Present: Schneider A.C.J.

1926.

THE KING *v.* PONNASAMYPILLAI.

69—D. C. (Crim.) Trincomalee, 204.

False statement in an affidavit—Charge under sections 196 and 190 of the Penal Code—Imperfect Jurat—Parol evidence—Sections 437-440 of the Civil Procedure Code.

Where a person was charged with having made a false statement in an affidavit submitted by him in a civil suit, and there was no indication that the affidavit had been read over and explained to him,—

Held, that parol evidence was inadmissible to supply the omission in that Jurat.

Empress v. Moyadeb Gossami [1] followed.

APPEAL from a conviction. The accused was indicted under sections 196 and 190 of the Penal Code with having made a false statement in an affidavit submitted by him in a civil suit. There was no indication in the Jurat that the affidavit had been read and explained to the declarant, who was ignorant of the English language. At the trial parol evidence was led to supply this omission, and the accused was found guilty of the charge laid against him.

Drieberg, K.C. (with him *J. S. Jayewardene*), for the appellant.

Navaratnam, for the Crown, respondent.

October 8, 1926. SCHNEIDER A.C.J.—

The accused was the defendant in action No. 1,047 of the District Court of Trincomalee, in which decree had been entered against him for default of appearance. He submitted an affidavit dated January 14, 1925, and moved the court to vacate the decree. He succeeded. That affidavit is the document marked B, and is to be found at page 63 of the record in that action. The last paragraph of that affidavit is as follows:—

> " (6) I was not aware of the institution of the above action until I received the *decree nisi* in the above case."

It is signed in English in a flowing hand, suggesting that the signatory could write in English freely. Below the signature, the only matter is—

> " Affirmed to this 14th day of January, 1925, at Batticaloa before me.
>
> C. MUTTYAH, J. P."

Those words comprise the whole of the Jurat.

[1] *6 Cal. 762.*

In the present action the accused was prosecuted under sections 196 and 190 of the Penal Code on the ground that the statement which I have quoted from the affidavit was false, and that the accused was aware of the institution of the said action. The accused was convicted. This is the appeal from that conviction. Mr. Drieberg, on his behalf, submitted that there is no admissible evidence that the contents of the affidavit were read over and explained to the accused, and that for that reason the prosecution fails. I think this contention is right and should be upheld. As I have already stated, the affidavit, which is the foundation of the charge in this prosecution, was intended to be used, and was used in connection with an action governed by the provisions of the Civil Procedure Code. Sections 437 to 440 of that Code deal with affidavits. It is enacted that "in the event of a declarant not being able to understand writing in English language the affidavit shall at the same time (that is, when it is signed by the declarant in the presence of the Justice of the Peace) be read over or interpreted to him in his own language, and the Jurat shall express that it was read over or interpreted to him in the presence of the Justice of the Peace and that he appeared to understand the contents." There is no Jurat in the affidavit expressing that it was read over and interpreted to the accused, but at the trial of the accused parol evidence was led to supply this omission. Mr. Drieberg's contention was that parol evidence was inadmissible and that the Jurat was the sole admissible evidence that the affidavit was read over or interpreted to the accused. There is clear evidence in the record that although the accused writes his signature in English, he does not read, write, or understand English. Mr. Drieberg cited the following passage from *Gour's* "*The Penal Law of India*":—

> "The deposition, if reduced to writing, must have been taken in accordance with law. That is to say, it must comply with the requirements of the law under which it was taken. If, for instance, it was taken under the Code of Civil Procedure, it must comply with the provisions of that code relating to the reading over and signing of it by the Judge, in the absence of which there can be no prosecution for perjury. For such evidence being required by law to be in writing, no evidence other than the document itself is admissible in evidence, and the defects of the evidence cannot be permitted to be made good by parol."

In support of this statement the writer cites the case of *Empress v. Mayadeb Gossami* (*supra*). That case clearly bears out the comment.

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SCHNEIDER A.C.J.

The King v. Ponnasamypillai

It would appear, therefore, that the accused has been wrongly convicted. I set aside the conviction and acquit him.

Together with the appeal was listed an application for the revision of the sentence made by the Attorney-General. The application is bound to fail as the accused has been acquitted The application must, therefore, be dismissed.

Set aside.