CASES

DETERMINED BY

THE HIGH COURT OF JUDICATURE,

AT FORT WILLIAM IN BENGAL,

IN ITS

APPELLATE JURISDICTION.

CRIMINAL.

Before Mr. Justice Loch, Mr. Justice Phear, and Mr. Justice Glover.

IN RE HARAN MANDAL.*

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Aug. 10,

Ss. 191 *and* 192, *Penal Code (Act XLV. of* 1860)*—False Evidence—Verification—Act XI. of* 1865, *s.* 21 *(Mofussil Small Cause Courts Act.)*

A. made an application for a new trial under section 21 of Act XI. of 1865. He filed a memorandum of his grounds verified as a plaint, and therein knowingly made a false statement. *Held*, (Glover, J., dissenting) that he had not thereby committed an offence under section 191 or 192 of the Penal Code.

A SUIT was instituted against the accused Haran Mandal and Mahesh Mandal, in the Small Cause Court at Narail. They went to Narail, and executed a vakalutnama, instructing a vakil to defend the case, which was ultimately, however, decreed against them.

Some four or five months after, they again went to Narail, and gave a vakalutnama to another vakil, instructing him to apply for a new trial, under section 21 of Act XI. of 1865. The vakil, under their instructions, wrote a memorandum of the grounds for the application, and a verification clause at the foot which the prisoners signed. This memorandum set forth that they knew nothing whatever of the suit until execution was

* Revision of proceedings by the Sessions Judge of Jessore, on a charge of giving false evidence.

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taken out against them. The memorandnm was filed before the Small Cause Court Judge, when the fact that the prisoners had had the case defended originally came to light. They were then criminally charged with having fabricated false evidence, for the purpose of its being used in a stage of a judicial proceeding—section 193, Indian Penal Code; and the Judge looking to sections 24 and 123 of Act VIII. of 1859, concurring with the assessors, convicted and sentenced them.

The learned Judges having differed in opinion, delivered the following judgments:

GLOVER, J.—This case is not without difficulty; but after the best consideration I have been able to give to it, it appears to me that the conviction ought to be allowed to stand.

I have considerable doubt, in the first place, whether the prisoner does not substantially come under the provisions of section 191 of the Penal Code, because although his application to the Small Cause Court, for a rehearing, under section 21, Act XI. of 1865, was not one which the law requires to be verified, and the prisoner was not, therefore, in the first instance, bound by any express provision of law to make that verification, still he did make it, and by so doing "legally bound himself;" and a false statement made under such circumstances, would, it appears to me, be "false evidence" under that section, and would bind the person making it.

It has been found, as a fact, by the Sessions Judge and Assessors (and the prisoner has not appealed) that the memorandum in the petition for rehearing contained a false statement, and that prisoner made it knowing it to be false and intending it to cause the Judge of the Small Cause Court to form an erroneous opinion upon the evidence.

Mr. Justice Loch thinks that the memorandum filed by Haran Mandal could not have been used as evidence in the case, and that section 192, Penal Code, therefore, would not apply.

It appears to me that, under the circumstances, it might have been so used. It would have had the same effect as a deposition on oath, and would have been *prima facie* evidence of the truth of the statements therein contained. Indeed, if the Court had

chosen to believe it, it would have been legally sufficient evidence by itself to prove the non-service of summons or any of the "sufficient causes" which had prevented the petitioner from appearing before the Small Cause Court when his case was first heard. But even if it were not "evidence" properly so called, it is quite clear that Haran Mandal "intended" it to appear in evidence, so that in any case the prisoner has, in my judgment made himself liable.

The prisoner has not appealed, and the proceedings are before us, as a Court of revision only. For the reasons above given, I do not think any interference necessary.

LOCH, J.— The prisoner has clearly made a false statement which he has verified, though not required to do so by law. He has, as described in section 192 of the Penal Code, made a document containing a false statement, and the document was intended to appear in a judicial proceeding that it might cause the Judge of the Small Cause Court to entertain an erroneous opinion touching a point material to the result of such proceeding. But all this does not quite make up the offence defined in section 192 of the Penal Code. That offence requires that the document containing the false statement should be made with the intention that it may appear in evidence in a judicial proceeding. A plaint or written statement filed in a suit cannot properly be called evidence, though any statements contained therein may be used as evidence against the party making them; but till the Code of Procedure required the plaint and written statements to be verified, the person filing them could not be punished criminally for any falsehoods they might contain. Section 24 of Act VIII. of 1859 declares that if a plaint, written statement, or declaration in writing required by that Act to be verified, shall contain any averment which the party making the verification knows or believes to be false, &c., such person shall be liable to the punishment provided for the offence of giving or fabricating false evidence.

