

Before Mr. Justice Ainslie.

THE QUEEN v. HOSSAIN ALI.*

False Evidence Contradictory—Statements—Two Charges—Plea of Guilty on one Charge—Acquittal on the other. 1871
August 15.

Where a prisoner is charged separately for having given false evidence with regard to two statements directly opposed to each other, plea of guilty on one of the charges does not involve an acquittal on the other. A Sessions Court is bound to take evidence and try a charge before it can acquit a prisoner of that charge.

The prisoner in this case, in a certain suit in the Small Cause Court, made two statements regarding the preparation of a document directly contradictory of each other. The Judge of the Small Cause Court disbelieved the statement first made by the prisoner and sent him to the Magistrate with a view to his being placed on his trial for having given false evidence, but he did not specify the particular statement or parts of the evidence given before him which he considered to be false. The committing Magistrate, however, framed two charges, based one on each statement. In the Sessions Court the prisoner pleaded guilty to the charge framed on the second statement,—i. e., the one considered to be true by the Judge of the Small Cause Court.

The Sessions Judge was of opinion that as the prisoner pleaded guilty to the charge based on one of the statements, he must be acquitted of the charge based on the other and contradictory statement, and so he convicted the prisoner on his own admission, and acquitted him of the other charge without trying it at all. The case came before the High Court as a Court of Revision, and the following judgment was passed by

AINSLIE, J.—The charge preferred against Hossain Ali by the Judge of the Court of Small Causes, was that he had falsely denied the drawing up of a certain bond which was said to have been prepared by him. The second statement made by the accused, before the Small Cause Court, was referred to as evidence in support of this charge.

The committing Magistrate has altered the nature of the prosecution by framing two charges, one based on each statement, instead of proceeding on the charge on which the Judge of the Small Cause Court apparently intended to prosecute. The Judge, however, had omitted to specify the particular statement or parts of the evidence given before him which he considered to be false, and this probably led to this change. The Sessions Judge has treated the case as if the plea of guilty on one charge necessarily involved an acquittal on the other, and has acquitted the accused on the first charge without taking any evidence. He has indeed come to a conclusion as to the facts of the case, but not from any evidence before him.

* Revision of proceedings under Section 404 of the Code of Criminal Procedure.

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Taking the Judge's own view of it, the sentence of 24 hour's imprisonment is quite inadequate. The accused made a statement which he asserts to be true,—he found it was disbelieved and he was in danger of being prosecuted, so to suit himself to the view taken by the Court, he, on being recalled, made a directly contrary statement knowing the same to be false, deliberately doing his best to mislead the Court and prejudice the party who was defendant in the Small Cause Court in order to shield himself. This is a very different case from that of a man who, having made a false statement, afterwards repents and reveals the truth.

But this is not the most serious defect in this case. The result of the proceedings is that there has really been no trial at all on the only charge which was preferred by the Small Cause Court Judge. He did not charge the accused with giving false evidence in making the statement embodied in the second charge, for which he has undergone a nominal punishment. On the contrary, he believed that statement to be true. The magistrate might have dismissed the charge, but he did otherwise,—he committed the accused for trial by the Court of Session on the charge preferred by the Judge of the Small Cause Court. The Sessions Judge was bound to hear the evidence tendered in support of it before he recorded a judgment of acquittal. As matters stand, the prisoner has been allowed to elect to be punished on a charge of an offence which the Judge treated as scarcely an offence at all, and to escape trial on a charge which, if proved, would probably have brought on him a severe penalty. As pointed out in a letter dated 19th June 1867 (1) an accused person cannot be allowed to make such election. It is to be regretted that the Judge of the Small Cause Court did not exercise the powers vested in him by section 173 of the Criminal Procedure Code; the mistrial could not have occurred if he had done so.

Before Mr. Justice Loch and Mr. Justice Mookerjee

PRASANNA KUMAR SANDYAL (PLAINTIFF) v. MATHURNATH BANERJEE (DEFENDANT).*

1871
May 5.

Declaratory Decree—Cause of Action—Civil Suit to contest Genuineness and Validity of Registered Document—Registration—Act XX of 1866, s. 84.

Under section 84 of Act XX of 1866, the District Judge ordered, without taking evidence, the registration of a document, which had been opposed on the ground that the execution of it had been obtained fraudulently and by putting the executant under duress. The executant brought a civil suit against the party, in favor of whom the document had been drawn, for a declaration that the document was not genuine, and was invalid and inoperative.

*Special Appeal, No. 30 of 1871, from a decree of the Judge of Moorshedabad, dated the 21st December 1870, affirming a decree of the Subordinate Judge of that district, dated the 3rd October 1870.

(1) 8 W. R., Cr. Letters, 6.