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[331] CRIMINAL REVISION.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

QUEEN-EMPRESS *v.* CHAGAN DAYARAM AND ANOTHER.*
[25th February, 1890.]

High Court's powers of revision in criminal cases—Criminal Procedure Code (Act X of 1882) ss. 435, 439—Accomplice—Corroboration—Evidence Act (I of 1872), ss. 114 and 133.

Under ss. 435 and 439 of the Code of Criminal Procedure (Act X of 1882) the High Court can, in the exercise of its revisional jurisdiction, interfere with the findings of fact of inferior Courts; and will do so, if there are very exceptional grounds for its interference, in the interests of justice.

A person who offers a bribe to a public officer is an accomplice.

Per BIRDWOOD, J.—*A conviction is not illegal, merely* because it proceeds on the uncorroborated evidence of an accomplice. Such evidence, being admissible, furnishes as legal a basis for a conviction as any other evidence which is admissible. The omission to follow the established rule of practice as to the corroboration of such evidence does not *constitute an error in law; but where* the evidence of an accomplice is not of a character to warrant the refusal of a Court to apply to it the maxim enunciated in illustration (*b*) of s. 114 of the Evidence Act I of 1872, a conviction based on such evidence alone would be of questionable propriety.

Per JARDINE, J.—As a rule, the Court refuses to interfere(1) where the Legislature intended the original or appellate decision on the facts to be final; (2) where *the relief sought might* be got from a lower Court of concurrent revisional jurisdiction; and (3) where the lower Court's judgment on the facts is not shown to be clearly and manifestly wrong. Sections 114 and 133 of the Indian Evidence Act (I of 1872) are to be read together, and neither section is to be *ignored in the exercise of judicial discretion.* The illustration (*b*) of s. 114—"that the Court may presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars"—is, however, the rule, and when it is departed from, the Court should show, or it should appear that the circumstances justify such departure.

Accordingly where a conviction was based solely on the evidence of accomplices and the circumstances connected with the preparation and conduct of the case, as disclosed by the record, and portions also of the evidence adduced at the trial, showed that it would not be proper to act on that evidence, the Court set aside the conviction.

[F., 34 B. 378=12 Bom.L.R. 21=11 Cr.L.J. 180=5 Ind. Cas. 612; Rat. Unr. Cr. Cas. 708 (709); Rat. Unr. Cr. Cas. 826 (827); R., 16 B. 580 (583)=Rat. Unr. Cr. Cas. 577 (579); 19 B. 51 (65); 19 B. 363 (369); 20 B. 394 (399); 21 B. 567 (569); 26 B. 193 (197)=3 Bom.L.R. 694; 28 B. 533 (550)=6 Bom.L.R. 379; 22 C. 998 (1001); 33 C. 649 (665)=10 C.W.N. 669; 35 M. 397=13 Cr.L.J. 352=14 Ind. Cas. 896=12 M.L.T. 1=(1912) M.W.N. 549; 14 Ind. Cas. 849=(1912)M.W.N. 207; L.B.R. (1893–1900), 70 (72); 1 L.B.R. 29 (32); Rat. Unr. Cr. Cas. 720 (721); Rat. Unr. Cr. Cas. 746 (748); Rat. Unr. Cr. Cas. 750 (752); Rat. Unr. Cr. Cas. 776 (778); Rat. Unr. Cr. Cas. 786 (790); Rat. Unr Cr. Cas. 795 (796); Rat. Unr. Cr. Cas. 806 (814); Rat. Unr. Cr. Cas. 837; Rat. Unr. Cr. Cas. 844 (846); Rat. Unr. Cr. Cas. 908 (914); D., 27 C. 144 (153).]

THIS was an application under s. 435 of the Code of Criminal Procedure (Act X of 1882).

The accused Chagan Dayaram and Dwarkadas Harkisondas were classers in the Revenue Survey Department. They were charged with taking bribes in the discharge of their duties as [332] public servants, and convicted under s. 161 of the Indian Penal Code, by the First Class Magistrate of Ahmedabad.

* Criminal Revision, No. 459 of 1889.

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The convictions were based mainly on the evidence of persons who had subscribed to a fund raised for the purpose of bribing the classers.

The trying Magistrate dealt with this evidence as the evidence of accomplices, but held that it was sufficiently corroborated by certain entries in the books of account of two bankers from whom some of the witnesses had borrowed money for the purpose of bribing the classers.

The Session Judge, in appeal, did not attach any weight to the entries in the account books, but confirmed the convictions solely on the evidence of the accomplices, who, in his opinion, had told a substantially true story.

The accused thereupon applied to the High Court, under its revisional jurisdiction, to set aside the convictions. The High Court sent for the record of the case.

Branson, for accused No. 1.

Macpherson, for accused No. 2.

Latham, Advocate General, (with him *Shantaram Narayan*, Government Pleader), for the Crown.

