APPELLATE CRIMINAL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

QUEEN-EMPRESS *v.* KARIGOWDA.*

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January 18.

Penal Code (Act XLV of 1860*), Secs.* 211, 500*—Falsely charging a person with an offence—Defamation—Defamatory statement made by a person examined in the course of an official or departmental inquiry—Privilege—Qualified privilege—Criminal Procedure Code (Act X of* 1882*), Secs.* 191, 197.

The complainant was Deputy Collector and First Class Magistrate of Bijápur. Certain petitions said to emanate from the accused were received by Government charging the complainant with bribery and corruption. Government thereupon ordered Mr. Monteath, Collector and Magistrate of the district, to inquire into the matter. Mr. Monteath enforced the attendance of the accused by writing to the police, who brought the accused before him. In answer to questions put to him, the accused denied having sent any petition to Government, but stated that he had paid a bribe to the complainant to secure the acquittal of his son, who was then on his trial on a charge of theft before him. Mr. Monteath examined other witnesses and reported the result of his inquiry to Government. Government permitted the Deputy Collector to prosecute the accused, and he accordingly lodged a complaint against the accused for defamation, under section 500 of the Indian Penal Code (XLV of 1860), in having stated to Mr. Monteath, in the course of the inquiry, that he (the complainant) had accepted a bribe from him.

The trying Magistrate was of opinion that the offence fell under section 211 of the Penal Code. He at first framed charges both under sections 211 and 500. But subsequently he struck out the charge of defamation under section 500 and convicted the accused under section 211 of making a false charge.

On appeal, the Joint Sessions Judge was of opinion that the charge under section 211 could not be maintained, as the accused had not made any "false charge" to a Court or officer having jurisdiction to investigate it. As regards the charge of defamation, he was of opinion that the fact of bribery was not proved. But he held that in making the statement to Mr. Monteath the accused had acted in good faith, and that his case fell under exception 8 to section 499 of the Indian Penal Code. He, therefore, reversed the conviction under section 211 and acquitted the accused of defamation under section 500 of the Code. Against this order of acquittal Government appealed to the High Court.

Held that the accused was guilty of defamation.

Held, also, that section 211 of the Penal Code had no application to the present case. The accused was brought before Mr. Monteath against his will. He did not make any complaint before that officer; and though what he stated, in answer to questions put to him, was defamatory, the imputations did not constitute a "false charge" within the meaning of section 211, as he did not intend to set the criminal law in motion.

* Criminal Appeal, No. 328 of 1893.

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Per RÁNADE, J.:—The words "falsely charging" in section 211 must be construed along with the words which speak of the "institution of proceedings." These latter words are obviously used in a technical and exclusive sense, and the same restricted sense must be given to the words which relate to a false charge as implying a false complaint.

Karim Buksh v. *Queen-Empress*(1) followed.

Held, also, that in the absence of sanction from Government, the inquiry held by Mr. Monteath, the District Magistrate, was not a taking cognizance of the offence.

Held, also, that as Mr. Monteath was not sitting as a "Court" when he made the inquiry and examined the accused, the accused was not entitled to claim the absolute protection from a charge of defamation as a witness in a judicial proceeding. The accused was only entitled to a qualified privilege depending on the exceptions to section 499 of the Indian Penal Code.

Per RÁNADE, J.:—The High Court, in exercising jurisdiction in the matter of appeals against acquittals, should confine its exercise to the particular grounds of objection which are raised by Government against the acquittal complained of.

APPEAL by the Government of Bombay under section 417 of the Criminal Procedure Code (X of 1882) against an order of acquittal made by the Joint Sessions Judge of Bijápur.

Certain petitions having been received by Government containing charges of bribery and corruption against the District Deputy Collector of Bijápur (J. M. Kharsedji), Government ordered Mr. Monteath, the Collector and District Magistrate of Bijápur, to inquire into the matter and report. In the course of his inquiry Mr. Monteath sent for the accused (among others), who, however, refused to appear before him. His attendance was subsequently secured by the police, who took him before Mr. Monteath, by whom he was examined. In answer to Mr. Monteath's questions, he denied that he had sent any petition to Government, but alleged that the statement contained in it was true, and that he had himself paid J. M. Kharsedji a sum of Rs. 300 to procure the acquittal of his son, who was then on his trial for theft. Mr. Monteath subsequently made his report to Government. Both the inquiry and report were departmental: the provisions of section 132 of Act I of 1872 did not apply, and J. M. Kharsedji was permitted by Government to prosecute his detractors and (among others) the accused. He accordingly lodged a complaint against the accused, charging him with defamation.

(1) I. L. R., 17 Calc., 574.

At the commencement of the proceedings, however, the Magistrate (Mr. Knight) was of opinion that, on the facts alleged against the accused, the proper charge to frame against him was a charge under section 211 of the Penal Code (XLV of 1860) and not one under section 500. The accused had stated to Mr. Monteath that J. M. Kharsedji had been guilty of what was a criminal offence, and the Magistrate held that, if that statement was false, section 211 of the Penal Code was applicable and ought to be applied. The following passage from his judgment sets forth his views on the point:—

