

ram (1), *Pragi Lal v. Maxwell* (2), *Bhagbat Pandu v. Bamdeb Panda* (3), and *G. Chisholm v. Gopal Chander Sarma* (4). Section 216 of the Code of Civil Procedure, as amended by Act No. VII of 1888, recognises that a right of set-off which would not be admissible under s. 111 of that Code might be otherwise admissible and that a defendant pleading it might be entitled to a decree on it as against the plaintiff. Under these circumstances the Court should have gone into the question of the defendant's set-off, as it arose out of the same transaction; but inasmuch as it appears to us that if the question of set-off were gone into the parties would be put to the expense of a remand with the result that the defendant would succeed in the suit, and inasmuch as Pandit *Sundar Lal* is willing to forego any claim in excess on the set-off, we have allowed him to object to the maintenance of the suit at all in this appeal although that point was not specifically raised. In our opinion upon the findings below the plaintiff's suit should have been dismissed. We allow this appeal and dismiss the plaintiff's suit with costs. Pandit *Sundar Lal* on behalf of his client abandoning the set-off, the set-off is dismissed, but without costs. The defendant will have the costs of the suit in all Courts.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.

QUEEN-EMPRESS v. BHAGWANTIA.

Act XLV of 1860, ss. 191 and 193—Criminal Procedure Code, ss. 161—False evidence—Statement made to a police officer investigating a case—Mode of recording such statements.

It is not necessary that the statement of a witness recorded under s. 161 of the Code of Criminal Procedure, 1882, should be elicited and recorded in the form of alternate question and answer. It is sufficient if such statement is substantially an answer to one or more questions addressed to the witness before the statement is made.

The provisions of ss. 191 and 193 of the Indian Penal Code do apply to the case of false statements made under s. 161 of the Code of Criminal Procedure, 1882.

- (1) I. L. R., 4 Bom. 407. (3) I. L. R., 11 Cal. 557.
 (2) I. L. R., 7 All. 234. (4) I. L. R., 16 Cal. 711.

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It is not illegal, though unnecessary, for a police officer recording a statement under s. 161 of the Code of Criminal Procedure, 1882, to obtain the signatures of persons present at the time to authenticate his record of such statement.

THE facts of this case sufficiently appear from the judgment of the Court.

The Public Prosecutor (The Hon'ble Mr. *Spankie*) for the Crown.

The respondent was not represented.

EDGE, C. J., AND TYRELL, J.—In this case an appeal has, by order of the Local Government, been presented under s. 417 of the Code of Criminal Procedure against an order in appeal of the Sessions Judge of Meerut acquitting Musammat Bhagwanti of the offence of which she had been convicted under s. 193 of the Indian Penal Code. She was tried on an alternative charge of perjury. She had made a statement to a Police Officer holding an investigation, and she was bound under s. 161 of the Code of Criminal Procedure, 1882, to answer truly all the questions relating to the case put to her by such officer. Section 193 of the Indian Penal Code applies to answers so given; because she was, within the meaning of s. 191, legally bound by an express provision of law to speak the truth to the officer. The questions were not questions tending to criminate her. When examined before the Magistrate her evidence was in contradiction of the answers given by her to the Police Officer. The question, or rather series of questions, under the head of "question," which was put to her by the Police Officer was as follows:—"What do you know in the case? Where were you on Saturday night? What did you see? Was there any one else in the house?" That series of questions or one question combining several led to her answer, the material part of which is in effect that she saw four Chamars, whom she named, strangling Musammat Sanwalia on a charpoy outside Musammat Sanwalia's door and saw them carrying her body off afterwards. When examined before the Magistrate she stated that on the Sunday morning, which was the day after that to which her previous statement referred, she saw Musammat Sanwalia going away with one Dharma, a sweeper,

