

**Bogra Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/791458](http://sooperkanoon.com/791458)

**Court :** Chennai

**Decided On :** Mar-31-1910

**Reported in :** (1911)ILR34Mad141

**Judge :** Miller, J.

**Appellant :** Bogra

**Respondent :** Emperor

**Judgement :**

**Miller, J.**

1. It was held by Collins, C.J., and Parker, J., in Singiri Eradu v. Empress II Weir's Crl. Rule, 435 Crl. Rev. C No. 463 of 1894 (unreported) that procedure identical with that adopted by the Sessions Judge in the present case is materially irregular. The deposition taken in the Sessions Court was therefore irregularly taken, and it may be that a conviction based upon such evidence could not be sustained. But in the present case the person concerned is the witness who made the deposition and not the accused against whom it was made, and it has been read over to the witness admitted to be correct and signed. It is very difficult, I think, to see any good reason why this admission of the witness should not be taken to be a proof of the correctness of the document. There is no doubt direct authority in this Court for the view that a deposition not read over in the hearing of the Judge and the vakils (in a civil case) is not a deposition at all and cannot be used as evidence for

any purpose [Kamatchinathan Chetty v. Emperor I.L.R. (1905) Mad. 308], but that decision seems to be in part based on the reasoning that the presence of the Judge and vakils at the reading is required for the protection of the witness. I very respectfully differ from that, if that is what is meant by the learned Judge. The presence of the Judge and the vakils or the accused is required to make it sure that the deposition is correctly recorded and the accused or the Crown or the defendant or plaintiff is not prejudiced by any mistake in the recorded evidence. But when the deposition has been read over to the witness and he has admitted it to be correct, there seems to be no good reason why that admission should not, so far as he is concerned, be regarded as a proof of its correctness. I cannot see why a deposition irregularly recorded is necessarily to be treated as a nullity for all purposes even as against the man who made it and who has admitted that it represented what he said. It, of course, may be open to him to prove that the record was incorrectly made, but that is not suggested in the present case. I am not, holding this view, therefore prepared to hold that the conviction is illegal.

2. The accused has not himself applied for the revision of the Sessions Judge's decision, and I do not think it necessary to do more than point out that the deposition was undoubtedly irregularly recorded, and that the provisions of the Code and the law as laid down in this Court must be followed in the recording of evidence by the Courts of this Presidency.

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