

1863.
Nov. 5.

REG. V. PREMA' BHIKA'.

Witness deposing in another's name—False Evidence—Cheating by Personation—Ind. Pen. Code, Secs. 193, 416, and 419.

A witness falsely deposing in another's name should be charged with giving false evidence, under Sec. 193, and not with cheating by personation, under Secs. 416 and 419, of the Penal Code.

THE accused in this case was committed for trial to the Session Court by the Second Assistant Magistrate in the Kheda District, charged, under Sec. 193 of the Penal Code, with "giving false evidence in a stage of a judicial proceeding, in having personated and given evidence in the name of his brother, so as to avoid the necessity for his brother's appearance." T. Weeding, the Senior Assistant Session Judge of Kheda, before whom the case came for trial, altered the charge as under, for the reasons given by him :—

"The Court observes that the Acting Second Assistant Magistrate has committed this Premá Bhiká charged under Sec. 193 of the Indian Penal Code, but as Secs. 205 and 416 apply especially to the offence of falsely personating, one or other of these should have been applied. The Court, acting upon the authority conferred in Sec. 244 of Act XXV. of 1861, charges the prisoner under Sec. 416 of the Indian Penal Code."

The charge as amended stood thus on the Session Court's proceedings :—

"Cheating by personation, in having given evidence in a judicial proceeding in the name of his brother, to avoid the necessity of his appearance."

The accused, being convicted, was sentenced to pay a fine of Rupees 50, or in default to suffer rigorous imprisonment for two months.

The case was reviewed by the High Court (present FORBES, WESTROPP, and TUCKER, JJ.) and the following order passed :—

The Court alters the conviction to one of intentionally giving false evidence in a stage of a judicial proceeding, and the sentence to one of a fine of fifty rupees, commutable to two months' rigorous imprisonment, under Sec. 193 of the Indian Penal Code.