Branson:—The Sessions Judge has upheld the convictions on the uncorroborated evidence of persons who are confessed accomplices. We do not contend that the convictions are illegal, but that they are most improper, regard being had to the character of the witnesses and the circumstances under which they have come forward to give evidence. In a case like this, the Court has undoubtedly the jurisdiction to interfere with the findings of fact of the lower Court. Section 435 of the Criminal Procedure Code (Act X of 1882) confers larger powers on this Court in revision than s. 297 of the old Code. Even under the old Code, great laxity in weighing and testing evidence justified revision —*Empress* v. *Murli* (1). The present Code imposes on this Court the duty of considering the propriety, or otherwise, of any order or proceeding of a Subordinate Court, and for this purpose **[333]** invests it with the powers of an appellate Court: see s. 439. The only limit to this Court's power of interference is the interests of justice—*Nobin Krishna Mookerji* v. *Rassick Lall* (2); *Queen-Empress* v. *Sheikh Saheb Badrudin* (3). In the present case the Sessions Judge has not properly dealt with the evidence. The only evidence is that of accomplices, who have come forward as witnesses on promise of indemnity. The Mamlatdar had no power to issue proclamations promising indemnity to the witnesses and refund of money. The witnesses are thoroughly unreliable, and there is no reason given why the usual practice of requiring corroboration of the evidence of accomplices was departed from in this case.

Macpherson:—We admit that in revision this Court cannot go into the details of the evidence. But in a case like the present, where the conviction is clearly wrong and improper, this Court can, and will, interfere. Section 435 of the Criminal Procedure Code requires the Court to interfere in the interests of justice. The Mamlatdar's action was quite irregular and unjustifiable. Neither the Land Revenue Code nor the Criminal Procedure Code empowers the Mamlatdar to issue proclamations offering indemnity to witnesses.

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(1) 2 A. 336. (2) 10 C. 1047. (3) 8 B. 197.

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Latham :—The law as to accomplice evidence as laid down by the High Court is evidently not clearly intelligible to the Subordinate Courts. *Maganlal's case* (1) is not satisfactory. I would, therefore, ask the Court to refer this case to a Full Bench, so that the law may be settled once for all—*Reg.* v. *John Cannon* (2); *Reg.* v. *Malapa* (3); *Reg.* v. *Budhu Nanku* (4); *Queen-Empress* v. *Krishnabhat* (5). The right test is whether the Judge had the danger of relying on accomplice evidence alone present to his mind. Where the judge has recognized the fact of the witnesses being accomplices, and scrutinized the evidence carefully, the onus does not lie on the Crown to support the conviction. As to this Court's powers of revision, [334] I apprehend that the principle to be deduced from the decided cases is this that where the conviction is reasonable, the Court will not interfere—*Metropolitan Railway Company* v. *Wright* (6); *In the matter of Juggut Chunder Chuckerbutty* (7).

JUDGMENT.

BIRDWOOD, J.—The accused persons, who are classers in the Revenue Survey Department, were convicted by the First Class Magistrate, under s. 161 of the Indian Penal Code, of obtaining from the witness, Dhinga Hari, the sum of Rs. 34 as a gratification, other than legal remuneration, as a motive for forbearing to show, in the exercise of their official functions, disfavour to the said Dhinga Hari and certain other persons who had paid contributions towards that sum. The accused Dwarkadas was also convicted of similarly obtaining a further sum of Rs. 27 from Nathu Arjan, with a similar corrupt intent. The principal evidence against the accused was that of accomplices, that is, of some of the persons who subscribed towards the two funds said to have been collected for the accused. The Magistrate held that this evidence was sufficiently corroborated by certain entries in the account books of two money-lenders, showing sums advanced to the accomplices. On a third charge brought against the accused Dwarkadas, the Magistrate recorded a judgment of acquittal, as the evidence of the accomplices was not corroborated by independent testimony.

In dismissing the appeals of the two accused persons, the Sessions Judge observed, with reference to the first charge, that the evidence of the money-lender, Nager Amba, as to sums borrowed from him about the 23rd December, 1888, which was supported by an evidently contemporaneous entry in his rough account book, Ex. C, did not carry the evidence further than that the borrowers held themselves out to be borrowing the money to pay the classers. The Sessions Judge really upheld the convictions, both on the first and second charges, on a consideration of the evidence of the accomplices, as he was satisfied that they had told a substantially true story, and he was mainly led to form a favourable opinion of the evidence of the accomplices because he found that its production was due to the discovery of a clue in [335] the books of the money-lenders, Nager Amba and Govind Itcha, and because the record disclosed no indication of any concert or conspiracy. He gives other reasons for his opinion; but these two considerations seem to have been allowed most weight.

Before this application came on for hearing, the learned Advocate-General moved us, on behalf of the Government, to refer it to a Full Bench.

(1) See *ante*, 14 B. 115. (2) 6 B. H. C. R. Cr. C. 15. (3) 11 B. H. C. R. 196.
(4) 1 B. 475. (5) 10 B. 319. (6) 11 Ap. Ca. 152.
(7) 2 C. 110.

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But we felt ourselves unable to comply with the request, as it was not clear that, in regard to any important question of law involved in the case, there was any such conflict of authority in the decisions of this Court as to justify the reference.

