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the "*Bengali*" of Calcutta and in the "*Vartman*" of Cawnpore. Clearly, therefore, there was no compliance with the terms of this section. The railway company not having fulfilled one of the conditions, no sale of the goods could validly take place. The claim of the plaintiffs against the railway company was, therefore, well founded. Mr. *Uma Shankar Bajpai* for the railway company contends that "local newspaper" means any newspaper which is read at Agra. It is not improbable that the two newspapers in which the notification was published are read at Agra, but there is no evidence forthcoming in the case. But I am not prepared to accept the interpretation put by Mr. *Bajpai*. By "local newspaper" I understand a newspaper which is issued from the locality.

The result is that this application fails. It is accordingly dismissed with costs.

REVISIONAL CRIMINAL.

Before Mr. Justice Kendall.

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EMPEROR *v.* ARJUN SINGH.*

Perjury—Quantum of proof for conviction—Oath against oath —Indian Penal Code, section 193—*Evidence Act* (*I of* 1872), *sections* 3 *and* 134.

It is not safe to lay down as a general rule, irrespective of the circumstances of the case, that a conviction for perjury cannot properly be based on an oath against an oath. The dictum of English common law that the testimony of a single witness is not sufficient to sustain an indictment for perjury is not a safe guide for the Indian courts, which are bound by the statute law enacted in sections 3 and 134 of the Evidence Act.

Messrs. *K. D. Malaviya* and *Gopalji Mehrotra*, for the applicant.

*Criminal Revision No. 795 of 1930, from an order of K. N. Wanchoo, Sessions Judge of Benares at Jaunpur, dated the 10th of November, 1930.

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The Assistant Government Advocate (Dr. *M. Wali-ullah*), for the Crown.

KENDALL, J. :—This is an application for the revision of an order of the Sessions Judge of Benares upholding the Magistrate's order in which he convicted the applicant Arjun Singh of an offence under section 193 of the Indian Penal Code. The question raised here is what is to be the standard of proof in a case of perjury where the accused is not charged with two mutually contradictory statements, one of which must be false, but with making statements that must be proved to be false by other evidence. The circumstances out of which this case arose are these. One Santokhi, a resident of Jaunpur district, together with another was sued in Rangoon in the small cause court on the basis of a promissory note, and a decree was obtained against him in Rangoon. Santokhi filed a suit in Jaunpur to set aside this decree, on the ground that it had been obtained against him by fraud, alleging that he had never been to Rangoon and did not execute the promissory note and that Raghunandan of his village, who was an enemy of his, had caused this false suit to be instituted and an *ex parte* decree obtained against him. Part of his case was that he had never heard of the decree until it was executed against him, and that he had not received a summons showing that the suit had been instituted. He succeeded in establishing this case in the trial court, the decree of which was upheld in first and second appeals.

The present applicant Arjun Singh made two statements in the course of this proceeding, for which he has been prosecuted. Those statements are: (1) *Santokhi ne samman nahin liya, inkar kar dia;* and (2) *Santokhi Rangoon char panch sal tak raha hai.*

The evidence for the prosecution was the statement of Santokhi that he had never been to Rangoon and

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that he had never been shown the summons, and the circumstantial evidence arising out of the proceedings in which Santokhi had had the fraudulent decree set aside. Arjun Singh was convicted by the Magistrate, and the Sessions Judge has gone into the matter fully and has upheld the order. The case for the applicant which has been argued with force and ability by Mr. *K. D. Malaviya* is that the courts were wrong in accepting the testimony of one witness as the sole basis for a charge of perjury. A reference has been made in the first place to the dictum of Lord COLERIDGE in *Regina* v. *Yates* (1): "The rule that the testimony of a single witness is not sufficient to sustain an indictment for perjury is not a mere technical rule, but a rule founded on substantial justice; and evidence confirmatory of that one witness, in some slight particulars only, is not sufficient to warrant a conviction, . . ." In the present case Arjun, it is pointed out, after making the statement that Santokhi had been in Rangoon for four or five years, qualified this statement in cross-examination by saying "*Am taur se ham ko malum hua ke Santokhi bhi Rangoon gaya hai*". That is to say his statement that Santokhi had gone to Rangoon was not based on personal knowledge but on a general rumour. Now, in considering whether the accused was guilty the Judge has found that the statement relating to Santokhi's going to Rangoon was definitely false and then has proceeded to find that in consequence of that the statement relating to the service of summons, being a part of the same conspiracy, must also be definitely false. In regard to this last question, viz., whether Santokhi had refused the summons or not, the only direct evidence is the statement of Santokhi, and I am asked to hold that it was legally incorrect to accept the statement of Santokhi in preference to that of the accused and to convict him of perjury in regard to this statement,

(1) (1841) I Carrington and Marshman, 132 (139).

while as regards the other statement in regard to Rangoon I am asked to hold that Arjun as a simple villager was unable to distinguish between direct and hearsay evidence, that he must be judged on the whole of his statement and that he never intended to convey to the court that he had personal knowledge that Santokhi had been to Rangoon,—in fact that he did not make a definitely false statement.

