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has been interpreted by this Court in *Ram Lal* v. *Sil Chand* (1) in a sense adverse to the present contention.

We regret that we are unable to help the appellants, but we think that they might have foreseen this difficulty and have moved this Court to make an order rendering the respondent personally liable for the costs they incurred in answering him. For the above reasons we dismiss this appeal, but under the circumstances we make no order as to costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

1904
March 14.

Before Mr. Justice Blair and Mr. Justice Banerji.

EMPEROR *v.* BABU RAM. *

Act No. XLV of 1860 (*Indian Penal Code*), *section* 191—*False evidence—Perjury not necessarily on a point material to the case.*

Semble that to constitute the offence defined by section 191 of the Indian Penal Code it is not necessary that the false evidence should be concerning a question material to the decision of the case in which it is given; it is sufficient if the false evidence is intentionally given, that is to say, if the person making that statement makes it advisedly knowing it to be false, and with the intention of deceiving the Court and of leading it to be supposed that that which he states is true. *The Queen* v. *Mahomed Hossain* (2) and *The Queen* v. *Shib Prosad Giri* (3) referred to. *Emperor* v. *Ganga Sahai* (4) discussed.

But if the false evidence does not bear directly on a material issue in the case, being relative to incidental or trivial matters only, that would be a matter to be taken into consideration in fixing the sentence.

IN a suit in the Court of the Munsif of Bareilly city one Babu Ram appeared as a witness and made a statement concerning the existence of a certain *kachchi* well which, according to the witness, had been filled up several years before suit. The object of Babu Ram in testifying to the existence of this *kachcha* well was to induce the Court to believe that the boundary of certain property in dispute in the suit extended further in a certain direction than it really did. This statement was, however, disbelieved, and Babu Ram was prosecuted for the offence of giving false evidence under section 193 of the Indian

* Criminal Revision No. 785 of 1903.

(1) (1901) I. L. R., 23 All., 439.
(2) (1871) 16 W. R., 37.
(3) (1873) 19 W. R., 69.
(4) Weekly Notes, 1903, p. 68.

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Penal Code. He was convicted by a Magistrate of the first class of Bareilly. He appealed, and his appeal was heard by the Sessions Judge of Shahjahanpur, who upheld the conviction. Babu Ram then applied in revision to the High Court, where his main contention was that "the statement of the applicant alleged to be false was absolutely immaterial to the result of the case in which the applicant appeared as a witness," and reliance was placed on the case of *Emperor* v. *Ganga Sahai* (1).

Babu *Satya Chandra Mukerji*, for the appellant.

The Assistant Government Advocate (Mr. *W. K. Porter*), for the Crown.

BLAIR and BANERJI, JJ.—This is an application for revision of an order passed on appeal by the Sessions Judge of Shahjahanpur affirming a conviction by a Magistrate under section 193 of the Indian Penal Code. The grounds of revision pressed upon us are, firstly, that the statement on which the conviction was based was a statement wholly immaterial to the issue that the Court was trying. The second ground of revision is not argued before us, and the third has reference to the question of sentence only. On the first ground Mr. *Satya Chandra* cited as an authority a judgment of a learned Judge of this Court, Mr. Justice Knox, in *Emperor* v. *Ganga Sahai* (1). This application for revision came first before our brother Aikman, and upon the case of *Emperor* v. *Ganga Sahai* being brought before him he was unwilling to accept what was argued to be the ruling in that case. The ruling to which he objected forms a portion of the judgment of Mr. Justice Knox and is as follows:—"For a conviction under section 193 it is a material element that the false evidence should be given so as to cause the person who in such proceedings is to form an opinion on the evidence to entertain an erroneous opinion touching any point material to the result of such proceedings." We have a little difficulty in appreciating accurately the scope and intention of the sentence. If by it it be intended to convey that no conviction for perjury can be had, unless the evidence bore directly on some issue which had to be tried in the case in which the evidence was given, we find it impossible to agree with it, as the definition

(1) Weekly Notes, 1903, p. 68.

