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the influence of some feeling which took away from the person doing it all control over his actions, but that that feeling had an adequate cause.

Now, taking the case in the most favorable light for the prisoner, we cannot find anything that satisfies these conditions It is clear that the prisoner was not taken unawares, but had some expectation of what was likely to happen, and had placed his sword in readiness for the emergency.

However indignant he may have been at the wrong he supposed to have been done to him, it seems impossible to say that the provocation he received was of such a nature, as would take away from him all power of self-control, in any case the provocation was certainly not sudden.

As the Judge and Assessors have found on the evidence that the prisoner is not guilty of murder, and have acquitted him thereof, this Court cannot interfere, no question of law being involved; but we think it right to express our dissent from that finding, and to say that in our opinion it was not justified by the evidence

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Before Mr. Justice Phear and Mr. Justice Hobhouse.

THE QUEEN v. FATIK BISWAS.*

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Sept. 10.

False Evidence in a Judicial Proceeding—Charge—Evidence—Hand-writing of Magistrate—Indian Penal Code (Act XLV of 1860) s. 193.

It is essential in order to sustain a charge under section 193 of the Penal Code, that it should be proved that there was a judicial proceeding, and that the false statement alleged to have been made in the course of that proceeding, was made. A charge under this section should specify not only the judicial proceeding in the course of which the prisoner is accused of having made the false statement, but the particular stage of the proceeding in which the statement is made.

The knowledge by the Sessions Judge of the hand-writing of the judicial officer, before whom the statement was made, is no evidence of the statement having been made before that officer.

THE prisoner, in this case, was charged under section 193 of the Penal Code, with having intentionally made a false state-

* Committed by the Magistrate and tried by the Sessions Judge of Jessore, on a charge of giving false evidence in a judicial proceeding.

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ment in a stage of a judicial proceeding. He was found guilty by the Judge and the Assessors by whom he was tried, and was sentenced to six months' rigorous imprisonment. The facts of the case were as follows :

The house of the prisoner had been searched in connection with a case of forgery, in which one Erfanulla and one Haralal Bose were convicted and sentenced to transportation, on the 4th September 1867. Among the papers were found letters implicating two of the Amla of the Court of the Judge of Jessore, who were, accordingly, made over to the Magistrate to be prosecuted. The postscripts of two letters appeared to be in the hand-writing of the prisoner ; and he was, accordingly, summoned to prove them. He was examined by the Joint Magistrate, and he then denied having written either of them. He was, therefore, prosecuted, and he was committed to the Sessions on two charges of having given false evidence in a stage of a judicial proceeding. The Sessions Judge and the Assessors found the prisoner guilty, and he was sentenced to six months' rigorous imprisonment.

The prisoner appealed to the High Court.

Mr. *Mackenzie,* for the prisoner.—It is not proved in evidence in what judicial proceeding, or in what stage of such a proceeding, the prisoner made the false statement ; there is no evidence to show where, or when, or by whom such a proceeding was held. The charges are defective, and the Sessions Judge was wrong in regarding his knowledge of the hand-writing of the Magistrate as any evidence at all of such hand-writing. The evidence is wholly insufficient to support the conviction.

The judgment of the Court was delivered by

PHEAR, J.—We think that the prisoner must be acquitted in this case. He was tried before the Sessions Court upon two charges. The first one was, " that he, on or about the 2nd day " of April 1868, at Jessore, in the Court of the Joint Magis- " trate, being lawfully bound on oath to state the truth, inten- " tionally gave false evidence in a stage of a judicial proceeding

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"by stating;" and then follows the statement alleged to be false; and the second charge was, "that he, on or about the 2nd day "of April 1868, at Jessore, in the Court of the Joint Magis- "trate, being lawfully bound on oath to state the truth, inten- "tionally gave false evidence in a stage of a judicial proceeding "by stating," and so on. It was essential to both these charges that the prosecution should make out that there was, on or about the 2nd day of April, a judicial proceeding pending in the Joint Magistrate's Court; and that the prisoner, in the course of that proceeding, made the statement which was alleged to be false. But we can find no evidence on the record that there was any such judicial proceeding pending in the Joint Magistrate's Court at Jessore at any time. The proper mode of proving that fact would have been to produce the record of the proceeding which the prosecution referred to. If this was actually done, that record has become detached from the papers in this case, and has not come up to us as part of the Session's record.

