indian Penal Code for forgery of a promissory note not being a Government of India promissory note, as such offences are not exclusively triable by a Court of Sessions.

Section 239 of the Criminal Procedure Code prohibits only a joint trial and not a joint preliminary inquiry into a case against several persons for the purpose of committal to the sessions.

PETITION under sections 435 and 439 of the Code of Criminal Procedure praying the High Court to revise the order of K. SRINIVASA RAO, Sessions Judge of Guntūr division, in Criminal Revision Petition No. 10 of 1918, preferred against the order of discharge by A. RAMAYYA, the Stationary Second-class Magistrate of Ongole, in Preliminary Register Case No. 4 of 1918.

* Criminal Revision Case No. 583 of 1918.

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The material facts appear from the judgment.

P. Chenchayya, Counsel for the petitioner.

The Public Prosecutor (*E. R. Osborne*) on behalf of the Crown.

SADASIVA AYYAR, J.—The petitioners in revision are the four accused in Preliminary Register Case No. 4 of 1918 on the file of the Stationary Second-class Magistrate, Ongole. An inquiry for the purpose of commitment or discharge, as the case may be, was made in this case by the said Stationary Second-class Magistrate, the complaint against the first accused being under two sections 471 and 193, Indian Penal Code, and against the other accused under section 193, Indian Penal Code, alone. The charge under section 193 relates to the depositions, exhibits K, L, M and N given by the four accused before the District Munsif of Ongole in Original Suit No. 47 of 1912 were to the effect that the complainant executed a promissory note for Rs. 500 in favour of the first accused's father. The Stationary Sub-Magistrate discharged all the accused under section 209, Criminal Procedure Code. He considered that exhibits K, L, M and N were not admissible in evidence as the legally correct record of the statements given by the accused in the Ongole District Munsif's Court's suit, because it appeared from the evidence of the trial clerk of the District Munsif's Court, prosecution witness 3, that the depositions after they were completed were not interpreted and read over to the witnesses as required by order XVIII, rules 5 and 6, of the Civil Procedure Code. He also held that the statements could not be proved by any other evidence except these records (exhibits K, L, M and N), under section 91 of the Indian Evidence Act. This is the ground on which the Stationary Sub-Magistrate based the discharge of the accused so far as the offence under section 193, Indian Penal Code, was concerned. As regards the offence under section 471, Indian Penal Code, against the first accused alone, the Magistrate's reasons are not quite clear except that the depositions (exhibits K, L, M and N) cannot be used to connect the first accused with the forged document (exhibit A).

Against the order of discharge, a petition under sections 435 and 437 of the Code of Criminal Procedure seems to have been presented to the Sessions Judge and the learned Judge set aside the order of discharge and passed an order containing two directions, the first being that the case against the first accused

should be committed to the Sessions Court by the Sub-Magistrate in order that the first accused may be tried for the offences under sections 471 and 193, Indian Penal Code, and the second direction being that, as regards the accused Nos. 2, 3 and 4, the District Magistrate of Guntūr should direct either the Joint Magistrate of Ongole or any other Magistrate he thinks fit to make a further inquiry into the complaints against these persons and try them as separate cases and dispose of them according to law. I must say that the learned Sessions Judge's first direction out of the two directions found in his order is not warranted by the powers exercisable by him under the provisions of section 435 or section 436 of the Criminal Procedure Code. The offence under section 193, Indian Penal Code, is not exclusively triable by the Court of Sessions. The offence under section 471, Indian Penal Code, is also not exclusively triable by the Court of Sessions unless the forged document is a promissory note of the Government of India. The Criminal Procedure Code (section 435) gives the Sessions Judge power only to call for and examine records. Section 436 gives him power to order commitment only when the offence is exclusively triable by the Sessions Court. The Sessions Judge's order therefore directing the first accused to be committed to his Court is illegal and must be set aside. As regards the charge under section 193, Indian Penal Code, against all the accused, there is a case not officially reported but mentioned in *Meango* v. *Baviah*(1) which goes to the length of holding that even serious irregularities in making the record of the depositions of witnesses do not render that record inadmissible in evidence to prove the statement so recorded and only go in mitigation of the weight to be attached to that record as accurate. I am not prepared to agree to that extent. Where a deposition after it has been completed has been interpreted and read over to a witness and acknowledged by him to be correct, any irregularity due to the omission of the observances of further formalities, such as the presence of the Judge and his listening to the reading during the time when the deposition is interpreted and read over to the witness, may not affect the admissibility of the record as evidence of the witness's statement [see *Bogra* v. *Emperor*(2)]; but the omission to interpret

(1) (1918) 45 I.C., 507. (2) (1912) I.L.R., 34 Mad., 141.