"Complaints charging the accused with defamation were accordingly lodged before me. At the commencement of the proceedings I at once raised this difficulty. The facts alleged against the accused, if substantiated, would amount to an offence under section 211, although they included the offence of defamation. Could an accused person be properly put upon his trial for defamation when he had in fact, if the complaints were true, committed the major offence of bringing a false charge? There was no question of the offence alleged amounting merely to defamation and falling short of the more serious crime, it was either a false charge or nothing at all. I held and still hold that a Magistrate has no option but to proceed under the one section which includes all the ingredients of the offence, and that he is not justified in charging the accused with an offence which is only part of the offence he is said to have committed. For any argument that would justify me in charging the accused under section 500 in this case would equally justify me in charging a man accused of grievous hurt with causing simple hurt, or one accused of ravishing a married woman with committing adultery. Emphasizing the fact that the alleged defamation in these cases was the imputation to Mr. Kharsedji of a distinct and specific criminal offence, and that such defamation is expressly provided for in the Penal Code by section 211, I did not consider it open to me to proceed under section 500. As a final, though not conclusive, argument in support of this view, I may adduce the illustrations to section 499, in none of which a prosecution for defamation is contemplated when a specific criminal offence has been imputed to the complainant."

He considered that as the taking of any subsequent proceedings in the matter depended upon Mr. Monteath's report, he (Mr. Monteath) might be regarded as "an officer with power to investigate the case and send it up for trial" (see *In re Jamoona*[1]), but that as he was not a "Court," no sanction was now required under section 195 of the Criminal Procedure Code (X of 1882).

On this charge the Magistrate convicted the accused under section 211 of the Penal Code. The following is an extract from his judgment:—

(1) I. L. R., 6 Calc., 620.

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"Now before discussing the value of the evidence adduced in support of this story, I feel that I must determine some standard by which to measure the amount of proof which I must require from the accused to entitle him to an acquittal. Considering the nature of the case, it is manifestly unjust, to my mind, to expect him to offer evidence which would suffice to convict Mr. Kharsedji, were that officer in the dock. On the other hand, the corroboration which he adduces must be sufficient to create a reasonable doubt of the falsity of his story; and if he is so unfortunate as to have told the truth, but yet to be unable to produce any proof worthy of the name in support of it, the law, I am afraid, allows me no alternative but to convict him. After the most lengthy and careful consideration, therefore, I have finally fixed on the following test by which to determine his conviction or acquittal. Suppose that he were the complainant, and Mr. Kharsedji the accused, would the case he lays before me justify me in sanctioning his prosecution for bringing a false charge? If so, I shall consider it my duty to convict him. There are many considerations which commend this test to my mind, the first and the foremost being that were Mr. Kharsedji not a Government servant, such a sanction would have been the ordinary forerunner of Karigowda's conviction. I must also guard carefully against any impression that an acquittal of the accused is tantamount to a declaration of the truth of his allegation to a moral conviction of Mr. Kharsedji; at the most it will but be an equivalent of the Scotch verdict of 'not proven.' It will mean, that is to say, that I am unable, on the evidence before me, to determine whether his allegations are true or false, and that, therefore, although Mr. Kharsedji is a virtual accused, the actual accused is entitled to his right of the benefit of the doubt." (After a minute examination of the evidence the Magistrate continued:—) "Under the circumstances I consider that I am justified in saying that his (the accused's) story is false: to apply the test I gave above, I would certainly have accorded sanction for his prosecution had he been the complainant."

On appeal the Joint Sessions Judge reversed the conviction and acquitted the accused. He held that section 211 of the Penal Code did not apply, and that the conviction under it was, therefore, illegal; that the proper charge against the accused was one of defamation under section 500 of the Penal Code. On that charge, however, he acquitted the accused, holding that although the truth of the statement made by the accused as to bribing the complainant had not been proved, nevertheless it had been made by the accused in good faith and was protected by exception 8 to section 499 of the Penal Code. In his judgment he said:—

"..... I am not prepared to find that the truth of the alleged bribery is proved, and I decide issue 3 in the negative.

"Although the non-proof of the bribery in question might be sufficient to acquit the complainant if he was in the dock, it does not necessarily follow from it (*i. e.*, the non-proof) that the charge in question is false as a matter of fact. If, therefore, the charge was made by the appellant in good faith, which means with due care and caution

(section 52, Indian Penal Code), he would fall within the purview of exception 8 to section 499, Indian Penal Code, and he would not be guilty notwithstanding the above non-proof. For the reasons given below, due care and caution appear to have been used by him (appellant) in this matter, and if so, good faith is established. No private grudge is proved between the complainant and the appellant, and the latter had no motive to make any false imputations against the former, thereby exposing himself to unnecessary risks. No evidence is on record to prove that the petition sent to Government in appellant's name was made or investigated by him, and if so, he is not guilty of resorting to that kind of trick. He did not seek any remedy by resorting to any Courts of law, and this indicates that, whatever the truth, he had no intention to resort to that mode of obtaining relief, probably from the fear that he had no materials to substantiate his charge. These circumstances indicate that he acted just as a man of ordinary prudence would act and not with any rashness and if so he cannot be said to have acted without due care and caution. He did not make the imputation in question to the Collector rashly of his own accord, and he made it only when he was sent for by that officer and was specially questioned about it. It is true that he was not bound by law to make any statement at all to the Collector; but, unless the imputation made by him was positively false to his knowledge and was made maliciously with ulterior motives, it cannot be said, under the peculiar circumstances of this case, that by making it he exceeded the limits of due care and caution. The non-proof of the truth of the imputation does not arise from any proof of the falsehood of the charge, but it arises from circumstances which do not detract from the *bona fides* of the appellant. On the whole, although the charge of bribery and corruption is not proved by any sufficient evidence against the complainant, it is not proved that it was false and invented,—maliciously made to harm him, and there are ample circumstances in this case which strongly indicate that in making it (charge) before the Collector the appellant did act with sufficient care and caution, and that he was within the limits of *bona fides*."

