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*March 8.
*March 15.

SHAJOO RAM .....APPELLANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA.

Criminal law—Perjury—Form of oath—Practice—Voire dire.

After examination on *voire dire*, in a judicial proceeding, a person called as a witness (with the assistance of an interpreter) went through a ceremony accepted as the taking of an oath in the form usual with his race and class, knowing and intending that his testimony should be received and acted upon as evidence given under oath.

Held, that on prosecution for perjury in giving his testimony the witness could not set up the defence that he had not been duly sworn. *Rex* v. *Lai Ping* (11 B.C. Rep. 102); *The Queen's Case* (2 Brod. & Bing. 284); *Omychund* v. *Barker* (1 Atk. 21); *Attorney-General* v. *Bradlaugh* (14 Q.B.D. 667), and *Curry* v. *The King* (48 Can. S.C.R. 532), referred to.

Judgment appealed from (19 D.L.R. 313; 30 West. L.R. 65) affirmed.

APPEAL from the Court of Appeal for British Columbia(1), affirming the conviction of the appellant upon an indictment for perjury.

The judgment appealed from was rendered upon a case reserved at the trial by His Lordship Mr. Justice Gregory, which was as follows:—

"1. The prisoner was tried before me at the Vancouver Spring Assizes, on June 26th, 1914.

"2. The charge was that the said Shajoo Ram on

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*PRESENT:—Sir Charles Fitzpatrick C.J. and Idington, Duff, Anglin and Brodeur JJ.

(1) 19 D.L.R. 313; 30 West. L.R. 65.

the 15th day of January, 1914, whilst appearing as a witness, and after having been duly sworn before Charles John South, Esq., then sitting as Deputy Police Magistrate in and for the City of Vancouver, in a judicial proceeding wherein one Baboo Singh was charged with having unlawfully broken a shop window, which magistrate had competent power and authority to administer the oath to the said accused, as a witness in that behalf, did then and there falsely, knowingly and corruptly swear and depose to the effect following, that is to say, that he the said Shajoo Ram was not present at a meeting at the Sikh Temple, Second Avenue, West, in the City of Vancouver, on the night of Saturday, the 10th day of January, 1914, whereas in truth and in fact the said Shajoo Ram was present at a meeting at the Sikh Temple aforesaid, on the Saturday night aforesaid, as he the said Shajoo Ram well knew when he so falsely and corruptly deposed as aforesaid, and the said Shajoo Ram did thereby then and there commit wilful and corrupt perjury.

"3. There was no evidence before me of the words (if any) that the magistrate put to the interpreter, L. J. Ricketts, to be interpreted to the accused by way of administering an oath. The magistrate was not called to give evidence.

"4. Counsel for the accused consented to the admission of the transcript of the proceedings in the Police Court as evidence that it was in the course a judicial proceeding that the alleged perjury had been committed, but not as evidence that the accused had been sworn.

"5. At the trial before me Henry William Gwyther, a Hindu interpreter who was present in the proceedings before Magistrate South, and L. J. Ricketts, who

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acted as interpreter in the proceedings in question, were the only witnesses called to prove that the accused had been properly sworn in the Police Court proceedings. The evidence of these two witnesses is made part of this case.

"6. The accused was called on his own behalf at the trial before me and the following is the stenographic report of what occurred when he was called upon to give evidence on his own behalf.

"Shajoo Ram, the accused, called:—

"Interpreter: He is a Guthric. He will affirm.

"Court: What is the custom? How do you people swear?

"Interpreter: He swears by putting his hand up. It is like affirming.

"Court: All right.

"Accused sworn.

"7. At the close of the case for the Crown counsel for the accused asked to have the case taken from the jury on the ground that there was no evidence that the accused had been duly sworn in the Police Court proceedings.

"8. I gave leave that an application be made later for a stated case.

"9. I instructed the jury that there was evidence that the accused had been duly sworn.

"10. The accused was found guilty of the charge.

"11. On the application for the stated case counsel for the accused asked that the evidence of the witness Gwyther in the Police Court should be made part of the stated case. This application I refused.

"12. However, I gave leave that an appeal should be taken on this point.

"13. The questions submitted are:—

"1st. Was there evidence that a proper oath had been administered to the accused in the Police Court proceedings, in which perjury was alleged to have been committed, and was I right in charging the jury that there was such evidence ?

"2ndly. Was I right in refusing the application of Counsel for the accused that the deposition of Gwyther taken in the Police Court proceedings should form part of this case ?"

By the judgment appealed from, the conviction was affirmed, Irving J. dissenting.

W. L. Scott for the appellant.

J. A. Ritchie for the respondent.

THE CHIEF JUSTICE.—This appeal should be dismissed.

IDINGTON J.—I think this appeal should be dismissed. Sufficient reasons are assigned therefor and appear in the judgments of the court below and it seems needless to repeat them here.

DUFF J.—I think there was evidence, meagre it is true, but still sufficient, to support a finding by the jury that the accused, presenting himself as a witness in a court of justice, and giving the answers he did give, on his examination, on the *voire dire,* in effect declared that the ceremony which was accepted as the taking of an oath was in fact binding on his conscience as an oath. It is probable that the jury in reaching their conclusion assumed, as I think they were entitled to assume, that the witness under-

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stood that he was going through that which was the ordinary form of oath administered to persons of his race and class in the courts of British Columbia, and of course generally accepted as a form of oath binding on their consciences.

