1896.
May 12 and 22.

THE QUEEN *v.* APPUWA.

D. C., Kandy (Criminal), 843.

Indictment—Intentionally giving false evidence—Record of judicial proceeding—Presumptions on production of it—Evidence—The Ceylon Evidence Ordinance, ss. 80, 114.

An indictment charging the accused with intentionally giving false evidence in the course of a judicial proceeding stated the alleged false evidence to be as follows :—" I never sold an undivided " half share of this land. I have never been to the notary's office " to execute a deed in the defendant's favour. I did not obtain " from the notary a certified copy of deed in favour of myself and " plaintiff," &c.—

Held, that it must appear in the indictment by proper innuendos what was meant by the expressions " this land," " the notary's office," " the notary," &c.

Sections 80 and 114 of " The Ceylon Evidence Ordinance, 1895," render it unnecessary that in a prosecution for intentionally giving false evidence in the course of a judicial proceeding, the chief clerk of the Court in which the judicial proceeding was had should be called to produce and verify the record, or the interpreter to prove that there was a judicial proceeding, and that the oath or affirmation was duly administered, and that the Court took down what the witnesses actually said, and the interpreter correctly interpreted the evidence. These facts are to be presumed on the production of the record.

THE facts of the case sufficiently appear in the judgment. It was argued on 12th May, 1896.

Dornhorst, for appellant.

Cooke, C.C., for respondent.

Cur. adv. vult.

22nd May, 1896. BONSER, C.J.—

The appellant was convicted in the District Court of Kandy of intentionally giving false evidence in a judicial proceeding on two occasions, the 5th February, 1894, and 10th October, 1894.

The indictment was as follows :—

" .... The charges against the accused are—(1) That he on or about the 5th day of February, 1894, at Gampola, within the jurisdiction of this Court, being legally bound by affirmation to state the truth while giving evidence in a judicial proceeding, to wit, case No. 1,286, before the Court of Requests of Gampola, did intentionally state as follows :—" I never sold an undivided half " share of this land. I cannot write. I never signed any deed of " transfer. I have never been to the notary's office to execute " a deed in defendant's favour. I did not obtain from the notary " a certified copy of deed in favour of myself and plaintiff,"

which said statements were false in fact, and the said Pihilagedara Appuwa (the accused) knew them to be false when he gave the aforesaid evidence, and that he has thereby committed the offence of intentionally giving false evidence, punishable under section 190 of the Ceylon Penal Code.

(2) That he on or about the 10th day of October, 1894, at Gampola, being legally bound by affirmation to state the truth while giving evidence in a judicial proceeding, to wit, case No. 1,286, before the Court of Requests of Gampola, did intentionally state as follows :—" I never executed a deed of transfer, nor signed any " document in his favour. I know Kaluwa, but not Menikrala. I " never asked them to attest my signature to any deed. I never " wrote nor signed this deed." Which said statements were false in fact, and the said accused knew them to be false when he gave the aforesaid evidence, and that he has thereby committed the offence of intentionally giving false evidence, punishable under section 190 of the Ceylon Penal Code.

In my opinion this indictment was not sufficiently precise. It ought to have appeared in the indictment by proper innuendos what was meant by the expressions " this land," " the notary's office," " the notary," " this deed," &c.

But no objection was taken at the time to the indictment, and section 200 of the Criminal Procedure Code applies.

At the same time, greater care should be taken in the preparation of charges, for looseness in stating an offence is not infrequently followed by looseness in proof. The alleged perjury was committed in the course of two trials of the same action in the Court of Requests at Gampola : the first having taken place before Mr. Lee, who was then the Commissioner or acting as the Commissioner of that Court, and the second before Mr. Kindersley, who was then acting in the same capacity.

The proof that the words alleged to be false were uttered by the appellant consisted of the production of the record of the case by the chief clerk of the Court, and the evidence of one De Zilva, the interpreter of that Court, who deposed to having acted as interpreter on these two occasions, and to having administered the affirmation to the appellant.

The interpreter was unable to swear that the appellant used the words alleged in the indictment, but referred to the evidence as recorded respectively by Mr. Lee and by Mr. Kindersley.

It was contended for the appellant that this evidence was insufficient ; that the Commissioners ought to have been called, who could have refreshed their memory from the notes of

1896. May 12 and 22. BONSER, C.J.

evidence taken by them, or that some one should have been called who was present and who could pledge his recollection to the actual words used.

In my opinion this contention is correct according to English law and practice, but we have to decide this case according to the law of this Island.

No doubt De Zilva's evidence was insufficient both by English law and the law of this Island. He professed to speak of that of which he had no recollection, refreshing his memory by the notes made by the Commissioners, but he did not read over the evidence after it had been recorded by the Commissioners, nor was he able to say that he was sure that the evidence was correctly recorded by the Commissioners, so that he was not justified in using these notes to refresh his memory (see sections 159 and 160 of the Evidence Ordinance, 1895). But these notes were recorded by the Commissioners in the discharge of their official duty (see section 169 of the Criminal Procedure Code). In this they differ from the case of notes taken by a County Court Judge in England or by a Judge of Assize. In neither of the latter cases is there a legal obligation to take such notes, and therefore it has been held that the notes themselves are not evidence, even though proved to have been taken by the Judge himself (see *R. v. Child, 5 Cox Crim. Cases, 197*), where Talfourd, J., held, "a Judge's notes stood in no other position than anybody "else's notes. They could only be used in evidence to refresh the "memory of the party taking them.....They were altogether "inadmissible." But section 80 of our Evidence Ordinance expressly applies. The Court is bound, until the contrary be proved, to presume that the record of the evidence taken, purporting to be signed, as it was in this case, by the Commissioners, was genuine, and that the evidence was duly taken. This in my opinion rendered it unnecessary for the chief clerk to attend to produce and verify the record, for it proves itself. It was unnecessary for the interpreter to attend to prove that there was a judicial proceeding, and that the oath or affirmation was duly administered, or that the Commissioners took down what the witnesses actually said, for these facts being stated on the record will be presumed. Nor was it necessary for the interpreter to prove that he correctly interpreted the evidence; the Court may presume this (section 114 of the Evidence Ordinance, 1895). It will of course be open to a defendant to displace all these presumptions by evidence.

In my opinion the Commissioners' record of the evidence was not only admissible as proof of what the appellant said, but

1896.
May 12 and 22.

BONSER, C.J.

the only admissible proof. For these reasons I think that the objection in law to this conviction fails.

It was further argued that the weight of evidence was against the conviction. As to this I can only say that I am not satisfied that the District Judge was in error in finding the appellant guilty of these offences.

LAWRIE, J.—I agree.