The local Government appealed against the order of acquittal. The appeal now came on for hearing.

Jardine (with Government Pleader) for the Crown:—The acquittal is wrong. The accused should have been convicted of defamation. He stated before Mr. Monteath that he had given a bribe of Rs. 300 to the Deputy Collector to get his son acquitted. This statement is clearly defamatory of the Deputy Collector, who is the complainant here. It was made in the course of a departmental and not a judicial inquiry, and, therefore, the accused was not privileged as a witness. Nor did he make the statement on a privileged occasion. Mr. Monteath did not hold the inquiry as a Magistrate, though he might have taken cognizance of a complaint under section 197 of the Criminal Procedure Code (X of 1882). It was optional with the accused to make

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the statement or refuse to answer Mr. Monteath's questions. He was not on oath. He was not bound to answer any questions put to him, and if he did make any statement, he did so at his own risk. The statement in question being *primâ facie* defamatory, the accused must bring it under some one of the exceptions to section 499 of the Indian Penal Code, or he must prove its truth. Both the Magistrate and the Session Judge have found that the accused failed to prove that his statements were true and that he had not proved that the Deputy Collector had accepted a bribe from him. If the statement is not proved to be true it must be taken to be false. But the Joint Sessions Judge holds that the statements were made in good faith. If, however, it was not true, it could not possibly be made in good faith, as it was a statement of something alleged to have been done by himself, and, therefore, if untrue, was untrue to his knowledge. The complainant has reason to complain of this finding. I submit that the accused is guilty of defamation and should be convicted under section 500 of the Penal Code.

Kirkpatrick (with him *N. G. Chandavarkar*) for the accused:—The conviction of the accused by the first Court of "making a false charge" under section 211 was wrong. The accused had made no "charge" against the complainant to Mr. Monteath. He merely answered questions put to him in a private departmental inquiry—*In re Jamoona*(1). On the other hand, if the inquiry was not private, and if Mr. Monteath is to be considered a "Court," no sanction from him for this prosecution was obtained, and there was, therefore, no jurisdiction to try him. The Joint Sessions Judge was, therefore, right in reversing the conviction.

The Joint Sessions Judge was also right in acquitting the accused of defamation under section 500. As to the principles on which this Court should act when the Government appeals against an acquittal, see *Empress* v. *Gayadin*(2). The accused was taken by the police before Mr. Monteath, and was induced or coerced to answer the questions put to him. His answers to these questions are said to be defamatory, and he is now charged with

(1) I. L. R., 6 Calc., 620. (2) I. L. R., 4 All., 148.

defamation and required to prove their truth. If he had been warned that the burden of giving strict legal proof of the truth of what he said would be laid upon him, he would not have answered the questions. An inquiry by Government will be useless for the future if informants are to be exposed to this risk. They may know the truth, but they may know that they cannot produce the evidence that is necessary legally to prove it. It is for the public interest that they should be protected, and the law will regard the occasion as privileged—*Hunt* v. *Great Northern Railway Company*(1); *Stuart* v. *Bell*(2); *Clark* v. *Molyneux*(3); *Dawkins* v. *Lord Paulet*(4); *Dawkins* v. *Lord Rokeby*(5); *Beatson* v. *Skene*(6).

The accused ought not now on appeal to be convicted of defamation. He has never really been tried on that charge. The Magistrate at the outset of the proceedings stated that he considered the complaint to be "one of making a false charge or nothing," and he subsequently struck out the charge of defamation, which he had at first framed against the accused. He commenced his judgment by stating that "the accused stands charged under section 211." It is clear, therefore, that the accused was not tried on a charge of defamation, but was tried on a charge framed under section 211. On that charge the burden of proof lay on the prosecution, and in his defence to that charge the accused was not called on to prove the truth of the facts stated by him to Mr. Monteath, but only his good faith in making the statement. But on appeal the Court is now asked to alter the charge into one of defamation, and to consider the evidence with reference to it. That will shift the burden of proof over upon the accused, who must on that charge strictly prove the truth of the facts stated by him, and he must do this now in appeal by means of the evidence before the Court which was recorded on a different charge and for a different purpose. The evidence of good faith, which would be a defence to a charge under section 211, would be no answer at all to a charge of defamation.

(1) L. R. (1891), 2 Q. B., 189.
(2) *Ibid.* 341.
(3) 3 Q. B. D., 237.
(4) L. R., 5 Q. B., 94.
(5) L. R., 8 Q. B., 255; and 7 Eng. and Ir. Ap., 744.
(6) 5 H. and N., 838.

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It is clear that if a person is acquitted on a charge framed under section 211, but on appeal the charge is altered to one of defamation, he must inevitably be convicted, for the burden of proof is shifted, and the evidence which is a defence to the one charge is no defence to the other. To find the accused guilty of defamation on appeal is really to find him guilty on a charge which he has never been called on to meet. The two charges ought never to be joined. If they are joined, the accused must be greatly prejudiced in his defence. He referred to *Empress* v. *Imad Khán*(1) and *Queen-Empress* v. *A'ppa*(2).

Ráo Sáheb *Vásudeo J. Kirtikar*, Government Pleader, in reply:—Section 211 of the Indian Penal Code does not apply, there being no charge before a judicial officer. Mr. Monteath was not acting as a Magistrate.

[JARDINE, J.:—Could he divest himself of his magisterial functions?]