of perjury in section 191 of the Indian Penal Code imposes no such restriction upon the nature of the evidence upon which a conviction for perjury can properly be had. It deals with the making of any statement which the maker either knows or believes to be false or does not believe to be true. If our learned brother intended by the sentence to include in false swearing for which a conviction would lie statements made to buttress the evidence of a witness or to make his evidence less credible than it otherwise would have been, such evidence being in our opinion likely to influence the opinion of the Court trying the case would be material, and we do not think the words used by our learned brother necessarily exclude such evidence from the class of cases which fall under section 191. Our attention has been called to several cases, amongst which are the cases of *The Queen* v. *Mohamed Hussain* (1) and *The Queen* v. *Shib Prosad Giri* (2). These two cases are distinctly in point, and they lay down as a general principle that "the words in section 191 are very general and do not contain any limitation that the statement made shall have any bearing upon the matter in issue. It is sufficient to bring a case within that section if the false evidence is intentionally given, that is to say, if the person making the statement makes it advisedly, knowing it to be false, and with the intention of deceiving the Court and of leading it to be supposed that that which he states is true." In our opinion the evidence, the nature of which was to make a witness more or less credible to the Court, is material evidence and therefore fit subject for a prosecution. If the evidence does not bear directly on a material issue in the case, being relative to incidental or trivial matters, then in our opinion it would be a matter to be taken into consideration in fixing the sentence, but would not render illegal a conviction. In the present case, however, it seems to us that this question does not arise. On perusing the judgment in the civil case and examining the map of the locality, we find that the evidence about the *kachcha* well was evidence material to a question at issue, namely, where did the boundaries of the house mortgaged in 1868 in suit lie? The conviction must be upheld. On the question of sentence the

(1) (1871) 16 W. R., 37. (2) (1873) 19 W. R., 69.

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observations made above have some bearing. The evidence was intended to alter the decision of the Court. We therefore see no reason to interfere with the sentence which has been passed. We dismiss the application.

Application dismissed.

1904
March 14.

Before Mr. Justice Blair and Mr. Justice Banerji.

EMPEROR *v.* BINDESRI PRASAD.*

Criminal Procedure Code, section 250 — *Frivolous or vexatious complaint— False complaint—Act No. X of* 1882 *(Criminal Procedure Code), section* 560.

Held that section 250 of the Code of Criminal Procedure is equally applicable to a case which is deliberately false as to one which cannot be said to be more than frivolous or vexatious. *Manjhli* v. *Manik Chand* (1), *quoad hoc* overruled. *Adikkan* v. *Alagan* (2) and *Beni Madhub Kurmi* v. *Kumud Kumar Biswas* (3) followed.

THIS was a case reported under the provisions of section 438 of the Code of Criminal Procedure by the Sessions Judge of Mirzapur. The facts, so far as necessary for the purposes of this report, appear from the Sessions Judge's order, which was as follows:—

"This is an application for revision of an order of the Deputy Magistrate, dated 29th October 1903, passed against the applicant under section 250 of the Code of Criminal Procedure and condemning him to pay Rs. 25 as compensation to the person against whom he had brought a charge under section 457 of the Indian Penal Code. The Deputy Magistrate's finding in that case was that the charge was a false one; and according to the ruling in *Manjhli* v. *Manik Chand* (1), section 250, Criminal Procedure Code, is not applicable in cases where the charge is definitely found to be false and where more serious punishment therefore is called for.

In his explanation the Magistrate concerned referred to the cases of *Beni Madhub Kurmi* v. *Kumud Kumar Biswas* (3) and *Adikkan* v. *Alagan* (2).

The reference came before Aikman J., who, disagreeing with the dictum to be found towards the close of the judgment in *Manjhli* v. *Manik Chand* (1), referred the case to a Division Bench.

Munshi *Kalindi Prasad*, in support of the reference.

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* Criminal Reference No. 4 of 1904.

(1) Weekly Notes, 1896, p. 180. (2) (1897) I. L. R., 21 Mad., 237.
(3) (1902) I. L. R., 30 Calc., 123.