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and read over the deposition to the witness after the deposition is completed cannot in my opinion be put on the same footing, because the guarantee provided by the law for the accuracy of the deposition has been substantially ignored, and it is dangerous and against public policy to make a witness liable on such a wholly unsafe record. I would therefore set aside the Sessions Judge's order so far as it directs the District Magistrate to make further inquiry in respect of the charge under section 193, Indian Penal Code.

I may add that the Sessions Judge fell into another error in holding that the Sub-Magistrate contravened the provisions of section 239 of the Criminal Procedure Code in inquiring into the cases of these four accused jointly, section 239 prohibiting only a joint trial and not a joint preliminary inquiry into a case for the purpose of commitment to the sessions. Though the Sessions Judge's order as against the first accused must be set aside as illegal, I think that this is a case in which the powers of this Court under section 439, Criminal Procedure Code, might properly be utilized in passing the necessary order in connexion with the alleged forgery of the promissory note for Rs. 500 in the interests of justice. There was some evidence before the Sub-Magistrate that the first accused did use the document as genuine in a Court of Justice and that the document is a forgery. The proper course for the Sub-Magistrate under those circumstances was to have committed the first accused to the Sessions Court as regards the offence under section 471. I would therefore direct him to do so.

NAPIER, J.

NAPIER, J.—I agree. I would add that I am strongly influenced in the view I take as to the admissibility of the exhibits K, L, M and N, which have clearly been recorded in an irregular manner, by the provisions of section 91 of the Evidence Act which seem to lay down that the deposition is the only evidence admissible of the statements alleged to have been made by the witness. The words are

> "In all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of such matter except the document itself or secondary evidence of it."

It seems to me that where the legislature has imposed such narrow limits on methods of proof, we should be careful to see

that this sole proof is forthcoming in a form which is free from suspicion, and I entirely agree with my learned brother that where the ground of the attack goes to the knowledge of the witness as to what has been recorded as his statement, we have not got that certainty of accuracy which the law must require under section 91 of the Evidence Act. I agree with the order proposed by my learned brother.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Phillips and Mr. Justice Krishnan.

1919, January, 17.

RAMANAYAKUDU AND THREE OTHERS (DEFENDANTS NOS. 5 TO 8), APPELLANTS,

v.

BOYA PEDDA BASAPPA AND TWO OTHERS (PLAINTIFF AND DEFENDANTS NOS. 1 AND 2), RESPONDENTS.*

Civil Procedure Code (V of 1908), sec. 64 and O. 21, r. 54—Attachment when effective against alienation.

An attachment of land which is only ordered but not communicated to the judgment-debtor by the issue of a prohibitory order under Order 21, rule 54, Civil Procedure Code, does not affect an alienation made before the judgment-debtor has knowledge of the prohibitory order.

SECOND APPEAL against the decree of A. FOTHERINGHAM, District Judge of Kurnool, in Appeal Suit No. 3 of 1917, against the decree of A. NARAYANA PANTULU, District Munsif of Kurnool, in Original Suit No. 566 of 1915.

In 1914 the fourth defendant was sinking into insolvency. On 1st February 1915 he borrowed Rs. 500 from plaintiff's second witness, but the latter required a surety and plaintiff stood surety. On 21st March 1915 the plaintiff paid off plaintiff's second witness's loan and on 29th April 1915 fourth defendant executed a lease to him of the suit land for five years in discharge of the Rs. 400 due on this account. But meantime on 23rd April 1915 first and second defendants (decree-holders against fourth defendant) had obtained an attachment order on this same land though it had not been executed by 29th April 1915. Eventually the land was sold in court auction and the third defendant bought it and had plaintiff evicted. Plaintiff accordingly sued for repossession as lessee. While the suit was pending third defendant

*Second Appeal No. 511 of 1918.