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January 2.

[APPELLATE CRIMINAL JURISDICTION.]

REG. *v.* PARBHUDA'S AMBARA'M and others.

Indian Evidence Act I. of 1872, Secs 11, 14, 43, 54, and 153—Forgery—Inadmissible evidence.

Section 11 of the Indian Evidence Act should not be construed in its widest signification, but considered as limited in its effect by Section 54 of the Act. So construed, Section 11 renders inadmissible the evidence of one crime (not reduced to legal certainty by a conviction) to prove the existence of another unconnected crime, even though it be cognate. Accordingly, the possession by an accused person of a number of documents suspected to be forged is no evidence to prove that he has forged the particular document, with the forgery of which he is charged.

PER WEST, J. :—Where a person charges another with having forged a promissory note, and denies having ever executed any promissory note at all, the evidence that a note, similar to the one alleged to be forged, was, in fact, executed by that person, is not admissible, nor even would a judgment, founded upon such note, be so : Sections 43 and 153 of the Indian Evidence Act.

THE accused No. 1, Parbhudás, was charged with having forged a promissory note, purporting to have been passed to him by one Fakirchand, and the other four accused with having abetted this offence. The trial was conducted by W. H. Newnham, Session Judge of Ahmedabad, who sentenced each of the accused to seven years' rigorous imprisonment.

It appeared on the evidence that a bundle of papers was found in the possession of four of the accused persons. Some of them were blank stamp papers, purchased in the names of different persons, others were deeds, purporting to have been signed by the obligor, but bearing no attestations ; others, again, bore the signatures of supposed obligors to blank deeds. In convicting the prisoners, the Session Judge, with regard to these papers, made the following observation :—

"The fact, therefore, of papers being found in the houses of four of the accused of such a description as to throw the gravest suspicion on their dealings in bonds, remains totally unexplained ; and though it does not, of course, prove the bond now in question to be a forgery, it must needs

materially affect the Court's opinion of the evidence in the present case."

The appeal was heard by MELVILL and WEST, JJ.

Macpherson and *Leith* (with them *Shántárám Náráyan* and *Chandulál Mathurádás*) for the appellants.

Mayhew, Legal Remembrancer (with him *Dhirajlál Mathurádás*, Government Pleader,) for the Crown.

WEST, J.:—On consideration, I am of opinion that the bundles of documents found in the houses of four of the accused, and alleged to be forgeries, or inchoate forgeries, were improperly admitted as evidence in this case. Section 11 of the Evidence Act is, no doubt, expressed in terms so extensive that any fact which can, by a chain of ratiocination, be brought into connexion with another, so as to have a bearing upon a point in issue, may possibly be held to be relevant within its meaning. But the connexions of human affairs are so infinitely various and so far reaching, that thus to take the section in its widest admissible sense, would be to complicate every trial with a mass of collateral inquiries limited only by the patience and the means of the parties. One of the objects of a law of evidence is to restrict the investigations made by Courts within the bounds prescribed by general convenience, and this object would be completely frustrated by the admission, on all occasions, of every circumstance on either side having some remote and conjectural probative force, the precise amount of which might itself be ascertainable only by a long trial and a determination of fresh collateral issues, growing up in endless succession, as the inquiry proceeded. That such an extensive meaning was not in the mind of the Legislature, seems to be shown by several indications in the Act itself. The illustrations to Section 11 do not go beyond familiar cases in the English Law of Evidence. The possession by an accused of several other articles deposed to have been stolen, would, no doubt, have some probative force on the issue of whether he had received the particular articles which he was charged

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with having dishonestly received, and the receipt or possession of which he denied altogether, yet, in the first illustration to Section 14, it is set forth as a preliminary to the admission of testimony as to the other articles that "It is proved that he was in possession of [the] particular stolen article." The receipt and possession are not allowed to be proved by other apparently similar instances, only the guilty knowledge which can be inferred satisfactorily through a conscious or unconscious application of the law of probabilities from a multiplication of the fractions representing in each case the ratio of probable ignorance to probable knowledge of how the goods had been come by. Illustration (O) to the same section makes a previous attempt by the accused to shoot the person murdered, evidence of the accused's intention, but not of the act that caused the death; yet it is certain that on the issue of whether *A* actually shot *B* or not, the fact that he had previously shot at him, would have some probative force; so, too, would proof of a general malignity of disposition by evidence "that *A* was in the habit of shooting at people, with intent to murder them," yet this evidence is excluded even as proof of *A*'s intention, either as too remotely connected with the particular intention in issue, or as raising collateral questions, which could not properly be resolved in the case. What, however, is to my mind most conclusive, is Section 54. That a man has a notoriously bad character, may very often, when taken "in connexion with other facts * * * make the existence * * * of a fact in issue * * * highly probable or improbable," yet this is declared irrelevant, except when evidence of good character has been given. But, again, if the bad character has been reduced to legal certainty by a conviction, evidence of the conviction is admissible. The conviction admits practically of no dispute, but evidence, merely tending to establish another offence, may, and generally will, be met by counter-evidence, raising unmanageable collateral questions. It may be remarked, too, that the case of a previous conviction being one covered and exceeded by the terms of Section 11 in their widest extension, its subsequent specification shows that the Legislature

did not intend those terms to be thus taken, and that the provision for admitting evidence of a previous conviction amounts, as an exact indication of how far in this direction the Legislature meant to go, to an implied exclusion of matters having a remoter and more disputable bearing on the issues under trial, such as the particular facts on which the previous conviction was founded. And if this reasoning applies to such matters, it must apply *a fortiori* to those which are evidence not of a crime actually proved, but only of one suspected. The extent of the earlier enactment in this direction is restricted by the more specific provision for the later one.

