

[CROWN CASE RESERVED.]

1903

Nov. 27.

THE KING *v.* ROUSE AND ANOTHER.

Criminal Law—Evidence—Nature and Conduct of Defence—Evidence of Person Charged—Cross-examination as to Character—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1, sub-s. (f), (ii.).

Upon the trial of an indictment for conspiring by false pretences to induce the prosecutor to sell a mare, the prosecutor gave evidence that one of the defendants had previously offered to buy the mare on credit. The defendant in question was called as a witness for the defence, and was asked in cross-examination, "Did you ask the prosecutor to sell you the mare in April, or has he invented all that?" To which he replied, "No, it is a lie, and he is a liar." Counsel for the prosecution was thereupon allowed to cross-examine the defendant as to previous convictions:—

Held, that the defendant's answer amounted only to an emphatic denial of the truth of the charge against him; that the nature or conduct of the defence was not such as to involve imputations on the character of the prosecutor within the meaning of s. 1, sub-s. (f), (ii.), of the Criminal Evidence Act, 1898, and that therefore the defendant was not liable to be cross-examined as to his previous character.

CASE stated by the chairman of the Suffolk Quarter Sessions.

The defendants were indicted for conspiring together with other persons unknown, by means of various false pretences, &c., to induce Thomas John Wright to sell to the defendant Daniel Burrell a certain mare. In the prosecutor's evidence he stated that in April, 1902, Rouse offered to buy the mare of him on credit for the sum of 19*l.* Rouse was called as a witness on his own behalf, and in his cross-examination was asked by counsel for the prosecution, "Did you ask the prosecutor to sell you the mare in April for 19*l.*, or has he invented all that?" Rouse replied, "No, it is a lie, and he is a liar." Counsel for the prosecution then proposed to ask him if he had not been in trouble before. Counsel for the defence objected that on the mere statement that the prosecutor was a liar evidence as to the character of the defendant was inadmissible, there being no other attack made on the prosecutor or his witnesses. The chairman admitted the evidence, and Rouse

replied that he had been convicted of being quarrelsome, that he had been before the magistrates for drunkenness, and had been fined 15s. or 1*l*. for breaking a window. The defendants were convicted and sentenced, Rouse to one month's imprisonment with hard labour, and Burrell to three months' imprisonment with hard labour, and were undergoing the sentences. The chairman made no allusion to Rouse's character in summing up the case, and did not consider that the answers which he gave as to his character had any effect upon the issue.

1903

 REX
v.
ROUSE.

If the Court was of opinion that the evidence was improperly admitted, the conviction was to be quashed; if otherwise, it was to be affirmed. (1)

E. E. Wild, for Rouse. The question asked in cross-examination was not admissible; the previous answer of the defendant does not come within the proviso of s. 1, sub-s. (f), (ii.), of the Criminal Evidence Act, 1898, as to the nature or conduct of the defence as involving imputations on the character of the prosecutor. The defendant's answer was merely a rough and emphatic way of saying that the charge against him was false, and amounted only to a plea of not guilty in forcible language. The question to which it was an answer was itself in the nature of an invitation to call the prosecutor a liar, and such an answer to such a question cannot make an accused man liable to cross-examination as to his previous character. If the evidence was inadmissible, the Court will not sift it with the view of seeing whether the

(1) By 61 & 62 Vict. c. 36 (The Criminal Evidence Act, 1898), s. 1, every person charged with an offence is made a competent witness for the defence, provided "(f) a person charged and called as a witness in pursuance of this Act shall not be asked, and if asked shall not be required to answer, any question tending to shew that he has committed or been convicted of or been charged with any offence other than

that wherewith he is then charged, or is of bad character, unless . . . (ii.) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution."

1903

 REX
 v.
 ROUSE.

conviction can be supported without it: *Reg. v. Gibson* (1); *Reg. v. Saunders*. (2) [He also cited *Reg. v. Marshall*. (3)]

[He was stopped by the Court.]

A. W. F. Bagge, for Burrell, did not argue.

W. Stewart, for the prosecution. This was not an isolated answer; the whole of the history of the trial should be looked at, and the nature of the defence considered.

[LORD ALVERSTONE C.J. We cannot travel outside the facts found in the case.]

It is not possible to argue the case further upon that basis.