I submit it was open to him to say that he was not acting as a Magistrate *quâ* the enquiry.

[JARDINE, J.:—That would render section 211 unavailable against anybody defaming a Magistrate for bribery, unless the defamatory statement was made to a Government official as a Judge.]

Yes, that would be so. Unless a formal complaint is made in a Court, section 211 would not apply. As to privilege, if the accused had been examined as a witness in a judicial proceeding, he would have been protected—*Queen-Empress* v. *Bálkrishna Vithal*(3). But he was not. He made a purely voluntary statement. The statement is defamatory *per se*, and it lies on the accused to show that it falls within one of the exceptions to section 499 of the Penal Code. Section 105 of the Evidence Act applies.

JARDINE, J.:—The Government of Bombay gave leave to Mr. Jehángir Mánekji Kharshedji, who is a Magistrate in the district of Bijápur, to prosecute the accused, Karigowda, for defamation by words spoken by him in reply to questions put by Mr.

(1) I. L. R., 8 All., 120. (2) I. L. R., 8 Bom., 200.
(3) I. L. R., 17 Bom., 573.

Monteath at Muddebihál on the 6th December, 1892. The trying Magistrate, Mr. Knight, framed heads of charge under sections 211 and 500 of the Indian Penal Code, but at the end of the trial struck out the head under section 500, and convicted and sentenced the accused under section 211.

The Joint Sessions Judge, Mr. Venkatráo Inámdár, in appeal, held that section 211 was inapplicable, and that the case fell under section 500. He acquitted the accused on the ground that the defamatory statements, though not proved to be true, were made in good faith, so that exception 8 to the definition of section 499 applied in his favour. This exception applies to an accusation made in good faith to some one having lawful authority over the person accused with respect to the subject-matter of accusation.

The defamation consists of statements to the effect that Mr. Jehángir himself accepted a bribe of Rs. 300 from the hands of the accused as an inducement to acquit Sanganbassápa, accused's son, of an offence which Mr. Jehángir was trying. At the time the words were uttered, Mr. Monteath was, and is now, Collector and District Magistrate of Bijápur.

Questions having been raised, under the circumstances in which the words were uttered, as to which section—section 211 or section 500—the charge should specify, and as to whether the *onus* of provifig the truth of the words lies on the prosecution or the defence, and also as to whether the speaker had any privilege, qualified or absolute, it is necessary to consider what capacity Mr. Monteath filled at the time he elicited the answers from Karigowda. Some petitions charging Mr. Jehángir, the complainant, with bribery had been received by the Government of Bombay, which forwarded them to Mr. Fleet, the Revenue and Police Commissioner. This official, on the 29th October, 1892, sent them to Mr. Monteath, who is addressed as Collector and District Magistrate, for inquiry and report, with directions to take evidence in support of the charges if the petitioners persisted in them, and to give Mr. Jehángir full opportunity of rebutting them. Mr. Monteath, after this "preliminary inquiry," as Mr. Fleet called it, was to submit a report. As it does not appear

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that Mr. Fleet had any special authority to issue orders to the District Magistrate in the matter of the alleged taking of bribes, unless Mr. Fleet had been commissioned by the Governor in Council to convey the sanction of the Government under section 197 of the Code of Criminal Procedure (X of 1882) to the District Magistrate taking cognizance of the offence, and as it seemed that in some sense Mr. Monteath had taken cognizance and recorded the statements of a number of persons, we suggested to the Government Pleader that he should take further instructions in the matter. He has since shown us a letter from the District Magistrate, stating that at the time he considered that he had received no such sanction, and that, therefore, he could take no magisterial cognizance. But the Collector's Chitnis has deposed that after the Mámlatdár had been unsuccessful in procuring the attendance of Karigowda, Mr. Monteath sent an order to the police to produce Karigowda before him, and thus it was that the latter came up to be questioned. Karigowda denied having sent the accusatory petition bearing his name. Then he went on to state how he had paid the bribe.

Whatever view may be taken of the legality of the orders to the police to produce the body of Karigowda before Mr. Monteath, I am of opinion that, in the absence of the Government sanction under section 197, he cannot be considered, in law, as having taken cognizance of the offence by holding his inquiry. The great powers of initiating prosecutions which he holds under section 191 are restricted by the latter section. But this consideration by itself does not determine Mr. Monteath's position. Mr. Jardine, who appears for the complainant, but with the Government Pleader, contends that Mr. Monteath and Karigowda were in no special relation any more than two people at a dinner table; and it has been suggested by the Government Pleader that Mr. Monteath was, at the time he took Karigowda's statement, divested of his magisterial functions and acting as any person might act whom the Government had commissioned to make inquiries, as, for example, a solicitor sent to Muddebihál for that purpose. I am of opinion that this view of Mr. Monteath's legal position at the time cannot be entertained. A Ma-

gistrate cannot divest himself of his duties at his own will. As explained in the case of the Corrupt Mámlatdárs—*In re Ganesh Sáthé*,[1] Magistrates have to use diligence and vigour to repress crime. Magna Charta says that justice must not be sold, and to this the sovereign is bound by the Coronation Oath. The Petition of Right requires the officers and ministers of justice to proceed against offenders.

The duty of the Government being thus clear, and the Government having through the Commissioner informed Mr. Monteath of the petitions, he must be considered as a public servant put upon inquiry. I think that he was in a position analogous to the Secretary of State in *Harrison* v. *Bush*[2], and to the officials mentioned in the other cases there discussed by Lord Campbell as regards his duty to the Crown and the public. Moreover, the laws made by Parliament or the Indian Legislature to punish corruption on the part of public servants are in perpetual force; and if on Mr. Monteath's report the Government were to give sanction for the prosecution of the complainant, his powers under section 191, clause *c*, of the Code of Criminal Procedure would come into operation unrestricted by the other section.