It appears to me that this is a case which does not come under the provisions of section 192 of the Penal Code, and that the prisoner has not committed the offence specified in that section,

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unless it can be said that the false statement which he made was intended to be used in evidence in the case. It was made with the intention of getting the case reheard, but not to be used in evidence in the suit. It was intended to mislead the person who had to form an opinion upon the evidence in that suit; but it was not offered as evidence as regards the question at issue in that suit.

If the case does not come up to the offence defined in section 192 of the Penal Code, has an offence been committed under section 24, Act VIII. of 1859, which will render the prisoner liable to punishment, as if he had committed the offence described in section 192 of the Penal Code? The prisoner put in an application before the Judge of the Small Cause Court, praying for a rehearing of his case, alleging that he was not aware that a suit had been instituted, or a decree given against him, though he had given a vakalutnama to a pleader of the Court to defend the suit. By section 47, Act XI. of 1865, the provisions of the Code of Civil Procedure were, as far as applicable, extended to all suits and proceedings in the Small Cause Courts; and consequently all plaints and written statements for suits tried in the Small Cause Court, are required to be verified, and if any plaint or written statement contain an averment which the party making the verification knows or believes to be false, such party would, under the provisions of section 24, Act VIII. of 1859, be liable to the punishment prescribed for giving or fabricating false evidence.

The offence, however, is only committed when the written statement, of whatever kind it be, is required by the Act to be verified. Now applications for a re-hearing made under section 119, Act VIII. of 1859, are not required by the Act to be verified; and consequently applications of a similar nature presented to the Judge of the Small Cause Court do not require verification. If, therefore, a party has made a verification, when it is not required by law, he cannot be said to have committed the offence defined in section 24 of the Civil Procedure Code. That the prisoner has committed gross perjury, I have no doubt of, but it does not appear that he can be legally convicted under the provisions of the Penal Code, and must be released.

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PHEAR, J.—The record of this case is not before me, and I take the facts solely from the abstract statement of the Officiating Judge. From this I gather that the alleged false document, which is the foundation of the charge against the prisoners, is a memorandum of the grounds upon which they, the prisoners, made an application to the Small Cause Court, for a new trial of a certain suit. At the foot of this memorandum was a so-called verification signed by the prisoners. In the absence of the original or any copy, I suppose this was merely a clause declaring that the statements of fact in the memorandum were true to the best of the signers' knowledge and belief.

A declaration of this kind, unless special significance or importance be attached to it by the legislature, merely pledges the declarant's word to the truth of the statements which precede it, and a simple signature, without the express words of the declaration, would have the same effect. Whoever signs any document, thereby impliedly says and means to convey that he believes the statements therein made to be true, no other meaning can be given to the act of signing. Therefore, in my judgment, except in cases where the legislature has otherwise provided, falsehood in respect of statement made in a signed document, is of the same character and is in precisely the same predicament as regards any penal consequences to the signer, whether the document contains a clause of verification or not. If the signer would not be "bound by express provision of law" in the one case to state the truth within the provisions of section 191 of the Penal Code, neither would he be so in the other.

But it is conceded that a memorandum of grounds urged in support of a application for a new trial in the Small Cause Court, is not an document lying under any special legislative sanction. The legislature has not directed it to be verified in any manner, or declared that the statements of fact made in it, whether verified or not, are made under any express provision of law that the truth should be stated. It is also clear that the memorandum is not a deposition made upon oath. Nor is it a declaration which the prisoners were bound by law to make. I conclude then, that the prisoners by causing the memorandum

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containing false statements signed by them, to be presented in Court, did not make a false statement under any of the three sets of circumstances mentioned in section 191 of the Penal Code; and consequently are not liable to the penal consequences which rest thereon.

It remains only to consider whether the prisoners in signing the memorandum made a document containing a false statement, intending that such false statement should appear in evidence in a judicial proceeding, and that such false statement so appearing in evidence shoul cause the person who in such proceeding is to from an opinion on the evidence to entertain an erroneous opinion touching any point material to the result of such proceeding, within the the terms of section 192 of the Penal Code. And as to this, I think it clear, that the act of the prisoner does not fall within these words. The memorandum of the grounds on which a new trial was sought, was in no sense evidence, and the Court of Small Causes would, in my opinion, have erred, if it had formed any judicial opinion upon it, excepting an opinion as to the sufficiency of the grounds, assuming them to be true in fact, as affording reasons for granting a new trial. So far as the memorandum contained a statement of fact, it operated not as evidence, but merely as a statement of that which the applicant was prepared to prove by evidence. I must assume that the prisoners put in this memorandum for its normal purpose, therefore it seems to me that although the memorandum contained the false statements made by the prisoners, they did not, by so putting the memorandum before the Court, offend against section 192.

On the whole, I think that the facts disclosed by the abstract statement of the Officiating Judge do not justify the conviction of the prisoners which the Court has made.

Consequently, I would send for the record, and if on production thereof, it appears that the abstract statement of the Officiating Judge is borne out, I would quash the conviction as having been illegally made without evidence, and order the discharge of the prisoners.