In the English law, rules, substantially identical with those embodied in Section 14 and its illustrations, have not been thought inconsistent with others corresponding to the construction which, I think, ought to be put upon Section 11 of the Indian Evidence Act. "In criminal proceedings the necessity is stronger, if possible, than in civil, of strictly enforcing the rule that the evidence is to be confined to the point in issue; for, where a prisoner is charged with an offence, it is of the utmost importance to him that the facts, laid before the Jury, should consist exclusively of the transaction which forms the subject of the indictment, which alone he can be expected to come prepared to answer": 3 Russell on Crimes, 279. "Hence, where * * * the evidence appears to refer to more than one distinct unconnected felony, it is usual for the Judge in his discretion to call upon the counsel for the prosecution to select one felony, and to confine the evidence to that particular charge. Thus on an indictment * * * for receiving several articles, if it appear that they were received at different times, the prosecutor may be put to his election" (*Ibid.* 280) although (page 28) "evidence may be given of all the receipts for the purpose of proving guilty knowledge." This is the rule of Section 14, standing side by side with the rule of Section 11 as I construe the latter, and when several offences are so connected that proof of one can be arrived at through evidence going to prove the others, the evidence is not on

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that account excluded. In *Rex* v. *Ellis* (*a*) it is said: "Generally speaking, it is not competent to a prosecutor to prove a man guilty of one felony by proving him guilty of another unconnected felony, but where several felonies are connected together and form part of one entire transaction, the one is evidence to show the character of the other." In *Rex* v. *Crocker* (*b*) a charge of forging one promissory note was supported by evidence that another one found in the prisoner's pocket-book was forged. The evidence was admitted by the Judge at the assizes, but the prisoner was afterwards released on a case submitted to the twelve Judges, and it was understood that they thought the evidence inadmissible: 2 Russell on Crimes, 816, 838. Thus, if a fact has a direct probative force, it is not excluded by the English rule; but if its force is merely mediate through its tendency to prove another cognate offence, it is excluded. I do not think the rule in the Indian Evidence Act was intended to go beyond this. There must always be room for the exercise of discretion when the relevancy of testimony rests upon its effect towards making the affirmative or negative of a proposition "highly probable," and with any reasonable use of this discretion, the Court ought not to interfere, but it appears to me to be as illegal now, as before the Evidence Act was passed, to admit evidence of crime *A* in order to prove the cognate but unconnected crime *B*.

The documents in the present case seem to afford some *primâ facie* evidence of about one hundred and fifty offences besides the one charged against the accused. But without a trial the case on any one of those documents cannot be more than one of suspicion. The law says that a conviction shall be evidence, but it does not say that suspicion, however strong, of another offence, shall be evidence, or that facts tending to create such a suspicion shall, in virtue of that tendency, be evidence. The present case is one in which the rule of exclusion is severely tried, because the improbability, that the accused should have committed forgery in

(*a*) 6 Barn & Cress 145. (*b*) 2 Leach 987.

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the particular instance under trial, is really diminished very perceptibly by their possession of so many documents seemingly prepared for fraudulent use; but still it is not, I think, on that account to be broken down. The general mischief would far outweigh the particular advantage; and the tendency to stray from the issues is so strong in this country, that any indulgence of it beyond the clear provisions of the law is certain to lead to future embarrassment. I think, therefore, that the documents—even those as to which some evidence has been given, and *â fortiori* the others—must be excluded from consideration.

Equally inadmissible, on the other hand, was the evidence on the part of the prisoners, by which it was sought to disprove the complainant Fakirchand's assertion that he had never made a promissory note. That the prisoner, Mansuklál, had filed a suit against Fakirchand on a promissory note, which suit he afterwards withdrew without the defendants appearing to answer, could be no proof of the alleged transaction for the purposes of the trial. What Mansuklál said on the occasion could be no evidence in his favour. The *ex-parte* deposition in the civil court of the court's peon that he had served Fakirchand with the summons, would be no evidence of a real service for this case. It was only if the alleged promissory note should be held proved, and proved as made at Ahmedabad, that it could prove Fakirchand to have been at Ahmedabad on the date it bore; and its genuineness was a collateral issue which the Court could not try, though it could receive the evidence of witnesses directly deposing that they saw Fakirchand at Ahmedabad on the day it was made. The hearsay evidence of a compromise, carried out by Fakirchand, was in any case inadmissible, and no one deposes to having himself seen him pay the amount of the compromise to Mansuklál. Upon the whole, the direct evidence of Mansuklál's acts in connexion with his claim on the promissory note to himself, is calculated to create an impression by no means favourable to that prisoner, but if the supposition be adopted, which is most favourable to the admission of Fakirchand's own examination on this