It is perfectly obvious that these two statements are not consistent. One is destructive of the other. They cannot both be true, as she must have known. The offence charged under s. 193 of the Indian Penal Code was consequently made out, if there was satisfactory evidence that she made the first statement to the Police Officer. On that point there was the Police Officer himself, who produced his diary in which he had recorded the statement at the time. There was also the evidence of three lambar্দárs and the son of another lambar্দár, *i. e.*, of four independent persons who were present when Bhagwantia was questioned by the Police Officer. All these persons spoke to the statement which was recorded and swore that that was the statement which the woman had made. Three of them further remembered, apparently without looking at the statement, that Bhagwantia had mentioned the four men referred to in the statement as the persons whom she saw strangling Musammát Sanvalia. The Sessions Judge considers that evidence not satisfactory. We confess we do not see how, on occasions such as this, a Police Officer can obtain more satisfactory evidence than was obtained here. The woman was examined in the presence of several lambar্দárs, who apparently were respectable people, and three of those lambar্দárs and the son of another were called to prove that she made the statement. In our opinion it is proved beyond all reasonable doubt that she made the statement alleged to the Police Officer. Sections 164 and 364 do not apply to an examination under s. 161 of the Code of Criminal Procedure, 1882. If the Police Officer were at the completion of each sentence by the person whom he was examining to stop that person and ask a fresh question, it is probable that the whole truth would not come out. The test as to whether a case comes within paragraph 2 of s. 161 of the Code of Criminal Procedure, 1882, is—was a question put to the person by the Police Officer, and was what was stated by that person stated in answer to that question? In our opinion this case fails that test. The Sessions Judge was of opinion that the Police Officer should have got the lambar্দárs and other persons present to sign the record of Bhagwantia's statement as witnesses. There would be nothing illegal in Police Officers obtaining the signatures

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of witnesses to a statement, but there is nothing to compel a witness to sign, and we very much doubt whether any of the by-standers would drag themselves into a case by signing a statement made under s. 161 of the Code of Criminal Procedure, 1882. We set aside the order of acquittal of the Sessions Judge, and we convict Musammat Bhagwanti of the offence charged under s. 193 of the Indian Penal Code, and, taking into account the fact that she has already been imprisoned for over two months, we sentence her to be rigorously imprisoned for fourteen days for the offence of which we have convicted her.

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APPELLATE CIVIL.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.

IN THE MATTER OF PETITION OF SITA RAM KESHO AND OTHERS.*

Act I of 1868, s. 3, cl. (1)—Act X of 1877, s. 599—Civil Procedure Code, s. 599—Act VII of 1888, s. 57—Act XV of 1877, ss. 2 and 5: sch. ii, arts 177 and 178—Application for leave to appeal to Her Majesty in Council—Limitation.

Section 599 of Act No. XIV of 1882 was not inconsistent with article 177 of the second schedule of Act No. XV of 1877 as read in conjunction with the provisions contained in the sections of that Act which are applicable to article 177. The limitation therefore for an application for leave to appeal to Her Majesty in Council is six months from the date of the decree to appeal from which leave is sought.

The provisions of the second paragraph of s. 5 of Act No. XV of 1877 do not extend to applications for leave to appeal to Her Majesty in Council.

Fazal-un-nissa Begam v. Mulo (1), Burjore and Bhawani Pershad v. Bhagana (2), Lakshmi v. Ananta Shanbaga (3), and Ganga Gir v. Balwant Gir (4) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. A. H. S. Reid, for the applicants.

The Hon'ble Mr. Spankie, for the opposite party.

EDGE, C. J., and TYRRELL, J.—This application under ss. 598 and 600 of the Code of Civil Procedure was presented to this Court on the 19th of February 1891 by the plaintiffs in the suit,

* Application No. 4 of 1892 for leave to appeal to Her Majesty in Council.

(1) I. L. R., 6 All. 250.

(3) I. L. R. 2 Mad. 230.

(2) L. R. 11, I. A. 7, s. c, I. L. R.

(4) Weekly Notes-1881, p. 130.

10, Calc. 557.