

REG. V. DAYA'LJI ENDARJI.

1871.
April 25.

*False Statement—Income Tax Commissioner—Judicial Proceeding—
—Ind. Pen. Code, Secs. 181 and 193.*

When an offence under Sec. 193 of the Indian Penal Code is established, a conviction under Sec. 181 is illegal.

When the accused made on solemn affirmation a statement before an Income Tax Commissioner which statement the accused knew, or had reason to believe, to be incorrect:

It was held that such statement amounted to the offence of giving false evidence in a judicial proceeding, under Sec. 193 of the Indian Penal Code, and was, therefore, not cognisable by a Full Power Magistrate, as it could not be treated as constituting an offence triable under Sec. 181 of the Indian Penal Code (making a false statement to a public servant).

THIS was an application for the exercise of the Court's extraordinary jurisdiction under Sec. 404 of the Code of Criminal Procedure.

The facts were these:—

In an inquiry into the income of one Kuvarji, conducted under the provisions of Act XVI. of 1870, the accused stated on solemn affirmation that Kuvarji himself cultivated certain land situated in the village of Ancheli; Kuvarji on the same day, and before the same authority, stated that he had sublet a part of the land for Rs. 505 per annum, and was thus liable to the income tax. Mr. Ramsay, Magistrate F. P. in the district of Súrat, tried and convicted the accused on a charge, under Sec. 181 of the Indian Penal Code, of having made a false statement on solemn affirmation to a public servant authorised to administer the same, and sentenced him to rigorous imprisonment for a term of six months, and to pay a fine of Rs. 50, or in default to suffer further rigorous imprisonment for one month.

On appeal made to Mr. Newnham, the Acting Session Judge, the conviction and sentence were upheld.

The application was heard by LLOYD and KEMBALL, JJ.

Shántarám Náráyan, for the petitioner:—The offence alleged to have been committed by the accused amounts to the offence of giving false evidence in a proceeding declared by the Income Tax Act to be judicial. The Magistrate F. P. had, therefore, no jurisdiction to try the accused. He

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relied upon *In re the case of Nuthoo Kumall**; *Reg. v. Shama Churn Roy*, (a) and *Reg. v. Heeramun Singh* (b).

Dhirajlal Mathuradas (Government Pleader) relied upon the proceedings of the Madras High Court under date the 4th of November 1868, reported in 4 Mad. H. C. Rep., Appendix xviii.

Shántarám in reply.

PER CURIAM:—Following the ruling of this court in *Reg. v. Nuthoo Kumall*, the Court annuls the conviction and sentence, as the act which the accused is alleged to have committed amounted to the giving of false evidence in a judicial proceeding, an offence punishable under Sec. 193 of the Indian Penal Code, and beyond the jurisdiction of the Magistrate F. P. The fine, if levied, to be restored. The accused having already undergone, upwards of four months' rigorous imprisonment, the Court is of opinion that no further proceedings against the accused are necessary.

Conviction and sentence annulled.



May 17.

REG. V. AVJI bin NA'RU *et al.*

Stamp—Complaint—Seizure of Cattle—Act III. of 1857—Court Fees' Act, VII. of 1870, Sec. 31, and Sch. II., No. 1 (b).

The illegal seizure and detention of cattle, to which Sec. 14 of Act III. of 1857 refers, is not an "offence" within the meaning of Sec. 31 and Sch. II., No. 1, cl. (b), of the Court Fees' Act, VII. of 1870. Complaints of such illegal seizure and detention do not require a stamp.

If such complaints be stamped, it is not competent for the Court to direct that the accused shall repay the amount of such stamp to the complainant.

THE accused were convicted of "illegal seizure and impounding of cattle," under Sec. 14 of Act III. of 1857, by the Subordinate Magistrate, Second Class, of Waruz, in

(a) 8 Calc. W. Rep., Cr. R. 27. (b) *Ibid.* 30.

* "A witness who had stated on solemn affirmation that he was not present when the police captured an offender in the act of flight was punished by a Magistrate under Sec. 181 I. P. Code. The High Court annulled the conviction and sentence, on the ground that the act constituted giving false evidence in a judicial proceeding under Sec. 193, and was beyond the Magistrate's jurisdiction:—*In re Nuthoo Kumall*, 8th November 1865."—West's Acts and Regulations, note to Sec. 181 of Act XLV. of 1860.