The convictions upheld by the Court of Session are objected to by the learned counsel for the applicants, not as illegal, but as improper and unreasonable in the circumstances of the case. It is obvious,—indeed it is distinctly laid down in s. 133 of the Indian Evidence Act, 1872,—that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Such evidence, being admissible, furnishes as legal a basis for a conviction as any other evidence which is admissible. The omission to follow the established rule of practice as to the corroboration of such evidence does not constitute an error in law—*The Queen* v. *Stubbs* (1) cited in *Reg.* v. *Ganu* (2). In his Treatise on the Law of Evidence, Mr. Phillipps says: "Although the Judge does not in express language declare, that a case depending on the unconfirmed evidence of an accomplice is insufficient in law to warrant a conviction, but merely advises the jury not to place credit on the evidence; yet, as it is not likely an instance should arise in which the jury would disregard the advice so given, and convict the prisoner, the substantial result appears to be nearly the same as if the practice had depended upon a rule of law, instead of being only the exercise of the discretion of the presiding Judge. The only distinction appears to be, that if the judge were to submit a case of this nature to the jury without any such recommendation, and a conviction ensued,—or if a jury were to convict in opposition to the recommendation of the Judge,—it could not properly be said in their case consistently **[336]** with the authorities on the subject, that the conviction would be illegal." (Phillipps' Law of Evidence, Vol. I., p. 95). And in India a conviction by a jury could not be set aside on appeal merely on the ground that the only evidence against the accused was that of accomplices: for under s. 418 of the Code of Criminal Procedure, an appeal lies on a matter of law only when the trial is by jury. The rule has been regarded rather as "a doctrine of expediency and prudence than a principle of law." (*Per* Sir James Hannen: as President of the "Special Commission," *Times'* Report, Part 33, p. 94.) But, under ss. 435 and 439 of the Code of Criminal Procedure, this Court can, in the exercise of its revisional jurisdiction, examine the records of cases for the purpose of satisfying itself as to the correctness or propriety as well as the legality of any finding, sentence or order; and where there are very exceptional grounds for its interference, it will, in the interests of justice, exercise the powers of a Court of appeal, in dealing with them (*Queen Empress* v. *Shekh Saheb Budrudin*(3); *Nobin Krishna Mookerji* v. *Rassick Lall* (4); *Bhawoo Jivaji* v. *Mulji Dyal* (5). If there are such grounds in the present case for interference, this Court will be able to deal with this application as if it were hearing an appeal from the decision of a Sessions Judge in a case not tried by jury.

Now the circumstances connected with the preparation and conduct of this case, as disclosed by the record, and portions also of the evidence adduced at the trial, seem to us to justify the gravest doubts as to the correctness and propriety of the Sessions Judge's judgment. The

(1) 25 L. J. Mag. Ca. 16. (2) 6 B. H. C. R. Cr. Ca. 57 (58).
(3) 8 B. 197. (4) 10. C. 1047. (5) 12 B. 377.

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Mamlatdar, who is also a Magistrate, had, before commencing an enquiry in the village of a Rethal, where the offences charged against the accused are said to have been committed, issued in the villages in his charge, including Rethal, proclamations which, in the opinion of both the Magistrate and the Sessions Judge, were likely to be regarded as a promise of indemnity to people for giving bribes to classers, if only the persons who had paid them would come forward, without fear, to [337] give evidence about such payments. Exhibit H is a proclamation in the Mamlatdar's own handwriting, in which the promise is made to refund such payments. It is not proved that a proclamation containing this precise promise was issued in Rethal; but it was probably well known there, as elsewhere, that such a promise had been made. The Sessions Judge thinks that the witnesses for the prosecution incriminated themselves not because of any promise held out, but because of the clue discovered in the books of the money-lenders. But it is difficult to estimate fully the possible effect of such a proclamation. If the classers were unpopular in the district, or even if there was no feeling against them, still such a proclamation might readily be regarded by ignorant cultivators as a denunciation by the Government of a certain class of public servants. Persons who had never given bribes might thus be tempted to come forward and impeach innocent men. The promise held out might lead them to suppose that they could do so without risk, and even with some profit to themselves, if they could secure the payment to themselves from the public treasury of moneys which they professed to have paid to the classers. The proclamation was absolutely unwarranted by any law. It was not sanctioned by any superior authority, and the only explanation of it which has been suggested to us by the Advocate-General is that the Mamlatdar was probably desirous of obtaining reputation as a zealous officer. His conduct is under review before us only so far as it affects the evidence in this case; and we must observe that, whatever his motive may have been in issuing the proclamations, we cannot hold that they could have been entirely without any influence on the minds of witnesses. And, then, as regards the books of the money-lenders and the reliance placed on them by the Sessions Judge, it is to be observed that the money-lender, Nager Amba, first of all produced at the trial a book, Ex. A, which, he said, was his original book of accounts, after referring to which he was able to depose to the several payments made by him on the 23rd December, 1888. On cross-examination, however, on the 1st July 1889, he was forced to admit that this book was copied out from another rough book (Ex. C), which he produced on the 9th July. This book (Ex. C) was apparently written by his son, who, however, [338] was not called to prove it. The witness adds that he is "not acquainted with the account book transactions, as his son writes it." It does not appear, therefore, that the case against the accused receives any support from the accounts, as produced, or from the evidence of Nager Amba. It seems scarcely safe to hold that accounts, as to the authenticity of which no evidence was recorded at the trial, could have furnished any clue to the discovery of evidence. These unproved accounts cannot be used as corroborative evidence in the case of Nager Amba's statements; and even if they could be so used, there is apparently nothing in his evidence to corroborate, as he does not seem to speak from personal knowledge and recollection of payments alleged to have been made by him to persons who profess to have bribed the accused. The money-lender Govind Itcha, who is said to have advanced the money which

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forms the subject of the second charge, does not himself prove his books. He cannot read or write. His books were written by his nephew, Pocha, who was not called. This witness seems, however, to remember the fact of his having made the payments in question.

