

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Mr. Justice Rachhpal Singh*

EMPEROR *v.* DAYA RAM*

1934
August, 16

*Indian Penal Code, section 193—False evidence given by witness
in course of executive proceedings—Inquiry held by Magis-
trate into the conduct of a village headman—Power to
administer oath in such proceedings.*

In the course of proceedings held by a Magistrate, inquiring into the conduct of a village headman against whom reports had been made, a witness gave false evidence. *Held*, that he could not be convicted of perjury under section 193 of the Indian Penal Code, as the proceedings were of an executive character and the Magistrate had no power to administer oath to witnesses in such proceedings.

Mr. *A. P. Dube*, for the applicant.

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

SULAIMAN, C.J., and RACHHPAL SINGH, J.:—This is a revision by the applicant against his conviction under section 193 of the Indian Penal Code. The facts of the case are very simple. One Panna Lal was the headman of a village. The police reported to a Magistrate against Panna Lal, whereupon the Magistrate held an inquiry during the course of which Daya Ram, a witness, was examined. He deposed in his statement that he had filed a complaint against Panna Lal under section 500 of the Indian Penal Code and that on that complaint Panna Lal had been fined. It was found that this statement was false. Both the courts below have held that Daya Ram has been guilty of an offence under section 193 of the Indian Penal Code. The only question for determination in this case is whether the conviction of the applicant under section 193 can be sustained. That will depend on the decision of a further question, whether the Magistrate who examined him had power to administer oath to him. Section 45 of the Criminal Procedure Code empowers Magistrates

*Criminal Revision No. 374 of 1934, from an order of A. H. Gurney, Sessions Judge of Jhansi, dated the 21st of February, 1934.

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to make appointments of headmen. It may be assumed that a Magistrate may dismiss the headman when he is satisfied that he is not a fit person. But the principal question is whether he had power to administer oath to the accused when he was examined as a witness before him. In our opinion he had no such powers. The orders of a Magistrate in respect of such matters are executive orders, as held in a ruling of this Court in *In the matter of the petition of Damma* (1). We are, therefore, clearly of opinion that the conviction of the accused is bad and must be set aside.

We accordingly allow the revision, set aside the conviction and sentence and direct that the accused be acquitted.

APPELLATE CIVIL

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Mr. Justice Rachhpal Singh*

UPENDRA NATH BASU (DEFENDANT) *v.* MUNICIPAL
BOARD, BENARES (PLAINTIFF)*

1934
August, 17

Municipalities Act (Local Act II of 1916), section 151—Remission of taxes for period of non-occupation—"Remain vacant"—"Unproductive of rent"—House situated within large compound—House unoccupied but compound maintained and produce of trees realised—Whether remission of taxes admissible.

The words "remained vacant" in section 151 of the Municipalities Act do not mean that the land should be barren land, uncovered by trees or vegetation, but the words are used in the sense of non-occupation, that is to say, although there may be a garden on the land it may nevertheless be in some cases unoccupied.

A building is "vacant" and "unproductive of rent" within the meaning of section 151 of the Municipalities Act when neither the owner nor his relations or friends occupy it, nor is it let out to any tenant or lessee; the words "unproductive of rent"

*Second Appeal No. 211 of 1931, from a decree of Mathura Prasad, Second Additional Subordinate Judge of Benares, dated the 27th of October, 1930, confirming a decree of Maheshwari Dayal, City Munsif of Benares, dated the 25th of February, 1930.

(1) (1907) I.L.R., 29 All., 563.