

1868.

REG.
v.
BHA'GU
SHA'BA'JI.

“ All Magistrates are Subordinate Magistrates except those who are authorised to exercise the full powers of a Magistrate. Subordinate Magistrates are subordinate to the Magistrate of the District or Division of a District only. It has been held that where the Government confers upon a Magistrate with Full Powers the power to hear appeals under Sec. 412, that does not make the other Magistrates subordinate to him in the sense of Sec. 434 of the Code of Criminal Procedure.”—*Vide* High Court's letter No. 210 dated the 8th of March 1864.

June 18.

REG. v. BA'I DIVA'LI.

Irregular Procedure—Stamp Act, Secs. 3 and 52—Complaint—Collector's Sanction.

Conviction and sentence under Sec. 3 of Act X. of 1862 (Stamp Act) reversed, because no complaint had been made before the trying Magistrate.

A memorandum, under the signature of the Collector, sanctioning the prosecution, cannot be accepted in the place of a complaint so as to authorise the issuing of a summons.

THE accused was convicted by M. H. Scott, Magistrate F. P. in the Kheda Division, under Sec. 3 of the Stamp Act (X. of 1862), of being party (grantee) to a deed of gift on insufficiently stamped paper, and sentenced to pay a fine of forty-two rupees.

The Acting Session Judge at Ahmedabad, A. L. Spens, referred the case for the orders of the High Court, under Sec. 434 of the Criminal Procedure Code, with the following remarks :—

“ I sent for this case to see whether the prosecution had been commenced by the Collector of the District, as required by Sec. 52 of Act X. of 1862. I find on the record a mere sanction for the prosecution of the accused under the signature of the Collector, and that the Collector did nothing more than forward this sanction, with the deed which called it forth, to the Magistrate.

“ The Magistrate apparently acted on this sanction *only*, and, without having any sworn complaint before him, issued his summons to the accused.

“ This case is nearly similar to one published at page 34 of the Bombay High Court Reports, Vol. III., and I am of

opinion that the conviction recorded in this case against Báí Diváli cannot be upheld.

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“The question for decision appears to me to be, whether the procedure above described constitutes a ‘prosecution commenced’ by the Collector, according to the requirements of Sec. 52 of Act X. of 1862, or not; or, in other words, whether the Collector is bound, like other individuals, to make a complaint in person, or through a pleader or agent.

“I am of opinion that the Collector is bound to proceed by formal complaint laid either by himself or through a pleader or agent. As, however, this ruling is against the established practice of this district, and as it would occasion some inconvenience to the Collector’s department, I think it advisable that a direct decision should be passed on this point by their Lordships the Judges of the High Court.”

PER CURIAM (COUCH C.J., and NEWTON, J.):—The Court annuls the conviction, because no complaint, as required by Sec. 66 of the Code of Criminal Procedure, was made before the trying Magistrate, either by the Collector or any person duly authorised in his behalf. A memorandum under the signature of the Collector cannot be accepted in the place of a complaint so as to authorise the issuing of a summons.

Conviction reversed.

REG. V. GA'NOJI bin PA'NDJI.

June 25.

False Evidence—Contradictory Statements—Alternative Charge—Ind.

Pen. Code, Sec. 193.

Where a person makes two contradictory statements in the course of a judicial proceeding, he may be tried and convicted of giving false evidence on a single charge, if there is evidence to show which statement is false.

THE accused was, on the 7th of April 1868, convicted, under Sec. 193 of the Indian Penal Code, of intentionally giving false evidence in a stage of a judicial proceeding, and was sentenced by A. Bosanquet, Acting Session Judge of the Konkan at Tháná, to suffer rigorous imprisonment for two years.