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matter, namely, that it was intended to shake his credit, then Fakirchand having denied that he had ever made a promissory note such as the one to Mansuklál, and the fact of whether he had or not being relevant to the present trial only in so far as it might affect Fakirchand's credit, no contradiction of his statement could, according to the principle of Section 153 of the Evidence Act, in strictness, be received. But the whole inquiry into the collateral question of the genuineness of Mansuklál's note was, in my view, irregular, and ought to be excluded from consideration. Even a judgment obtained by him on the note would, according to Section 43, have been inadmissible, unless that section is construed as widely as it is proposed to construe Section 11.

It is not very easy to say, when the necessary deductions have been made, to what conclusion the remainder of the evidence ought to have led the Court of Sessions. But first the balance of testimony seems to be decidedly in favour of the firm, of which Fakirchand is a member, being in good repute and possessed of means for its business. The allegation that Fakirchand was engaged in clandestine "Satta" transactions, is an unlikely one in the case of a mere child, as he was at the time, and is supported by no evidence of any one with whom he dealt. The books of the prisoner Parbhudás, which were seized suddenly, present no entry of the alleged loan, though those of his witness Jaichand, produced voluntarily some months afterwards, do contain an entry of his share of the loan. The excuse made that the money, advanced by Parbhudás, belonged to his mother, is very unsatisfactory. It is very unlikely that a note, payable by monthly instalments, and in which several people of small means were interested, should be allowed to stand for four or five years without a payment on account. When Mansuklál had sued, and been forced into a compromise, Parbhudás would naturally take immediate steps to enforce the settlement of his undeniable claim, and would not wait inactive for more than a year. The evidence for the prosecution, if it is to be believed, proves conclusively that Fakirchand was not at Ahmedabad at the time when the note purports to have

been made by him there. An *alibi* is generally an unsatisfactory way of disproving a claim or charge, but now it is supported by a considerable preponderance of the other testimony in the case. The conviction cannot be reversed if, "independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision" (Indian Evidence Act, Sec. 167). Here no objection appears to have been taken in the Court of Session, but the Session Judge ought, I think, to have excluded some of the evidence admitted by him in the exercise of his discretion, under Section 256 of the Code of Criminal Procedure; yet, on the whole, enough remains to support Fakirchand's denial of the note, and therefore to justify the decision of the Court of Session, which should, therefore, I think, be affirmed.

MELVILL, J. :—I have also arrived (though not without reluctance) at the conclusion that the Sessions Court ought not to have admitted evidence, that a number of documents, apparently forged, or held in readiness for the purpose of forgery, were found in the prisoners' possession. The point has been decided in England in *Griffits* v. *Payne* (c), in which case the defence was that the defendant's acceptance on the bill was a forgery, and evidence that a collection of bills, on which the defendant's acceptance was forged, had been found in the plaintiff's possession, was offered and refused, LORD DENMAN observing that such evidence would be clearly inadmissible in an indictment for forgery. It appears to me that the Indian Evidence Act does not go beyond the English law in regard to the admission of such evidence, except in so far as it renders a previous conviction relevant.

The learned Legal Remembrancer has argued that the evidence is relevant on the same ground that evidence of the discovery of implements of house-breaking in a prisoner's house is admitted in an indictment for house-breaking. But that evidence is admitted not to prove the fact of the house-breaking, but to show that the prisoner is the person who

(c) 11 A. and E. 131.

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has committed an act of house-breaking, the fact of which has been proved *aliunde*. In the present case it is attempted to use the possession of the implements of forgery as evidence that a forgery has been committed.

But excluding the evidence thus improperly admitted, I am of opinion that there remains sufficient to sustain the conviction. The greater part of the evidence for the prosecution has been believed by the Sessions Judge and the assessors; and I do not think that, as a court of appeal, we should be justified in dissenting from the view taken by them, merely because evidence of the same description is frequently manufactured. I have no hesitation in expressing my opinion that the evidence of the complainant having executed a bond to prisoner No. 3, by which it has been attempted to rebut the evidence for the prosecution, is, even if it be admissible, wholly unreliable.

I concur in confirming the conviction and sentence.

Conviction and Sentence confirmed.

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REG. v. GULA'BDA'S KUBERDA'S.

Session Case—Criminal Procedure Code, Secs. 4, 296, and 473—Jurisdiction—Giving false evidence in a judicial proceeding—Contempt of Court—Session Court—Assistant Session Judge.

To make a case a "session case" within the meaning of Section 4 of the Code of Criminal Procedure, it is not necessary that it should be triable exclusively by the Court of Session.

For the purposes of Section 473 of the Code, an Assistant Session Judge is a different Court from the Session Judge. Accordingly, an offence, which is committed in contempt of the Session Judge's authority, is cognizable by an Assistant Session Judge.

THIS was an application for the exercise of the High Court's extraordinary jurisdiction. The accused Gulábdás was tried, and convicted by J. W. Walker, Assistant