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notice of the same to the parties, and allow ten days for objections in case the defendant desires to file further objections. It may be a matter for inquiry whether the award was really made on the date which it purports to bear, as it would certainly amount to misconduct on the arbitrator's part if he made the award after the court's order of the 28th of July, 1911, reached him, and purposely antedated it.

For these reasons, I would set aside the order dismissing the plaintiff's suit, as well as the order superseding the arbitration, and remand the case to the court below with directions as suggested above.

RAFIQ, J.—I concur.

BY THE COURT.—The order of the Court is that the order of the lower court dismissing the plaintiff's suit, as also the order superseding the arbitration, is set aside, and the case is remanded to the court below to consider the validity of the award and to dispose of the suit according to law. The costs of this application will be costs in the suit.

Application allowed.

REVISIONAL CRIMINAL.

1914

April, 2.

Before Mr. Justice Piggott.

EMPEROR v. MUHAMMAD ISHAQ.*

*Act No. XLV of 1860 (Indian Penal Code), sections 52, 191 and 193—Perjury—
Verification of application for execution containing statements in fact untrue—
“ Good faith.”*

A man cannot be convicted of perjury under section 193 of the Indian Penal Code for having acted rashly, or for having failed to make reasonable inquiry with regard to the facts alleged by him to be true. It must be found that he made some statement which he knew to be false, or which he believed to be false, or which he did not believe to be true, and this finding should be arrived at independently of the definition of “good faith” in section 52 of the Code.

ONE Muhammad Ishaq presented to the Court of Small Causes at Benares an application for execution of a decree, duly verified according to law, stating that a decree had been passed on a certain date by the Court of Small Causes in his favour for a certain sum of money against one Bhola Sahu. As a matter of fact on the

* Criminal Revision No. 185 of 1914 from an order of B. J. Dalal, Sessions Judge of Benares, dated the 7th of March, 1914.

date in question no decree had been passed in the applicant's favour against Bhola Sahu, although a suit was pending which ended later on in a decree in his favour, neither was the decree when passed for the exact sum named in the application for execution. Muhammad Ishaq was convicted under section 193 of the Indian Penal Code in respect of the verification of the application, and applied in revision to the High Court.

Mr. G. P. Boys, for the applicant.

The Assistant Government Advocate (Mr. B. Malcomson), for the Crown.

Piggott, J.—This is an application in revision by one Muhammad Ishaq who has been convicted of an offence under section 193, Indian Penal Code, in that he presented before the Court of Small Causes of Benares an application for execution of a decree, duly verified according to law, which contained over the said verification allegations of fact which were not true. So far the case for the prosecution has been fully made out: Muhammad Ishaq did present an application for execution in which he stated that a decree had been passed, by the very court to which he was applying, in his favour, for a certain sum of money against Bhola Sahu. It appears that on the date in question no decree had been passed in favour of Muhammad Ishaq against the defendant Bhola Sahu, although a suit was pending which ended later on in a decree in favour of Muhammad Ishaq. This decree again was not for the precise sum alleged in Muhammad Ishaq's application for execution. The Magistrate who tried the case in the first instance has discussed the defence set up by Muhammad Ishaq in a manner which clearly shows that he was labouring under a misapprehension as to the law applicable to the case. Muhammad Ishaq's plea was that he stated nothing in the verification in question which he did not believe to be true at the time that he presented his application, thus verified, to the court. The Magistrate refers to the provisions of section 52 of Indian Penal Code and remarks that on Muhammad Ishaq's own showing there was an absence of due care and attention on his part, and that he cannot be said to have believed "*in good faith*" that a decree had been passed in his favour for the sum alleged, because a very little inquiry would have shown him that no such decree had been passed. The learned Sessions Judge does not refer to section 52,

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Indian Penal Code, in his judgement ; but he says that the question in issue is whether Muhammad Ishaq acted in good faith, under a *bond fide* mistake. This remark suggests that the provisions of section 52 were also in the mind of the learned Sessions Judge when he dismissed Muhammad Ishaq's appeal. Now the offence which is punishable under section 193, Indian Penal Code, is defined by section 191 of the same Code. That definition shows that it lay on the prosecution to prove, not merely that this verification made by Muhammad Ishaq covered statements which were false in fact, but that in making these statements Muhammad Ishaq either knew or believed the same to be false, or did not believe the same to be true. There has to be a finding against the accused on this point before the conviction under section 193, Indian Penal Code, can be affirmed. This finding must be arrived at independently of the definition of "good faith" contained in section 52, Indian Penal Code. A man cannot be convicted of perjury for having acted rashly, or for having failed to make reasonable inquiry with regard to the facts alleged by him to be true. It must be found that he made some statement or statements which he knew to be false, or which he believed to be false, or which he did not believe to be true. If I rightly understand the judgements of the two courts below, there has not been any finding against Muhammad Ishaq on this essential point. The Magistrate's finding certainly amounts to no more than this, that Muhammad Ishaq may have believed the statements made in his verification to be true, but that, if he did, he believed this without due care and attention. In coming to this Court in revision Muhammad Ishaq has confined himself to a plea against the severity of the sentence. I take it that, so far as he is personally concerned, he would be prepared to submit to the fine of Rs. 20 as a punishment for his rash and careless action, but he applies to this Court to relieve him from the sentence of imprisonment. The case having come before me, and the record having been examined by me according to law, I am unable to deal with the matter with reference merely to the wishes of the applicant. A man should not be convicted of perjury for having been rash or credulous, and the conviction in this case is in my opinion based upon an error of law. I accordingly set aside the conviction and the sentence, acquit Muhammad Ishaq of the offence charged and

direct that his security be discharged and the fine, if paid, be refunded.

Conviction set aside.

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APPELLATE CIVIL.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

1914
April, 9.

BAHADUR SINGH (PLAINTIFF) v SHIAM SUNDAR TUG (DEFENDANT).
Company—Sale of shares—Bond given for price—Unauthorized refusal of manager to register transfer—Suit on bond—Plea of non-registration of transfer not open to defendant.

A sold to B certain shares in a company, and B instead of paying the price in cash, executed a bond therefor in favour of A. Registration of the transfer was refused by a person describing himself as the chief manager of the company, who, however, did not appear to have any authority under the articles of association to refuse to register a transfer of shares.

Held on suit by A on the bond that it was not competent to B to plead as a defence that the transfer of the shares purchased by him had not been registered, as there had in fact been no refusal to register by the company.

THE facts of this case were as follows :—

The plaintiff transferred 10 deferred shares in the Indian Co-operative Bank, Limited, to the defendant on the 18th of April, 1911, for Rs. 500, and in lieu thereof the defendant executed a bond in favour of the plaintiff on the same date. The articles of association of the Bank which were in force on the 18th of April, 1911, had the following provision in regard to transfers:—

“The Company may decline to register any transfer of shares made by a member indebted to it or on which the Company may have a lien and the Company may also decline to register any transfer to any transferee not approved of by the directors, and they shall not be required to assign any reason for refusing such transfer.”

On the 8th of August, the plaintiff instituted the present suit on foot of the bond. On the 19th of August, the Bank at a meeting adopted a new set of articles of association and resolved that “they shall have retrospective effect”. In the new articles in

* Second Appeal No. 95 of 1913, from a decree of I. B. Mundle, Additional District Judge of Bareilly, dated the 23rd of November, 1912, reversing a decree of Abdul Halim, Munsif of Bareilly, dated the 20th of March, 1912,