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otherwise alter." It follows as a logical consequence that an addition is as much within the meaning of the Code as a substitution.

I am of opinion, therefore, firstly, that the construction I placed upon section 227 of the Criminal Procedure Code is warranted by the words of the section construed according to their plain and grammatical meaning; and, secondly, that when read in the light thrown upon the section by the words of its author, Mr. Justice Stephen, my construction only gave to the section the effect that was intended by the Legislature.

In all other respects I fully concur with the learned judgment delivered by the Chief Justice.

APPELLATE CRIMINAL.

Before Mr. Justice Pinhey and Mr. Justice Scott.

QUEEN EMPRESS v. PARSHRAM RA'YSING.*

1883
November 29.

False evidence—Police investigation—Judicial proceeding—Code of Criminal Procedure, Act X of 1882, Secs. 155 and 161—Indian Penal Code, XLV of 1860, Sec. 193.

Section 161 of the Code of Criminal Procedure, Act X of 1882, makes it obligatory on a person examined in the course of a police investigation under chapter xiv to answer truly all questions put to him (other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture,) and such person, if he knowingly answers falsely, commits the offence of giving false evidence in a stage of a judicial proceeding under section 193 of the Indian Penal Code.

THIS was an appeal against the sentence of rigorous imprisonment for three months passed by M. B. Baker, Session Judge of Khândesh, on conviction of intentionally giving false evidence in a stage of a judicial proceeding under section 193 of the Indian Penal Code.

The facts and the grounds of conviction appear from the following judgment recorded by the Court of Session :—

"The accused is charged on an alternative charge with giving false evidence in a judicial proceeding, under section 193, Indian Penal Code. He claims to be tried.

* Appeal, No. 185 of 1883.

"It appears that one Shivrám made a complaint to the First Class Magistrate that his wife had contracted a second marriage. The Magistrate sent the case to the police for inquiry, and accused was examined before the head constable. In his statement accused said that he had seen the marriage ceremony performed, describing it and the time and place of its performance. Witness No. 2 deposes that he took down the statement, and that it accords with what accused said. Accused admits that he was examined before the head constable, but says that he then said that people said that a marriage had been contracted, but that he had not witnessed it. In his deposition before the First Class Magistrate accused denied all knowledge of the marriage. I see no reason for doubting the evidence of witness No. 2 as to the correctness of the statement made before the head constable; it is too detailed to have been wholly fabricated. It is manifest that either the statement before the police or the deposition before the Magistrate is false.

"The point for decision is, whether the examination before the head constable was a stage of judicial proceeding, and accused is, consequently, liable to conviction on the alternative charge.

"The offence, of which complaint was made, was a non-recognizable one; but as an order had been issued by a First Class Magistrate, the police had power to investigate under section 155, Criminal Procedure Code. Under section 161 a police officer had power to take down the statements of witnesses in writing, and the witnesses were legally bound to answer truly the questions put to them. The obligation to answer truly was first imposed in this section, and in a note to the section in Prinsep's Commentary it is said that a witness who answers falsely commits the offence of giving false evidence as defined in section 191, Indian Penal Code. Accused's pleader objected to the statement before the head constable being admitted in evidence, but the objection was overruled. Section 162 lays down that statements recorded by a police officer shall not be used as evidence against the accused, but this clearly refers only to the accused in the proceeding in which the statement is recorded. It may be used against a witness charged with giving false

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evidence (*vide* Prinsep's note, section 163). Section 161 allows police officers to take evidence, and, consequently, the inquiry under chapter xiv must be considered as part of a judicial proceeding within the meaning of the definition in section 4, Criminal Procedure Code.

"I find, on the point raised, in the affirmative."

No one appeared in the High Court on behalf of either the appellant or the Crown; but the petition of appeal set forth the following grounds for the reversal of the conviction and sentence:—

"1. That the appellant has committed no offence.

"2. That the appellant had been convicted merely on an alternative charge founded on one statement alleged to have been made before a police head constable, and another before the Magistrate (F. C.).

"3. That there was no evidence of any kind to prove which of the statements was false.

"4. That there was no evidence in the case to show that the police had been legally authorized to investigate the matter.

"5. That there could be no judicial proceeding in this case until the Magistrate received the husband's complaint, as provided in section 200 of the Criminal Procedure Code.

"6. The formalities prescribed by law,—*i.e.* oath and signature of complainant,—were wanting.

"7. That the proceedings of the police cannot be said to be a stage of a judicial proceeding.

"8. That, in strict construction of law, the "judicial proceeding" contemplated by section 193 of the Indian Penal Code was that which was in view of the Legislature when the Code was framed. There could be no such judicial proceeding unless in the appellant's case, unless as provided by section 4 (*d*) and section 200 of the Criminal Procedure Code. Section 4 (*d*) defines a judicial proceeding as 'any proceeding in the course of which evidence is or may *legally* be taken'; and to give to the proceedings of the police the *status* of a judicial proceeding, they ought to be conducted

with the form expressly laid down in section 200 of the Criminal Procedure Code, and in no other way."

The following judgment of the Court was delivered by

SCOTT, J.—Section 161 Criminal Procedure Code (Act X of 1882) says that any person being under examination in the course of a police investigation under chapter xiv (sec. 155) of the Criminal Procedure Code, 1882, shall be bound to *answer truly* all questions put to him (with certain exceptions not applicable to the present case).

This provision is new. Under the previous law the obligation "to answer truly" in a police investigation was not enforced by any express provision.

Section 191 of the Penal Code says that if a person who is bound by any express provision to state the truth, states knowingly what is false, he is said to give false evidence.

The appellant in this case has, therefore, as the law now stands, given false evidence.

Section 193 of the Penal Code says that whoever gives intentionally false evidence in any stage of a judicial proceeding shall be punished, &c. And under explanation 2 of the same section a police investigation under chapter xiv of the Criminal Procedure Code is a stage of a judicial proceeding.

We, therefore, think the District Judge's decision is right under the present law, and reject the petition of appeal.

Appeal rejected.

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