On these grounds I have taken time to consider whether, if the imputation of bribery were falsely made, section 211 of the Penal Code would apply to punish. This depends on the meaning of the words "false charges" and the word "charge" as used in section 211. Considering that Mr. Monteath was making a formal inquiry into the bribery, and that he was District Magistrate, Karigowda was using a means of eventually setting the law in motion against the complainant. It has been contended that the Joint Sessions Judge was right in holding that section 211 does not apply, because Mr. Monteath had no powers to investigate or send up for trial. The authority he cites, *In re Jamoona*[3], relates to a complaint of rape made to a military officer who had no official duty at all in the matter. I think that case inapplicable. The present case, however, seems to me to be taken

(1) I. L. R., 13 Bom., 600.

(2) 5 E. and B., 344. See 25 L. J. (N. S.) Q. B., 25.

(3) I. L. R., 6 Calc., 620.

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out of section 211 by the fact that Karigowda did not apparently intend to set the criminal law in motion. He had been produced before Mr. Monteath against his will; and though what he said is "information" under section 191, clause *c*, of the Procedure Code, and "defamation" under the Penal Code, I am of opinion, after considering the Full Bench case[1], that the imputations do not make up a "false charge."

Next, Mr. Kirkpatrick, as counsel for the accused, contends before this Court that as Karigowda was dragged before Mr. Monteath to make his statement, he must be considered as coerced to answer through awe of that officer's powers and position, and, therefore, entitled to that absolute protection from prosecution for defamation which has been extended to witnesses in Courts of justice by decisions of this Court—*Queen-Empress* v. *Bábáji*[2] and *Queen-Empress* v. *Bálkrishna Vithal*[3]. The learned counsel cites the cogent reasons stated in the House of Lords for giving similar protection to a military witness summoned to give evidence before a Military Court of Inquiry—*Dawkins* v. *Lord Rokeby*[4], and see *Dickenson* v. *Hilliard*[5]. But, for the reasons given above, while I regard Mr. Monteath as a Magistrate, I do not go the length of holding him to have been a "Court;" and, after such consideration as I have been able to give, I do not think public policy requires that Karigowda should receive more protection than did the informant against the misbehaving Magistrate in *Harrison* v. *Bush*. The privilege is only a qualified one, and depends on the exceptions to section 499. He was not bound to answer Mr. Monteath's questions. Coercion was not pleaded below, and there is nothing to lead even to a conjecture that the accused was offered any improper inducement to make the imputations he did. It has not been suggested that he was asked to speak falsehoods.

But even to freedom to tell falsehoods under official coercion, section 94 of the Penal Code applies—see *Queen* v. *Sonoo*[6]; and the discussion of the effect of official coercion as an excuse,

(1) I. L. R., 17 Calc., 574.
(2) I. L. R., 17 Bom., 127.
(3) *Ibid.* 575.
(4) L. R., 7 Eng. and Ir. Ap., 744.
(5) L. R., 9 Ex., 79.
(6) 10 Calc. W. R. 48 (Cr. Rul.)

for crime in *Queen-Empress* v. *Maganlál*(1), where this Court had to rectify the error of a Magistrate who had been misled by the expression of some views of Sir R. West, *arguendo* in a published minute, as a member of the Government of Bombay, about the *Crawford case*. The accused had greater reason to feel security in stating the truth, whatever the truth may be, in that he was before a Magistrate, and one of high position and experience. I see no objection to the Government making use of such an officer in such an inquiry where the investigation requires much skill and experience, and the person accused is an official on whose character the Government does not wish by any inadvertence to cast a taint. Inferior and less judicial agents are liable to proceed with undue zeal. In *Chhagan's case* this Court had to censure the offer of illegal indemnities to witnesses by a Mámlatdár getting up the case. Mr. Justice Wilson and his colleagues, who held the investigation of the charges in the *Crawford case*, comment on the minds of witnesses being unduly influenced in this manner. Mr. Monteath was right in not administering oaths to Karigowda and the rest, and there is nothing to show that they were not free agents.

Now, turning to deal with the facts on the appeal of the Government against the acquittal, we are hampered by the way the Courts below have recorded their conclusions. The Magistrate, after a very careful discussion of the evidence, finds that Karigowda's story is false; but he explains that he means thereby only that, if Karigowda had been the complainant, and told that story, he would have sanctioned the prosecution of Karigowda for bringing a false charge. In plain English, this means that there are good *primâ facie* grounds for holding the story to be false. But under section 211 the Magistrate ought to have found one way or other—whether beyond reasonable doubt the falsity of the story was proved. The Joint Sessions Judge finds in distinct terms on the third issue that the truth of the story is not proved. But on the fourth issue he finds that the story was told in good faith, which is impossible, unless it be true, as Karigowda does not speak from information given by third persons, but tells, in detail, how he himself set to work to corrupt the complainant,

(1) I. L. R., 14 Bom., 115.