Of course, the foregoing considerations would not, in the absence of weightier reasons, warrant our interference with the finding of fact arrived at by the Courts below; but they serve to show that the case against the accused really rests only on the evidence of the accomplices. There is no corroboration, with reference to the first charge at all events, "of the surrounding circumstances, so as to lead up to a general presumption as to the truth of the evidence," such as, according to the dictum of Sir James Hannen, on the occasion already referred to, is required by the rule regarding the evidence of accomplices. The only corroboration, such as it is, of the evidence in support of the second charge is that furnished by Govind Itcha, whose evidence as to another matter, to be presently referred to, is, however, far from satisfactory. It becomes, therefore, of great importance to enquire in this case whether the evidence of the accomplices is of that unimpeachable character which we should expect to find in a case where the conviction rests on it alone.

Now, it is quite clear that, after issuing his proclamations, the Mamlatdar commenced an enquiry at Rethal on the 27th February, [339] 1889. He examined Govind Itcha on that day; and it further appears, from a passage in Govind Itcha's examination, regarding which he prevaricated "a great deal," according to the Magistrate, that the Mamlatdar must also have examined other witnesses then too. Their statements, however, of that date are not forthcoming; but, instead of them, there are statements recorded on solemn affirmation on the 1st March. These statements show how the sums of Rs. 34 and Rs. 27, which form the subjects of the first two charges, were made up. The witness, Dhinga Hari, who collected the contributions towards the sum of Rs. 34, says that the first statements taken down by the Mamlatdar were torn up, and other statements taken down subsequently, "because afterwards more people admitted having paid the money." This is not a very clear explanation, but it suggests the remark that, if there was no discrepancy between the two sets of statements, the reason for destroying the earlier statements is not obvious. The Magistrate did not believe the Mamlatdar when he said that no statements were made by the givers of bribes on the 27th February. He thinks that neither the Mamlatdar nor some of the witnesses are telling the truth as to that matter. The Sessions Judge was not satisfied, however, that the Mamlatdar had destroyed any formal record of any statements made by any of the witnesses. But the Advocate-General has admitted in argument that the Mamlatdar behaved with impropriety and has equivocated, and that, no doubt, witnesses were examined on the 27th February. It is not contended that the Mamlatdar had any authority to examine the witnesses on solemn affirmation, though he may have thought that he was acting as a Magistrate. The circumstance that he took down these depositions in this way shows, however, that he made a formal enquiry; and the absence of the statements at first made by the witnesses throws uncertainty and suspicion on the whole case for the prosecution. The only fair presumption to draw is that these statements, if produced, would not have supported the case for the prosecution.

The evidence of the accomplices has not, moreover, the merit of having been given without the possibility of any sort of concert. The

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witnesses are said to have been all present when each was examined by the Mamlatdar. This circumstance deprives [340] their evidence of the value which it would undoubtedly have had if they had been examined separately and had then confirmed each other's statements in all details. (See the second "fact" noted below illus. (*b*) of s. 114 of the Evidence Act.) Again, there can be no doubt that the case finally put forward on the 1st March and at the trial was one of the payment of Rs. 34 to the accused. This sum was made up of certain contributions, all of which were accounted for. The witness, Dhinga Hari, swore to the truth of the details of the list of contributions; but when one of the alleged contributors, Deva Dhansang, who denied that he had paid Rs. 2 to Dhinga Hari, was confronted with him, Dhinga Hari withdrew his statement as to that payment. Such inconsistency necessarily weakens his evidence, and leaves the case for the prosecution with an imperfect explanation of a material part of it. A witness of this kind is not one on whose uncorroborated evidence it is safe to act.

The case is clearly not so strong as the Sessions Judge takes it to be. Illustration (*b*) of s. 114 of the Evidence Act shows that the Court in British India may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. Mr. Phillips, in his Treatise on the Law of Evidence (Vol. I, p. 95), remarks that the practice of requiring corroboration of an accomplice's evidence "has obtained so much sanction from legal authority, that a deviation from it in any particular case would be justly considered as of questionable propriety." We are of opinion that the character of the evidence relied on by the prosecution was not of a kind to warrant the refusal of the Sessions Judge to apply to the case the maxim enunciated in illus. (*b*) of s. 114 of the Evidence Act.

We reverse the convictions and sentences recorded against the accused Chagan and Dwarkadas, and direct that they be set at liberty.

JARDINE, J.—I am of the same opinion.

We have been assisted by the Advocate-General for the Crown and by Mr. Branson and Mr. Macpherson for the respective accused, and have thus had much advantage in the discussion of the law and the examination of the evidence. I feel, therefore, [341] greater confidence in coming to the decision we now pronounce than I would otherwise have felt.

Among the important questions argued in this case is that of the limit of the interference of the High Court, as a Court of Revision, with the findings of fact of inferior Courts. The subject is discussed by Scott, J., in criminal application Nos. 263 and 265 of 1889, *Queen-Empress* v. *Maganlal and Motilal* (1), and is only touched on by Bayley, J., and myself, as it was but slightly argued. In the present case it has been fully discussed, and I will now state my opinion. The jurisdiction is plainly conferred by chap. 32 of the present Code of Criminal Procedure Act X of 1882. I refer more particularly to ss. 435, 438, 439. If these sections are compared with ss. 294 to 297 of the Code of 1872, it becomes apparent that the Legislature has now authorized the High Court to examine into the correctness as well as the legality, propriety and regularity of the proceedings of Courts below and I notice that Mr. Justice Prinsep remarks on s. 439 that "whereas under the Code of 1872 the

(1) 14 B. 115.

