

[APPELLATE CRIMINAL JURISDICTION.]

Criminal Reference No. 23 of 1873.

REG. v. JAIMAL SHRA'VAN.

1873.
March 27.

*Prevarication—Intentionally causing interruption to public servant—
Ind. Pen. Code, Sec. 228—Code of Criminal Procedure, Sec. 435.*

Prevarication by a witness may, though it does not necessarily, amount to contempt of court within the meaning of Sec. 228 of the Indian Penal Code and Sec. 435 of the Code of Criminal Procedure.

THIS was a reference, under Section 296 of the Criminal Procedure Code, by G. A. Hobart, Session Judge of Khandesh, for the orders of the High Court.

The accused, Jaimal, was convicted by W. A. East, Magistrate 1st class, under Section 228 of the Indian Penal Code, of wasting the time of his court by prevaricating whilst giving evidence as a witness, and fined a sum of Rs.4. The Session Judge was of opinion that this conviction, under the ruling in *Reg. v. Aubá Bhivráv (a)*, was illegal and ought to be set aside.

The reference was heard by Melvill and Kemball, JJ.

PER CURIAM:—The Court is not prepared to hold, as a matter of law, that no amount of prevarication on the part of a witness will constitute the offence specified in Section 228 of the Indian Penal Code; nor does the Court think that the Judges, who decided the cases reported at pages 6 and 7 of Volume 4 of the Bombay High Court Reports, went so far as this. The head notes of those cases seem inaccurate. All that the decisions show, is that the finding of the Magistrate did not clearly specify that there had been an interruption. In other words, it was held, not that prevarication could not constitute an interruption, but that it was not necessarily an interruption. In the case of *Regina v. Abdul Rahiman* (see statement of Criminal Rulings, dated the 16th of March 1871) it was held that prevarication by a witness and refusal to answer a question might amount to intentional interruption within the meaning of Section 228 of the Indian Penal Code, and Section 163 of the old Code of Criminal Procedure.

(a) 4 Bom. H. C. Rep. Cr. Ca. 6.

Papers to be returned.