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and at length himself paid over a bribe of Rs. 300 to the complainant himself. It is very difficult to understand the reasoning of the Joint Sessions Judge; but it is clear he thinks the witnesses who contradict Karigowdá's story are false witnesses, and have been tampered with; and I believe the Joint Sessions Judge really means to be understood as saying that Karigowda has told the truth, but is unfortunate in not being able to prove his story, and that the bribe was really paid. But then, again, the Joint Sessions Judge writes that, on the evidence recorded, the complainant, Mr. Jehángir, would have to be acquitted. If the Judge means that on the evidence there is reasonable doubt whether complainant took the bribe, he ought to have said so plainly. Perhaps in dealing with the fourth issue he means to say that, if he went on surmise or suspicion, he would hold Mr. Jehángir guilty. I do not understand the reasoning of the following passage:—"It is true that he (Karigowda) was not bound by law to make any statement at all to the Collector; but, unless the imputation made by him was positively false to his knowledge, and was made maliciously with ulterior motives, it cannot be said, under the peculiar circumstances of the case, that by making it he exceeded the limits of due care and caution."

We must now strip the case of this verbiage and decide whether Karigowda's story is proved to be true. The burden of proof lies on him[1]. If it is false, there was no good faith; if true, he is protected. I will deal shortly with the facts. (His Lordship then discussed the evidence at length and stated his conclusion, that the story told by the accused was not proved. He then continued:—)

Stripped of prejudice and surmise, the case stands thus. There is no corroboration of Karigowda's story about the payment of the Rs. 300 at the tent. It is utterly denied by the complainant, by Girimalla, and by Tammana. It is inconsistent with the story told by Basápa and Irápa. It was started in a petition sent to the Government by post, which nobody will own; and it would probably have been heard no more of, if Mr. Monteath, upon Karigowda's refusal to attend his camp, and his later de-

(1) 9 Bom. H. C. Rep., 451.

nial of the petition being his, had ceased to make inquiry. About the parentage of the petition we have no information. It is obvious that if a man in a written petition makes a false charge against a Magistrate of taking bribes, he is put in an awkward position when such petition is inquired into, and must either disown it, or adhere to the false statements and try to prove them.

As noticed earlier in this judgment, the Joint Sessions Judge, while recording that the charge of bribery is not proved against the accused Magistrate, treats it as if it were, and reverses the conviction of the man that made it. The Judge seems to act on conjecture and surmise rather than evidence; and this may possibly have been caused by the fact that a number of depositions made by other people accusing this Magistrate of taking other bribes made before Mr. Monteath, form part of the record of the present case. They must, of course, be entirely excluded from our judicial consideration of the present charge. In another recent case, where another Magistrate was accused of improper behaviour about a purchase of land in his district, we had to reverse an acquittal, by the Sessions Judge, of the person defaming him, and to remove the stigma so placed on the Magistrate. We were of opinion that there was no evidence worthy of the name to justify the defamatory article. Mr. Jardine has argued that there is a tendency, when a Magistrate is accused of corruption, to assume that he is guilty, and to weigh all the evidence in the scales of prejudice. I think it important, therefore, and especially as the reported decisions on corruption show that even Magistrates of experience are liable to very serious mistakes in applying the law against corruption (*In re Ganesh Sáthe*[1], *Queen-Empress* v. *Maganlál*[2], *Queen-Empress* v. *Chagan*[3]) to point out that the Courts must begin the trial of cases against Magistrates without prejudicing the particular case by admitting irrelevant matters to influence the mind of the Court. As this Court has pointed out in *Queen-Empress* v. *Fakirápa*[4], this freedom from prejudice is secured by the general rules of the Procedure Code, section 233, that every charge shall be separately tried. As Lord Black-

(1) I. L. R., 13 Bom., 590 and 600.
(2) I. L. R., 14 Bom., 115.
(3) I. L. R., 14 Bom., 331.
(4) I. L. R., 15 Bom., 491 at p. 501.

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burn points out in *Castro* v. *the Queem*[1], the mere fact of accusing a man of several things was supposed to tend to increase the probability of his being found guilty, as it amounted to giving evidence of bad character against him, so that a Judge wishing to keep the Court clear of prejudice might say, "I will not work this injustice by trying them together, let us diminish them in number and try a reasonable number, and no more." The Courts will find guidance as to the exceptions allowed to the general rule in *Queen-Empress* v. *Fakirappa* and in *Queen-Empress* v. *Vajirám*[2]. They are bound to administer the law as interpreted by the decisions of this Court. The Judges are the voices of the law. We are the *leges loquentes*. I think it is time to point this out, because, in the other case lately before us, the error of the Sessions Judge consisted in the view he took of the evidence which he called "cumulative," but which, in our opinion, was of the very weakest sort. "Cumulative effect" has even before us, and once not without a sense of humour by the Government Pleader, been used to cover decisions based more on conjecture than evidence. But the phrase, when used in forensic pleading, does not really convey that sort of meaning. This phrase "cumulative effect of the evidence" occurs in the letter, which has been published, in which the local Government of the time adopt Sir R. West's argument against the view taken by the Commissioners in the *Crawford case*, who had acquitted the accused of all the thirty-two charges of corruption. Sir R. West's remarks on evidence in this argument have reference to inquests under Act XXXVII of 1850, and whether the contention is right or wrong about them, it has no reference to cases under trial by the ordinary tribunals, where the ordinary rules of procedure and evidence based on enacted law and long experience are binding. While Sir R. West criticises the English system, which narrows the issues for trial in the way pointed out by Lord Blackburn, and while apparently he would, if allowed, improve our time-honoured system of trial by jury, by expedients of jurists and legislators of foreign countries, and let in collateral matters, which our law excludes, because he says our exclusions are the reverse of the mode of investigation employed in the physical sciences, and are,

(1) 6 Ap. Ca., 229, at pp. 244 245.