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High Court could act as a Court of Revision only whenever it appeared that a *material error* had been committed in a judicial proceeding, which, as interpreted, limited its powers, it can now act in its discretion." This is the view taken in *Queen Empress* v. *Shekh Saheb Budrudin* (1) by this Court, a ruling which was followed in *Bhawoo* v. *Mulji* (2). The High Court at Fort William takes the same view—*Nobin Krishna Mookerji* v. *Rassick Lall* (3), and so apparently does the High Court at Allahabad even in acquittals—*Queen* v. *Balwant* (4). See, too, *In the matter of Hardeo* (5) decided under the Code of 1872. These and other cases show that the jurisdiction to revise findings of fact exists as regards findings of Courts of appeal, as well as original Courts as may also be inferred from the words of s. 430. I do not find that the law imposes any limit to this jurisdiction, except the discretion of the Judges, who, as I shall show, have regulated the discretion by rules which in practice limits its use.

[342] I refrain carefully from using language implying that any suitor seeking a relief which this Court in its discretion may grant, is precluded from submitting his case to it. We have, however, followed the rule laid down by Kemball, J., at I. L. R. 8 Bom. 199, that we ought to refuse to interfere on the ground of mistake in dealing with facts "save on very exceptional grounds." In *Nobin Krishna Mookerji* v. *Rassick Lall* (3) the Judges say "We exercise this power only in such cases where we find that in the interests of justice it should be exercised". Where the suitor has a right of appeal, and does not exercise it, the revisional powers should, as is said in *Queen Empress* v. *Ala Bakhsh* (6), "be sparingly used, and, save in very exceptional instances not at all in reference to questions of fact." In this Court we have of late often followed the practice of the Judges at Calcutta reported in *Queen Empress* v. *Reolah* (7) refusing applications for revision in cases where a lower Court has concurrent revisional jurisdiction, save on some special ground shown, unless a previous application has been made to the lower Court. In support of this practice we have more than once referred to an old case of Charles II's time where the King's Bench refused a *mandamus*, on the ground that there was a remedy in a lower tribunal by appeal which had not been used. Although the Court had a general superintendency over all Courts, Spiritual and Temporal, to keep them within their jurisdictions, it said to the suitors: "They are not, for that matter, to appeal to this Court; for if so, the matters of all Colleges and particular jurisdictions would be drawn hither"—*Dr. Widdrington's case* (8). As a rule, while allowing the suitor to come to our revisional jurisdiction, we have acted on these principles and refused to interfere in two great classes of cases (*a*) where, as a rule, the Legislature intended the original or appellate decision on the facts to be final, (*b*) where the relief sought might be got from a Court of concurrent revisional jurisdiction below.

Whether in dealing with matters of fact "very exceptional grounds" exist, "whether the interests of justice" require revisional **[343]** interference, are questions to be determined in reference to the circumstances of each case. It may, as suggested by the learned Advocate General and assented to by Mr. Branson and Mr. Macpherson, be a fairly

(1) 8 B. 197.
(2) 12 B. 377.
(3) 10 C. 1047.
(4) 9 A. 134.
(5) 1 A. 139.
(6) 6 A. 484 (485).
(7) 14 C. 887.
(8) 1 Levinz, 23 (24).

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accurate account of the way this Court uses its discretion if we say that we refrain from interfering with the judgment on facts in like manner as we refrain under s. 307 of the Criminal Procedure Code from interfering with the verdict of a jury, *i. e.*, where it is not shown to be clearly and manifestly wrong—*Queen Empress* v. *Mani* (1), nor that the Court below has used no discretion at all, or in a manner wholly unreasonable—*In the matter of Juggut Chunder* (2). The Advocate General also argued that the High Court would be guided in this jurisdiction by the analogy of the important case of *Metropolitan Railway Company* v. *Wright* (3) where Lord Halsbury said at p. 156: "If reasonable men *might* find (not 'ought to' as was said in *Solomon* v. *Bitton* (4), the verdict which has been found, I think no Court has jurisdiction to disturb a decision of fact which the law has confided to juries, not to Judges." I think these cases do help to an understanding of the principles on which the higher Courts take notice of the fact that the Legislature has entrusted particular duties to Courts below, which of course must be sustained in the performance of those duties. But even in regard to verdicts of juries dealt with under s. 307, much depends on the discretion of the Judges; the reported cases show that different Judges of the same Division Bench sometimes differ in opinion as to whether the verdict is clearly and manifestly wrong: and I notice that in s. 439 the Legislature in stating our powers to revise, says: "The High Court may in its discretion." This ample phrase is doubtless used intentionally and with a knowledge that as every case varies, justice would be more difficult to attain if the judicial discretion of the Judges were limited, as in the law of 1872.

