

REVISIONAL CIVIL.

1917
February, 8.

Before Justice Sir George Know.

EMPEROR v. CHOTE LAL.*

Criminal Procedure Code, section 476—Practice—Order for prosecution for perjury—Court not bound to set out assignments of perjury alleged—Civil Procedure Code (1908), section 115—Revision—Material irregularity.

In every case, whether under section 195 or section 476 of the Code of Criminal Procedure, the particular statement, when the offence refers to a statement, should be set out, so that the accused person should not be taken by surprise, but should clearly know what is the statement which he is required to meet. It does not, however, follow that non-specification of the statement is a material irregularity justifying interference in revision by the High Court.

IN a suit upon a promissory note the defendant admitted his signature, but said that it had been obtained on blank paper under a representation that an application would be written on it for the establishment of a school. Besides the signature there were the words, in the defendant's hand-writing: "Executed promissory note, which is correct, by his own pen." The court held that the promissory note was duly executed by the defendant and that his statement that the signature had been obtained on blank paper was perjured. The court then held an inquiry under section 476 of the Code of Criminal Procedure and the order concluded as follows:—"Chote Lal is guilty of perjury and must stand his trial. Order: Let the paper be sent to the District Magistrate for trial." The defendant, Chote Lal, applied in revision to the High Court.

Babu *Piari Lal Banerji*, for the applicant:—

The court acting under section 476, Criminal Procedure Code, has not assigned the perjury. It should not be left to the Criminal Court to read the whole of the defendant's statement and discover as best as it can which part of it was in the mind of the Civil Court as constituting the perjury. The omission to specify the false statement in regard to which the court directs the prosecution for perjury amounts to material irregularity within the meaning of section 115, Civil Procedure Code; *Emperor v. Kashi Sukul* (1).

* Civil Revision No. 163 of 1916.

(1) (1916) I. L. R., 33 All., 695.

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The Government Advocate (Mr. A. E. Ryves), for the opposite party:—

There is no question of the applicant not being perfectly aware of what he is being charged with. The inquiry held by the Civil Court dealt with the question whether the applicant had signed a blank paper as he said he had. There is no ambiguity or room for surprise in the order of the Civil Court.

KNOX, J.—While I think that in every case, whether under section 195 or section 476 of the Code of Criminal Procedure, the particular statement when the offence refers to a statement, should be set out so that the accused person should not be taken by surprise, but should clearly know what is the statement which he is required to meet, I am not prepared to hold that the non-specification of the statement is a material irregularity. The law does not, so far as I can find out, require that the statement should be set out, and in the present case there can be no room for doubt what is the statement which the accused person has to meet. I dismiss the application with costs.

Application dismissed.

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February, 8.

Before Justice Sir George Knox.

SHEO CHARAN LAL (APPLICANT) v. TAJ BHAI ALI BHAI AND SONS
(OPPOSITE PARTIES.)*

Civil Procedure Code (1908), section 20—Sale of goods by sample—Vendor and purchaser living in different places—Suit by purchaser for damages for breach of warranty—In which place suit maintainable.

A person residing at Allahabad purchased goods by sample from a firm carrying on business at Bombay. The goods were sent to Allahabad, but on arrival they were discovered to be not according to sample, and the purchaser accordingly instituted a suit for damages against the vendors in the Small Cause Court at Allahabad. The Small Cause Court returned the plaint for presentation in Bombay. *Held* that the test which the court ought to have applied to the question was whether delivery of the goods at Allahabad was an essential part of the contract between the parties.

THE plaintiff was a resident of Allahabad and the defendants were the owners of a shop in Bombay. The plaintiff went to Bombay, and approved of certain samples of goods at the

* Civil Revision No. 143 of 1916.