(2) I. L. R., 16 Bom., 414.

in his opinion, defective in logical standpoints, it is quite obvious that Sir R. West distinguishes between the law as it is and the law as he opines it ought to be. The settled rules of evidence are those which the Courts must apply. On them, as Lord Abinger remarks, the property, the liberty, and the life of men depend; by them the position and character of the servants of the Crown are protected. The Legislature, being aware of the danger to which officials are exposed from the malice of disappointed petitioners and suitors, interposes also the requirement of official sanction for prosecution; and *In re Olive Durant*(1), where we refused to allow a suitor to defile our records with a petition containing scandalous attacks on Magistrates, Judges, and some high officials of the Government of India, we laid down a principle from *Butt* v. *Conant*(2) that "the people have a serious interest in the characters and conduct of the Judges and others who are appointed to serve in high and important offices, and the individual men have a valuable property in their respective characters." It is of great importance in all countries, and as the Lords of the Privy Council remark, more particularly in a country like India, that the Courts and officers should be above suspicion—*In re Ganesh Sáthe*(3). On this principle, corrupt persons must be removed from office. But the same considerations require that any one proved guilty of making false charges of corruption should feel the weight of the criminal law.

For the above reasons I am of opinion that the story of the bribe is false, and that the accused was rightly convicted by the trying Magistrate, but that the conviction should be for defamation under section 500 of the Indian Penal Code. We must, therefore, reverse the acquittal and convict the accused. In measuring the punishment we think it proper to give weight to the opinion of the trying Magistrate, as shown by his sentence. We fear that the sentence of fine might affect innocent people, the family or friends of the accused. We now sentence Karigowda to four months' simple imprisonment.

RÁNADE, J.:—I deem it necessary in this case to record my reasons separately, as the case is of some importance in the interests of

(1) I. L. R., 15 Bom., 488. (2) 1 Bro. and Bing., 548 at p. 587.

(3) I. L. R., 13 Bom., 590 and 600.

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the administration of justice. The complainant originally charged Karigowda with an offence under sections 499-500. The Magistrate, who heard the complaint, was of opinion that the offence complained of fell under section 211 of the Indian Penal Code. He at first framed charges both under sections 499-500 and section 211, but at the last stage of the inquiry, he struck out the charge of defamation, and convicted Karigowda of the offence under section 211 of the Code. This amendment was made by the Magistrate on two grounds: (1) that the imputation complained of had the graver character of a false charge under section 211, and that the charge under section 211 included the defamation; and (2) that the charge under sections 499-500 would throw the burden of proof on the accused, thereby prejudicing his interests. The Magistrate further held that no sanction was necessary, as the charge was not made before any Court. In appeal, the Joint Sessions Judge held that sanction was necessary in this case, and that, for want of sanction, the charge could not be maintained under section 211. The Judge, moreover, held that the Magistrate was in error in striking out the charge under sections 499-500. He inquired into that charge, and held that the accused was protected by reason of his good faith, and accordingly acquitted the accused. It is from this sentence of acquittal that Government appeals, and all the grounds set forth assert the sufficiency of the evidence to establish the charge of defamation, and disprove the exceptions. There is no reference to the decision of the Joint Session Judge on the point that the charge under section 211 was not maintainable for want of sanction.

In the first place, I am of opinion that the High Court, exercising its jurisdiction in the matter of appeals against acquittals, should confine its exercise to the particular acquittal complained of by Government. The Allahabad High Court has, indeed, in *Empress* v. *Gayadin*[1], gone so far as to limit the exercise of this jurisdiction to cases of obstinate or egregious failure of justice. This view of the Allahabad High Court was not concurred in by the Calcutta High Court, *Queen-Empress* v. *Bibhuti*[2], and for the purposes of the present case, the view of the Calcutta Court may be accepted as more authoritative. At the same time, it seems to me,

(1) I. L. R., 4 All., 148. (2) I. L. R., 17 Calc., 485.

that it would not be proper for this Court to consider the appeal on grounds not contained in the objections urged on behalf of the Government, and that this Court should only consider whether or not the acquittal, by the Joint Sessions Judge of the accused on the charge under sections 499-500 could be sustained, and that it is not open to us to consider whether the charge under section 211 was or was not maintainable, as no objection was urged on that point.

In the next place, it appears to me clear that the action of the accused in making the statement he made before Mr. Monteath cannot be regarded as bringing his case within the purview of section 211. The words "falsely charging" used in that section must be construed along with the words which speak of the "institution of proceedings." These latter words are obviously used in a technical and exclusive sense, and by parity of reasoning, the same restricted sense must be given to the words which relate to a false charge. Mr. Monteath was, no doubt, District Magistrate, but he was also the departmental head of the service to which the complainant belonged. Mr. Monteath admittedly held the inquiry, under orders of Government, as a departmental inquiry, and not as a Magistrate. He enforced the attendance of Karigowda not by the usual processes, but by writing to the police. He administered no oath. A more formal inquiry would still have been necessary, and this preliminary investigation was only intended to satisfy Government whether or not there were grounds for ordering such an inquiry. The accused Karigowda made of his own accord no complaint. He even disowned the petition sent in his name to Government. He appears simply to have answered certain questions put to him, in the first instance, by the Chitnis, and later on by Mr. Monteath, who took down his statement for the information of Government.