On another point we have been asked in the public interests by the Advocate-General to give our opinion, though it hardly arises in the case, I mean as to the corroboration of accomplices. **[344]** Here of course the Courts must use judicial discretion. In using a judicial discretion the Courts have to bear in mind not only the statutes, but also the great rules and maxims of the law, such, for example, as those of logic, or evidence, or public policy. A Court might farily be asked to review a finding that 2 and 2 make five. In a less degree, because the case is concrete, I think on perusal of the cases that this Court would give a friendly ear to a suitor, objecting to a conviction based solely on evidence of accomplices of bad character, if the convicting Court had given no reasons for trusting such testimony and if none appeared on the face of the proceedings. So long-established a rule of practice as that which makes it prudent, as a general rule, to require corroboration of accomplices, cannot without great danger to society be ignored by the Magistrates and Sessions Judges, simply because s. 133 of the Indian Evidence Act declares that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. As pointed out by Bayley, J., in *Maganlal's case*, the Courts must give proper effect to the long experience of the ways of rogues embodied in s. 114, illustration (*b*), of the same Act, *viz.*, "The Court may presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars." The rule in s. 114 and that in s. 133 are part of one subject, and both are found in most of the great judgments mentioned in our judgments in that case; and neither section is to be ignored in the exercise of

(1) 10 B. 497 (500).
(2) 2 C. 110.
(3) L. R. 11 Ap. C. 152.
(4) L. R. 8 Q. B. D. 176.

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judicial discretion. The illustration (*b*) is, however, the rule, and when it is departed from, I think the Court should show, or that it should appear, that the circumstances justify the exceptional treatment of the case. As I said (*ante*, p. 138) in *Maganlal's case*, "it has been held by two eminent Judges, now members of the Judicial Committee of the Privy Council, that it would certainly be unsafe to depart in India from the established practice of England in the application of the rule requiring corroboration. These are the words of Couch, C. J., in *Reg* v. *Imam* (1), and they pervade Sir Barnes Peacock's decision in *Elahi Buksh's case* (2)." It is [345] not enough for a Court to state the rule *pro forma* and merely as a reason to evade it; the Courts must act up to it. In the case before us, however, I am of opinion that both the convicting Magistrate and the Sessions Judge in appeal did recognize that a person who offers a bribe to a public officer is a criminal and punishable, and, therefore, an accomplice, and that in estimating the weight of his accomplice evidence, they did bear in mind what Sir Barnes Peacock calls the great safeguard of the rule. Thus the case differs from some of the Ahmedabad bribery cases we revised in September last, where the Magistrate assumed that a briber is not liable to punishment, but saved by the doctrine of necessity and, therefore, as was argued before us for the Crown, not an accomplice. We are not now asked to reverse the convictions on any ground of error in law or procedure. The learned counsel invite our interference on the ground of such exceptional misappreciation of evidence as was the ground of interference in the case of *Queen* v. *Shekh Saheb Badrudin* (3), and which was held to be material error in *Empress of India* v. *Murli* (4). Our jurisdiction being invoked, we are bound to consider whether the applicant's counsel have shown exceptional reasons for its exercise; and we must, therefore, enter on an examination of the evidence.

(Here his Lordship reviewed the evidence, and continued:—)

I think the Magistrate was far too easily satisfied with the corroboration of Nager and Govind, both most discredited witnesses. I think the evidence, on the face of it, shows that the Sessions Judge was wrong in supposing that there was no concert among the persons who say they bribed. As it must now be assumed that through the conduct of the Mamlatdar, the virtual prosecutor, important evidence has been kept back, I am of opinion that the facts are so exceptional as to require us in the interests of justice to reverse the convictions and sentences.

Having dealt with the evidence on which the convictions were chiefly based, I will now turn to some points which were argued, involving questions of law. The learned Advocate General moved us to consider this case in a Full Bench, in order that the [346] extent of the application of the rule contained in s. 133 of the Indian Evidence Act should be defined. It was urged that some expressions in the judgment of our brother Bayley in *Maganlal's case* (5) had thrown doubt on the view of that provision taken by this Court in reported cases. We, however, hold a contrary opinion. As remarked by Chief Justice Best in *Richardson* v. *Mellish* (6), "the expressions of every Judge must be taken with reference to the case on which he decides, otherwise the law will get into extreme confusion." The motion was made by the Advocate General under instructions of the Government of Bombay, who

(1) 3 B.H.C.R.O.C. 57 (59).
(2) B. L.R. F. B. Sup. Vol. 459=5 W. R. Cr. R. 80.
(3) 8 B. 197 (199).
(4) 2 A. 336.
(5) See *ante*, 14 B. 115.
(6) 2 Bing. 249.