On the questions of law I am in entire agreement with the view expressed by Mr. Justice Martin, in which Mr. Justice McPhillips concurred, which view is concisely stated in the judgment of the Chief Justice in the case of *Rex* v. *Lai Ping*(1), in a passage which is quoted in the judgment of Mr. Justice Martin and is in the following words:—

> It seems to me that when a man without objection takes the oath in the form ordinarily administered to persons of his race or belief, as the case may be, he is then under a legal obligation to speak the truth, and cannot be heard to say that he was not sworn. If we were to decide otherwise we would deprive the evidence given in a court of justice of the most powerful and necessary sanction which it is possible to give it, namely, the risk of a prosecution for perjury.

In British Columbia, indeed, the facts being as above mentioned the question would seem to be beyond controversy by reason of the declaratory enactment of 1 & 2 Vict, ch. 105, as follows:—

> AN ACT TO REMOVE DOUBTS AS TO THE VALIDITY OF CERTAIN OATHS.
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> Be it declared and enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in all cases in which an oath may lawfully be and shall have been administered to any person, either as a juryman or a witness, or a deponent in any proceeding, civil or criminal, in any court of law or equity in the United Kingdom, or on appointment to any office or employment, or on any occasion whatever, such person is bound by the oath administered, provided the same shall have been administered in such form and with such ceremonies as such person may declare to be binding; and every such person in case of wilful false swearing may be convicted of

(1) 11 B.C. Rep. 102.

the crime of perjury in the same manner as if the oath had been administered in the form and with the ceremonies most commonly adopted.

Eighteen years before that statute was passed, Abbott C.J., in the *Queen's Case* (1), used these words:

> I conceive, that, if a witness says he considers the oath as binding upon his conscience, he does, in effect affirm, that, in taking that oath, he has called his God to witness, * * * and having done that, that it is perfectly unnecessary and irrelevant to ask any further questions.

There seems to be no substance in the objection that the oath was administered by the interpreter and not by the magistrate. The interpreter was merely the mouthpiece of the judicial officer.

I think the appeal fails.

ANGLIN J.—The appellant was admittedly capable of taking an oath. He was not a person authorized to make affirmation under section 14 of the "Canada Evidence Act." To sustain his conviction for prejury under section 170 of the Criminal Code it is therefore necessary to shew that he told what was known to him to be false as part of his evidence upon oath in a judicial proceeding.

With Mr. Justice Galliher I regret that greater care was not taken in the Police Court proceedings, when the appellant was called as a witness, to make it certain that he fully understood that he was about to give evidence under the sanction of an invocation of the Deity (his Deity) as witness to his truthfulness. In whatever form it may be administered, that is in English law the essence of an oath. *Omychund* v.

(1) 2 Brod. & Bing. 284.

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Barker(1); *Attorney-General* v. *Bradlaugh*(2); *Curry* v. *The King*(3), at pages 534 and 535.

The evidence on the defendant's trial for perjury fairly establishes that, before giving his testimony at the Police Court, he solemnly promised with uplifted hand to tell the truth, the whole truth, and nothing but the truth. That he said "I swear," though probable, is uncertain. But he answered "yes" to the question: "Is the oath you have taken binding on you ?" or, it may have been, "binding on your conscience," or some equivalent term ? (*The Queen's Case*(4).) It also appears that it is the custom of the people to whom the defendant belongs to swear by putting up the hand; and he himself was so sworn when giving evidence on his own behalf on his trial for perjury. Taking all these circumstances into account it would seem to be a not unreasonable inference that the defendant knew he was taking what was intended to be an oath — that his purpose was to have the court believe that he was swearing to tell the truth and by uplifting his hand to invoke the Deity as witness. On the whole, though not entirely satisfied that the appellant did actually call upon the Deity to witness his truthfulness, neither am I satisfied that he did not. I entertain no doubt, however, that he gave his testimony with full knowledge that it would, and with deliberate intent that it should, be received and acted upon as evidence given under oath.

I am, for these reasons, not prepared to dissent from the judgment affirming this conviction.

(1) 1 Atk. 21, at p. 48.
(2) 14 Q.B.D. 667, at p. 708.
(3) 48 Can. S.C.R. 532.
(4) 2 Brod. & Bing. 284, at p. 285.

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BRODEUR J.—The appellant claims that he has not been duly sworn and that he could not then be convicted of perjury.

He is a Hindoo, and the evidence shews that when he was sworn the interpreter did his best to convey to the mind of the witness what he was bound to do as such. He volunteered to take the oath by the uplifting of the hand.

As the Chief Justice said in *Curry* v. *The King* (1) :—

> Having taken the oath in that form without objection it is an admission that the witness regarded it as binding on his conscience.

I cannot see how the appellant may claim to-day that he has not been duly sworn.

He was examined in this case before the criminal court and there took the oath in the same way.

I am of opinion that if a witness allows himself to be sworn in any form without objecting to it, he is liable to be indicted for perjury, if his testimony prove false. Best on Evidence (10 ed.), page 151.

It would be a pity if perjurers could escape on technicalities as the one which is raised in this case.

The appeal should be dismissed.

Appeal dismissed.

Solicitor for the appellant: *Clarence Darling.*

Solicitor for the respondent: *A. D. Taylor.*

(1) 48 Can. S.C.R. 532.