Taking all these circumstances into consideration, I do not think that Karigowda can properly be regarded as having made a complaint which could, if shown to be false, bring his act within the purview of section 211. At the most, he gave information to a public servant which, under certain circumstances, might furnish ground for a charge under section 182. The Ma-

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gistrate, therefore, who tried the case was not quite correct when he stated that Karigowda's statement was either a false charge or complaint, or nothing at all. Mr. Monteath's inquiry under orders from Government, though not carried on by him as Magistrate, was entrusted to him as a public servant, and information given to him, though not a charge or complaint, might well be an act for which Karigowda could be brought to account under conceivable circumstances.

It is, however, urged that men in the position of Karigowda, making statements to a District Magistrate, need, in the public, more than their own, interests, protection. In so far as the public interests are concerned, it is clearly desirable that men, who have any knowledge of the malpractices of public servants, should not be deterred from giving information to the superior authorities, and this they cannot do unless they enjoy the protection extended to witnesses examined on oath. As a matter of fact, however, this protection is extended to such persons, both under sections 182 and 211, for offences under these sections cannot be taken cognizance of without sanction under section 195. They, moreover, enjoy the protection under one or other of the exceptions to section 499, and are not liable to punishment not only when they are in a position to establish the truth, but also when they can show that they gave the information in good faith and for the public good. Any further protection can only encourage undue license in the matter of attacking the character of public servants, whose good reputation is also a matter of public concern. A public officer defamed, and ordered to clear his character, though he is nominally a prosecutor, is really the party accused, and his failure to establish the charge of defamation involves his ruin. He cannot well be expected to prove a negative, and the law, therefore, very properly requires that the accused in such cases should be required to bring his act under one or other of the many exceptions before he can protect himself. There appears to me nothing unreasonable in requiring a person, who imputes corrupt conduct to a Magistrate, to prove it, or at least to show that he made the imputation under circumstances which justified his belief. The Magistrate (Mr. Knight) appears to me not to have fully considered the peculiar nature of the offence of defam-

ation when he thought that the person defamed stood in less need of protection than the person who published the defamation.

I have accordingly come to the conclusion that the Magistrate was in error in holding that the offence fell under section 211, and in striking out on that account the charge under sections 499-500 at the last stage of the inquiry. It is no doubt open to a Magistrate to amend his charges, and if he is satisfied that the graver charge includes the smaller complained of, to proceed upon the graver charge. In this case, however, both the charges were not *ejusdem generis*. They did not fall under the same or similar class of offences, one being only an aggravation of the other. Moreover, the charge shifted the burden of proof sensibly from one side to the other. The powers given under sections 236-237 cannot, in my opinion, justify the amendment made in this case at the last stage of the inquiry, thus virtually setting aside the particular complaint made by the prosecutor with a view to clear his character.

As regards the decision in appeal, the Joint Sessions Judge, after holding that the charge under section 211 could not be maintained for want of sanction, examined the evidence to see how far the charge under sections 499-500 was made out. Mr. Justice Jardine has examined the whole of the evidence at great length in his judgment, and as I agree with his finding on the question of facts, I do not deem it necessary to go over the same ground again. The Joint Sessions Judge found that the accused failed to make out any case under the first exception, and that the truth of the story told by Karigowda about the alleged bribery was not proved. That being so, it is clear that, under the circumstances, Karigowda could not claim any protection for having acted in good faith. He paid the bribe himself—that is his story. If that story was not true, there could be no justification based on good faith. He did not make the statement on the basis of information supplied to him by others. It is mere casuistry to hold that though the truth of the alleged bribery was not established, it did not follow from it that the charge in question was false as a matter of fact. It is, similarly, not correct to say that, because Karigowda did not act rashly in making the imputation, therefore he must be

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held to have acted with due care and caution. This same sort of confusion runs throughout the judgment. There is no more *primâ facie* ground for holding that Girmálla and Tammappa have assumed a false attitude in this matter, than for holding that Karigowda gave false information. The Magistrate, it may be noted, fixed a special standard of his own, with a view not to press hard on the accused, and notwithstanding this leniency, he was led to hold that Karigowda's statement about the alleged bribery was not only not proved, but was false. The Joint Sessions Judge should not have set aside such a finding on mere surmises and probabilities, which were more than counterbalanced by the evidence of the accounts, the evidence of the village extracts, the admitted credit of Rs. 128 shortly after the alleged loan borrowed from the 'savkár,' the discrepancies and contradictions noticed by the Magistrate, and the denial of the principal witnesses of all knowledge of the alleged payment. There is, under these circumstances, no justification on the ground of good faith any more than on the ground of truth. I would, therefore, reverse the order of acquittal, and convict Karigowda with simple imprisonment for four months.

Order of acquittal reversed and accused convicted.

CRIMINAL REVISION.

Before Mr. Justice Jardine and Mr. Justice Ránade.

IN RE MUKUND BA'BU VETHE.*

1894. *January* 29.

Criminal Procedure Code (Act X of 1882), *Sec.* 54—*Offence committed by a British subject in foreign territory—Powers of the Police to arrest for such offence without a warrant—Wrongful arrest—Wrongful confinement—Indian Penal Code (Act XLV of* 1860), *Sec.* 342.

Section 54 of the Criminal Procedure Code (Act X of 1882) does not empower a police officer to arrest, without a warrant, a British subject in British India on a charge of criminal breach of trust or other cognizable offence committed outside British India.

Mukund was a native Indian subject of the Queen-Empress, residing at Belgaum. A complaint was filed against him in the Sángli State, charging him with committing breach of trust within the territories of that State. Thereupon he obtained an

* Application for criminal revision, No. 321 of 1893.