believed that the judgment in question has misled Magistrates. But we do not think that was at all made out. As one of the Judges in that case I may say that hardly any argument took place about the law of accomplice evidence before Scott, J., and myself, though Scott, J., enters on the subject in his judgment. The main question argued was whether the man who offers a bribe to an official is punishable, and an accomplice: this is apparent in the judgments of Bayley, J., and, myself. One of the Magistrates in Ahmedabad had held and wrongly held to the contrary, giving as his authority some expressions of Sir R. West in the Minute on the *Crawford case* which the Government of Bombay adopted. Mr. Branson, as counsel for the accused, argued, from many cases of great authority, that the doctrine of legal necessity did not excuse the bribers, and our decision affirmed his view, which we said had not, however, been doubted since the time of Hale. The impression I gather from all the bribery cases we had before us is that the decision will remove one main obstacle to the stoppage of corruption: I mean the too great readiness to treat the briber as an innocent man, and not as a rogue, and to rely too readily on his uncorroborated story even when supported by forgeries and false evidence. The rule of law and the rule of practice about accomplices have often been the subject of decision, and are also fully treated in all the text books; there was thus, in our opinion, no reason why we should sit in Full Bench to lay down well-established law, and when at the opening of the argument we [347] found that there was no contention on the subject, we resolved to hear the case in the Division Court. At the same time that we rejected what was a rather unusual motion, we of course appreciated the anxiety of Government that in proportion to the frequency of these somewhat difficult cases, the Magistrates should have proper guidance; and as the real question in each case is not so much one of rule as of its application, I have been careful in this as in all the other similar cases to analyze the evidence with fulness and care, so that the Courts below may know how this Court thinks it should be dealt with. Having been one of the Judges in *Maganlal's case* (1) I have acceded to the suggestion of the learned Advocate-General to explain what we really decided in that case and what view we had present to our minds of the extent of the rule about corroboration. In the present case other questions have arisen of much importance—as, for example, the issue by the Mamlatdar of the proclamations which the lower Courts both think would be treated by the rayats as tantamount to offers of indemnity to criminals. About this I have not been able to find any cases in the books, including the State Trials, and I am, therefore, constrained to rely on the dicta of Judges and the principles adopted by the Legislature in giving the opinion at which I arrive after considering what the learned counsel have argued. I have found no case in which a Magistrate either in England or in India has issued proclamations like those in the record. I will now state the opinion I have formed on this and other matters which the counsel for the accused condemn as illegal and prejudicial to the fair balance of justice. I think with the Advocate-General that the case discloses the need of some observations of this Court which may guide Magistrates in future, but more particularly on points in which the Reports available to them contain little guidance.

Mamlatdars have great power and influence in the mofussil districts where they wield civil and criminal jurisdiction, and it behoves them

(1) See *ante* 14 B. 115.

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more than private persons not to coerce people into making statements where they have no authority to inquire. It is admitted by the Advocate-General that we cannot impute any, [348] jurisdiction to this officer in this case under any revenue law or under s. 191, cl. (c) of the Criminal Procedure Code; his proceedings, therefore, were void under s. 530. He had apparently no right to administer oaths. "If any be compelled to answer upon his oath, where he ought not by the law, this is oppression"—*The Oath Ex-officio Case* (1). The issue of the proclamations, if done at all, ought to have been done in a more guarded manner. The promise to bribers, that if they came forward they would get back their money, was one incapable of performance and against the public policy—*Blachford* v. *Preston* (2). The law should be worked, so that the temptation to the accomplice to strain the truth should be as slight as possible. *Per* Blackburn, J., in *Winsor* v. *The Queen* (3). The exhortation not to be afraid should come either from a higher authority or from some officer having a jurisdiction in the case. If, as the Court below think, the proclamations were likely to be interpreted by the bribers as an indemnity, then caution was far more necessary to avoid breach of public faith. There is no authority, except the Legislature, competent, in time of quiet when the Courts are open, to suspend the ordinary operation of the law of crimes or disabilities. This is settled by the trial of the Seven Bishops and the Bill of Rights. See Broome's Constitutional Law. Some Statutes create absolute disabilities; others empower the higher authorities to remove Magistrates and other officers guilty of misconduct: and then there is the Royal prerogative. The subject has lately received in one instance the attention of the Legislature. When the Government of Bombay promised witnesses, in certain charges of corrupt conduct, a guarantee of "immunity from prosecution to any person giving evidence, and in cases of payments for promotion or to obtain or avoid transfers, immunity from official or departmental punishment or loss"—see Parliamentary Blue-Book, 5701; Correspondence relating to the case of Mr. Crawford, p. 252; and Proceedings of the Governor-General's Legislative Council of 19th September 1889—it was necessary to call in legislative authority to protect the witnesses from their statements being used as evidence against them, and [349] this led to the passing of the Mamlatdars' Indemnity Act in 1889, as appears from the proceedings in the Governor-General's Legislative Council. Again, the general terms of that indemnity did not protect the witnesses against the operation of the Stat. 5 and 6, Edward VI, c. 16, extended to India by 49 George III, c. 126, which disable the purchaser of a judicial office or an office of trust from keeping it: see *In re Ganesh Sathe* (4). The Legislature has declined to relieve those witnesses from these disabilities, as its proceedings show. It is important, as Baron Martin said, that the attention of all persons should be called to these Acts of Parliament—*Grœme* v. *Wroughton* (5), and I think also to our judgments in *Maganlal's case*, where it is declared that the person who offers a bribe to a public officer is punishable under the Indian Penal Code and is not excused by the doctrine of legal necessity. The knowledge of the consequences will make many fraudulent men less eager to commit the offence than the bribers in most of these Ahmedabad cases were. What Cockburn, C. J., said in *Winsor* v. *The Queen* (6), may be applied to all departments of the Government service: "Our rules are to

(1) 12 Coke R. 227. (2) 8 T. R. 89. (3) L. R. 1 Q. B. 312.
(4) 13 B. 600. (5) 11 Exch. 146. (6) L. R. 1 Q. B. 310.