The English common law in regard to perjury has been stated in the quotation given above and it has been sought to fortify this by reference to a decision of this Court, *Abdul Aziz* v. *Tara Chand* (1). In this a Judge of this Court refused to sanction the prosecution of a person on the ground that it was a pure question of oath against oath, and that after going through the record he found that there was no documentary evidence whatever to support the statement of the plaintiff against the defendant.

On the other hand Dr. *Wali-ullah* has pointed out that under section 3 of the Indian Evidence Act a fact is said to be proved when after considering the matters before it the court either believes it to exist or considers its existence so probable that a prudent man ought under the circumstances of the particular case to act upon the supposition that it exists: and under section 134 no particular number of witnesses shall in any case be required for the proof of any fact. It seems to be clear, therefore, that this dictum of English common law is not a safe guide for the Indian courts, which are bound by the statute law. In the present case the criminal courts had certain definitely proved facts before them, viz. that Santokhi had never been to Rangoon, that a false case had been instituted against him there, and that no summons relating to that case had been served upon him in the Jaunpur district. They had to consider the statements made

(1) (1921) 19 A.L.J., 291.

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by Arjun in relation to these proved facts. Now, as regards the first statement in which Arjun said that he had seen Santokhi refuse the summons, it was not merely the statement of Santokhi against the statement of the accused,—as the Judge remarks, it was not possible for the prosecution to produce any other direct evidence on the subject,—nor is it a fair statement of the case that in considering the one against the other Santokhi must be held to have been a partial witness, while the accused was not. Santokhi went into court with all the weight of the decisions of the civil courts behind him, evidence of so convincing a kind that it could only be controverted, if it could be controverted at all, by the clear and direct statements of witnesses on whom the courts placed the most implicit reliance. With regard to the other statement the argument is that Arjun did not pretend to have told the court that the statement was based on personal knowledge, but he did not escape responsibility entirely when he said that his knowledge was based on general rumour. The court was perfectly justified in considering and indeed was bound to consider whether the statement that he had heard such a general rumour was a true statement or not, and in deciding this point the circumstances that presented themselves were that Santokhi had never been to Rangoon, and that a general rumour that Santokhi had gone to Rangoon was not one that could conceivably have arisen in Jaunpur. The inference that the object of the witness in saying that Santokhi had gone to Rangoon or had been in Rangoon could only have been a dishonest one, and that the statement was one which he knew to be false, or which he did not believe to be true, was, therefore, a fair inference.

This has been the view taken by both the courts and I think it is the correct one. At any rate it is not possible, in my opinion, to displace it by relying on

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the argument that there is only the testimony of one man against another and that this is not a proper basis for a conviction for perjury. The result is that the application is dismissed. The applicant has been released and must surrender to his bail.

APPELLATE CIVIL.

Before Mr. Justice Mukerji and Mr. Justice Bennet.

SWARATH DHOBI (PLAINTIFF) *v.* GHURKI AND OTHERS (DEFENDANTS).* 1931 *January*, 26

Hindu law—Joint Hindu family—Acquisition of one member —Whether joint family property—Nucleus not proved—Separate property.

Where there is no nucleus of ancestral property or where there is no nucleus of joint property possessed by the members of the family, any acquisition of a particular member cannot be treated as joint family property in which other members of the family have a right to share.

Mr. *Harnandan Prasad*, for the appellant.

Mr. *Haribans Sahai*, for the respondents.

MUKERJI and BENNET, JJ. :—This second appeal has been referred to a Bench of two Judges because the learned Judge before whom it came thought that there was some conflict between two cases decided by this Court, namely, *Ram Kishan Das* v. *Tunda Mal* (1), and *Kundan Lal* v. *Shankar Lal* (2).

The facts of the case as found by the court below are these. One Ghura@ was a tenant holding the fixed-rate tenancy, one half of which is in dispute in this suit. On the 26th of July, 1913, he made a gift of one half of it to the plaintiff appellant Swarath, who was a son of his wife's brother. The other half he gave

*Second Appeal No. 680 of 1928, from a decree of Sarup Narain, Second Additional Subordinate Judge of Jaunpur, dated the 4th of February, 1928, reversing a decree of Riyazul Hasan, First Additional Munsif of Jaunpur, dated the 4th of February, 1927.

(1) (1911) I.L.R., 33 All., 677. (2) (1913) I.L.R., 35 All., 564.