1871.

REG. v. VINA'YAK DIVA'KAR.

the Resolution; but those limits have been transgressed. It is possible that there has been a failure of justice on this account. We do not go further, however, than to say that it is possible. We must not be understood as in any wise reflecting upon the gentleman who did act for the prosecution and prefer the charges. He may, for aught we know, have been a very proper person to bring them. But he was not the nominee of Government. We, therefore, quash the conviction. The fine, if it has been paid, is to be returned.

REG. v. RA'VJI valad TA'JU.

June 15.

False Evidence—Judicial Proceeding—Annulment of Proceedings in Trial in which alleged False Evidence was given.

The accused was convicted of intentionally giving false evidence in a judicial proceeding, in having, as a witness, therein made, on solemn affirmation, a false statement. The proceedings in the trial at which the alleged false evidence was given were subsequently annulled, in consequence of the sanction for the prosecution being insufficient.

Held that the conviction of the accused must be reversed, as the false statement was not made in a stage of a judicial proceeding.

The proceedings in a criminal trial, when necessary to be proved, should be proved by their production.

THE accused was tried by E. T. Candy, Acting Assistant Session Judge at Dhuliá, for intentionally giving false evidence. He was convicted, and was sentenced to one year's rigorous imprisonment and to pay a fine of Rs. 100, or in default of payment to suffer further rigorous imprisonment for three months.

The circumstances out of which this case arose were as follow:—

At the trial of Vináyak Divákar Shárangpáne, Deputy Collector and Magistrate F.P. in Khándesh (for receiving an illegal gratification), held before the District Magistrate, the accused, Rávji, was examined as a witness, and he stated on solemn affirmation that Vináyak Divákar did not on a certain day and at a certain place hold *kacheri*.

This statement the Assistant Session Judge held to be false, and convicted the accused.

The appeal was heard by GIBBS and WEST, JJ.

1871.
REG. v. RA'VJI TAJU.

Dhondu Shámráv Garud, for the appellant:—In the case of Vináyak Divákar, out of which this case has arisen, it was held that the sanction to prosecute was restricted to such charges as Mr. Campbell might prefer, and that the prosecution, having been conducted in a manner not warranted by the sanction, was *coram non judice*.* The proceedings were, accordingly, annulled. Here the statement made by the accused, even assuming it to be false, was made in a case which the Magistrate had no jurisdiction to take cognisance of. The conviction cannot, I submit, be upheld: *Reg.* v. *Chota Jadabchunder Biswas* (*a*); Russell on Crimes, Vol. III., p. 6; *Reg.* v. *Bykunt Nath Banerjee* (*b*); *Reg.* v. *Futteali Biswas* (*c*); Mayne's Indian Penal Code (6th ed.), pp. 144, 145.

Dhirajlál Mathurádás (Government Pleader) appeared for the Crown.

PER CURIAM:—On the authority of the cases cited at the bar, and that of *The Queen* v. *Scotton* (*d*), there appears to be no doubt that, unless the false statement be proved to have been made in a stage of a judicial proceeding, the conviction cannot be sustained. In this last case Williams, J., said: "It is necessary that the inquiry before the Magistrates should have been a judicial proceeding, in order to assign perjury upon the evidence there given." It has been held by another Division Bench of this court that Mr. Ashburner, the District Magistrate of Khándesh, had no jurisdiction in the case of Vinayák Divákar, out of which this trial arose, as he was not tried on charges preferred by Mr. Campbell, to whom Government limited their sanction, and the entire proceedings were annulled. We must, therefore, reverse the conviction and sentence as being illegal.

We observe that there is another irregularity in the case, which also seems to be a serious one. Strictly speaking, there is no legal evidence of the judicial proceeding in which the alleged false deposition was given; for the principle is

(*a*) Calc. W. Rep., Special No., Cr. R., 15.
(*b*) 5 Calc. W. Rep., Cr. R. 72. (*c*) 10 *Ibid.* 37.
(*d*) 13 Law J., Mag. Ca., N. S. 58; S. C. 5 Q. B. 493.
* See preceding case.

1871.

REG. v. RA'VJI TA'JU.

that where the law requires a written record to be kept of a trial, that record is the only proper evidence of the proceeding. This being so, parol evidence of such a proceeding is inadmissible (Taylor on Evidence, Sec. 370, p. 399). And that this rule is founded in reason is sufficiently evident from this very case, since, for ought that the witnesses prove, the inquiry in which the impugned statement was made may have been a mere departmental investigation. The Assistant Judge contented himself with the assertion of a Chitnis that the impugned statement was made by the accused on the trial of Vináyak Diváker, and on this has founded a conviction without having the proceedings on that trial before him. We think there should be a uniformity of practice on this important point, and shall, accordingly, consider it in chambers.

Conviction and sentence reversed.

Oct. 4.

REG. v. YENKU BA'PUJI', KRISHNA bin PA'NDU, and TUKA'RA'M KEDA'RI.

Municipal Commissioners—Subordinate Magistrates—Jurisdiction to try for breach of Municipal Rules—Act XXVI. of 1850—*Municipal Rules made* ultra vires—Ultra vires *doctrine explained.*

Municipal Commisioners appointed under Act XXVI. of 1850 have not, by that Act, conferred upon them, nor are they entitled to assume, judicial powers with reference to breaches of Rules or Bye-laws made by them under that Act.

Reg. v. *Kálidás Keval* (*a*) approved and followed.

The authority to try offenders against such Rules or Bye-laws is vested in the Magistrates of the country, and Subordinate as well as other Magistrates have jurisdiction to try such offenders.

Reg. v. *Dharmáyá valad Sangápá* approved (*b*).

Rules made under the above Act which purport to give the Managing Committee of such Municipal Commissioners power to try offenders against such Rules, or to levy fines upon them, are *ultra vires* and illegal.

Rules of the Municipalities of Balsád, Súrat, Malcolm Pet, and Ahmedábád referred to and commented on. How far a rule partially *ultra vires* and partially *intra vires* can be enforced, as to the latter portion, considered.

TWO questions arose in this case: (1) Whether Act XXVI. of 1850 conferred upon Municipal Commissioners of

(*a*) 5 Bom. H. C. Rep., Cr. Ca. 10. (*b*) 8 *Ibid.* 12.