We think it right to remark here that, in our opinion, both the charges made against the prisoner are seriously defective, in not specifying the judicial proceeding in a stage of which the prisoner is accused of having made the false statement. We even think that the particular stage of the proceeding ought to have been mentioned. It is only fair to the prisoner that the charge which is to stand for ever on record against him should be made as definite and specific as it reasonably can be; and, on the other hand, the prosecution, too often needs to be definitely told what is the burden of proof which lies upon it. Had the charge, in this case, been properly specified, it could hardly have happened that the evidence which was most material to the issue to be tried should not be forthcoming.

We also cannot discover that there is any evidene in the Session's record of the prisoner having made the statement in the Joint Magistrate's Court, which he is alleged to have made there. The Judge says: "the deposition he gave," that is, in the Joint Magistrate's Court, "is marked A., and I know it to be in the Joint Magistrate's hand-writing." It is scarcely necessary for us to remark that the knowledge of the hand-writing possessed by the Judge did not, of itself, constitute evidence,

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such as even he himself could have looked at or considered that the prisoner made the statement which appeared in the deposition. The hand-writing of the Magistrate did not afford legal evidence that the prisoner made the statement which was written down in that hand-writing. There are one or two instances mentioned in the Code of Criminal Procedure when the attestation by the Magistrate, and his signature is of itself sufficient proof of the document such as that to be found in section 366, relative to the examination of the accused person before the Magistrate. But there is no where any general provision apart from these special instances, that the deposition of a witness, either written out or signed by a Magistrate, shall be evidence of itself, without more to the effect that the witness deposed before that Magistrate the words which appear in the deposition, and this case does not fall within the meaning of any of those instances. Moreover, even if the Judge's knowledge of the hand-writing of the Joint Magistrate could have been supposed to afford to himself any evidence in proof of the deposition, it obviously could not be such evidence to the Assessors The only mode of conveying it to them would be by the Judge stating on oath before them what he actually knew upon the point.

It appears to us that, in the absence of any evidence of there having been in fact a judicial proceeding pending in the Joint Magistrate's Court, on or about the 2nd of April 1868; and further, in the absence of any evidence of the prisoner having made the statement alleged against him in any such proceeding, the whole foundation of the two charges upon which the prisoner was tried in the Sessions Court breaks down. We have had some hesitation in our minds whether or not we should exercise the powers which are given to us, sitting here in appeal, by the provision of section 422 of the Criminal Procedure Code, and send back the case to the Sessions Court, in order that any additional evidence on these two points might be produced by the prosecution. It is clear that evidence relevant thereto, either affirmative or negative, must exist But upon a consideration of all the circumstances of the case, including even some of the collateral matter to which the Judge has referred, and bearing in mind that the prisoner has already undergone nearly two

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months' rigorous imprisonment, we don't think it necessary to exercise the discretion which is given to us by that section ; and we think it is proper to say that on the evidence which appears on the record, the prisoner ought to be acquitted. He will, therefore, be discharged from custody so far as this conviction is concerned.

Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Mitter.

D. ABRAHAM *v.* THE QUEEN.*

1868 *Sept.* 12.

British Burmah—Lord's Day Act—Abkari Rules.

The Lord's Day Act does not extend to criminal cases in British Burmah. A was convicted and fined for the breach of an Abkari Rule. *Held*, the conviction could not be supported, on the ground that the Abkari Rule had not the force of law.

THE following case was submitted for the opinion of the High Court, by the Recorder of Rangoon :

The appellant, D. Abraham, a Jew, has been convicted by the Town Magistrate, of a breach of Abkari Rules, a copy of which Rules is attached to this reference. The 28th Rule is the one under which the charge was laid, and the fine inflicted was 400 rupees, the offence being a second offence.

The first question upon which I would ask the opinion of their Lordships is, whether the proceedings ought to be quashed, the appellant having been arrested on a Sunday.

The Advocate for the appellant cites the Lord's Day Act of 29 Car. 2, c 7, and the case of *Taylor* v. *Phillips* (1) It is contended that this Act applies to the case, because section 21 of Act XXI. of 1863 declares that, in all suits cognizable by the Recorder's Court, all questions, as well as of fact as of law or equity, shall be dealt with and determined according to the law administered by the High Court of Judicature at Fort William in Bengal in the exercise of its Ordinary Original Civil Jurisdiction. Assuming that the Lord's Day Act was in 1863 a part of the law administered in the High Court at Fort William in its Ordinary Original Civil Jurisdiction, I do not think that

* Reference from the Recorder of Rangoon.

(1) 3 East, 155.