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be framed to keep the administration of justice beyond the possibility of corruption." Again, "we must trust to the means we have of punishing corruption and dishonesty." Among these I include as most powerful the prosecution of people who conspire to bribe, or who offer bribes. The proclamations of indemnity seem to ignore this salutary influence of the penal law, while they tend rather to excite charges against classers in the Revenue Survey; and Mr. Branson, with an evident recollection of a passage in Macaulay's account of the trial of Nunkomar, remonstrates against such general offer of indemnity, on the ground that the bias thereby shown on the part of a powerful official tends to the fabrication of false charges and false evidence from which no one, however high his rank or excellent his character, would be safe in an Oriental country. Macaulay's words are that when the official gives the hint, the prosecution will "in twenty-four hours be furnished with grave charges supported by depositions so full and circumstantial that [350] any person unaccustomed to Asiatic mendacity would regard them as decisive." I think the evidence shows good ground for Mr. Branson's remark; and, besides, the law does not look with favour on promises to witnesses, so general and so vague as to relieve them from the feeling of responsibility. See *Rex* v. *Rudd* (1) and Melvill J.'s comment in *Reg.* v. *Hanmant* (2). The extreme danger of such terms being offered, is the subject of Mr. Phillipps' comments on the judicial murder of Lord Stafford. "This voluntary, but not gratuitous, assumption of guilt for the purpose of fixing a false charge on another, though unheard of in modern times, was not unexampled in the worst times of our earlier history. And among the Roman *delatores* it is well known to have been a common practice. Dugdale knew that he was safe, and that he could not fail to be well rewarded, whatever he said against himself, provided only he said enough against the prisoner"—I Phillipps' State Trials, p. 476. Under the Criminal Procedure Code, judicial pardons can be tendered only in certain cases and by officers of rank higher than this Mamlatdar. The pardon is offered on condition only of the full and true disclosure, of which the Court is the judge. It is very possible that in some of these cases the Magistrates may have been perplexed by the difficulty of ascertaining the truth where there is evidence of a general corruption, analogous to the state of things in a corrupt borough in England; but this difficulty is not a reason for straining any law of evidence, nor for promising indemnities without the limitation which the Legislature has found expedient. Honest objects may not be attained by breaking the law—*The Queen* v. *Hicklin* (3). The procedure in England on the trial of election petitions is the same as regards true disclosure; the witness who deposes to his own corrupt proceedings does not get the indemnity, unless he satisfies the Commissioners, who take the evidence, that he has answered honestly. Then only does he get his certificate: the Commissioners are the sole judge. Again, the certificate of indemnity does not save the witness from the incapacities which corrupt conduct entails; the principles of the Revolution of 1688 [351] are very carefully secured in the latest Act of Parliament on this subject, the Corrupt Practices Act of 1883. Section 38, cl. 6, is as follows:—"Where a person who is a Justice of Peace is reported by any election Court or election Commissioners to have been guilty of any corrupt practice in reference to an election, whether he has obtained a certificate of indemnity or not, it shall be the duty of the Director of

(1) 1 Cowper 334. (2) 1 B. 610 (618). (3) L. R. 3 Q.B. 360.

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Public Prosecutions to report the case to the Lord High Chancellor of Great Britain, with such evidence as may have been given of such corrupt practice, and where any such person acts as a Justice of the Peace by virtue of his being or having been Mayor of a borough, the Lord High Chancellor shall have the same power to remove such person from being a Justice of the Peace as if he was named in a commission of the peace." Then follows a similar provision as regards barristers, solicitors and members of other professions."

I notice that the indemnity proclamations filed in this case contain no saving terms like those about telling the truth, or about the forfeiture of office or liability thereto—matters relevant to all *vatandars* to whom the Hereditary Offices Act, Bombay Act III of 1874, part 9, applies, to patels with judicial powers and talatis holding offices of trust. There is always a danger that if officials, like Mamlatdars, issue indemnities by proclamation, the limitations of the law and those which good policy exact, will be forgotten, and the public faith be inadvertently pledged to promises which are contrary to law. These proclamations seem to have emanated entirely from the Mamlatdar and without any consultation with the law officers. The case is very different to the action of a Magistrate or a loyal subject in the suppression of a dangerous riot or tumultous assembly. There was plenty of time to seek instructions from higher authority. The Mamlatdar is a subordinate official, and, as it happens, had no authority to make any inquiry at all. Yet he issued these proclamations right and left, and I am of opinion that if they are still posted up in the village *chavdis*, the Government might well order that they be revoked. Possibly, the Mamlatdar thought that the protection given to bribers as witnesses by the [352] ordinary law, s. 132 of the Indian Evidence Act, does not go far enough, and that something special, more like the English Corrupt Practices Act without the safeguards, would be more efficacious. But the law must not be strained against individuals; that would be oppression; the law is no respector of persons. The English provision about certificate of indemnity is based on special reasons of that law as explained in *The Queen* v. *Hole* (1) by Lord Justice Brett. To prevent unfairness, Justice must be administered according to the existing law, whatever it is. The right discretion is not *scire quid sit justum*, but *scire per legem*, as Coke insisted. It is the duty of this Court to keep the Magistrates within the precise limits of their duty—*Rex* v. *Pinney* (2); and it seems difficult for them to hit the precise line in these cases of bribery. In the case of *Ganesh Sathe* (3) we had to deal with Magistrates who had wrongly declined to investigate a complaint about corruption; in the present case our remarks relate to the undue eagerness of an official who without any complaint acted *ultra vires*. The observations of the trying Magistrate on the evidence of the Mamlatdar are, in my opinion, such as require the attention of the Government; but as no full inquiry has been made into that officer's conduct, I refrain from further comment.

Convictions reversed.

(1) L.R. 7 Q.B.D. 584. (2) 5 C. & B. 270. (3) 13 B. 600.