LORD ALVERSTONE C.J. Having regard to the statement that has been made to us by the counsel for the prosecution, I wish to make it perfectly clear that our decision proceeds upon the particular facts as stated in the case, and that we are not laying down any general rule. The real question which we decide is whether the answer which the defendant gave to the question put to him was sufficient to justify cross-examination as to his antecedents. The indictment was for conspiring to induce the prosecutor by false pretences to sell a mare to the defendant Rouse, and the prosecutor in the course of his evidence said that on a previous occasion Rouse had offered to buy the mare from him for 19*l*. Rouse was called as a witness for the defence, and was asked this question in cross-examination: "Did you ask the prosecutor to sell you the mare in April for 19*l*., or has he invented all that?" If the expression "all that" referred to matters outside those with which the prosecution was dealing, different considerations might arise, for the answer, "No, it is a lie, and he is a liar," might then perhaps be construed as an attack upon the prosecutor's general character as regards truthfulness. But under the circumstances of the case, I think that the prosecution is in a dilemma; either the answer amounted to no more than a plea of not guilty put in forcible language such as would not be unnatural in a person in the defendant's rank in life, or it had nothing to do with the conduct of the defence. In my opinion, the

(1) (1887) 18 Q. B. D. 537.

(2) [1899] 1 Q. B. 490.

(3) (1899) 63 J. P. 36.

answer given by the defendant was not sufficient to bring the case within s. 1, sub-s. (f), (ii.), of the Criminal Evidence Act, 1898; the defence itself, by the plea of not guilty, involves the allegation that the charge is not true, and this answer of the defendant was no more than a denial, emphatic in its terms, to the same effect. The convictions must, therefore, be quashed.

1903

 REX
 v.
 ROUSE.

 Lord Alverstone
 C.J.

WRIGHT J. I am of the same opinion.

KENNEDY J. I am of the same opinion.

DARLING J. I agree. Merely to deny a fact alleged by the prosecution is not necessarily to make an attack on the character of the prosecutor or his witnesses. Such a denial is necessary and inevitable in every case where a prisoner goes into the witness-box, and is nothing more than a traverse of the truth of an allegation made against him; to add in cross-examination that the prosecutor is a liar is merely an emphatic mode of denial, and does not affect its essential quality.

PHILLIMORE J. I am entirely of the same opinion, and agree with the remarks that have been added by my brother Darling. In my judgment it would be very dangerous to allow cross-examination to character under circumstances such as those in the present case; it would then only be necessary to provoke a prisoner in the witness-box to go further than was necessary in his anxiety to make a good defence to the charge against him, and he would be liable to have his whole previous career inquired into in cross-examination. If a simple question as to a precise fact were answered by an assertion that it was an untruth which the prosecutor had invented, cross-examination as to previous misconduct might, though I do not say it would, be admissible. But to allow the prosecution to follow up such a question as was here asked by saying that the answer is an attack on the prosecutor's character, and asking leave to cross-examine the defendant as to misconduct, would be to destroy all safeguards for an unprejudiced trial on the particular charge.

1903

REX

v.

ROUSE.

I wish also to make it clear that my judgment proceeds entirely on the particular facts stated in the case before us.

Convictions quashed.

Solicitors for prosecution: *White, Borrett & Co., for Westhorp, Cobbold & Ward, Ipswich.*

Solicitors for defence: *Dubois & Williams, for Chamberlin & Taylor, Lowestoft.*

W. J. B.

[CROWN CASE RESERVED.]

1903

Nov. 27.

THE KING v. WYATT.

- Criminal Law—False Pretences—Fraud—Evidence of previous Acts of Fraud—Admissibility.

Upon an indictment for obtaining credit by means of fraud, it was proved that the defendant hired furnished apartments from the prosecutrix and occupied them for three days, when he left without paying for them or for the food supplied to him. Evidence was admitted that a short time previously to the particular transaction the defendant had gone to several houses and hired apartments and left without paying, and that he still owed the money when he went to the house of the prosecutrix:—

Held, that the evidence, being evidence of similar acts committed by the defendant at a period immediately preceding the commission of the alleged offence, was admissible as tending to establish a systematic course of conduct, and as negating any accident or mistake or the existence of any reasonable or honest motive on his part.

CASE stated by the chairman of the Worcestershire Quarter Sessions.

The defendant, who was undefended, was tried upon an indictment containing two counts. The first count charged that on August 4, 1903, and on other days between that day and August 7, 1903, he did unlawfully, in incurring a certain debt and liability to one Rhoda Williams to the amount of 14s. 6d., obtain credit to the amount of the said debt and liability from her under false pretences. The second count charged that he obtained the credit by means of fraud other than false pretences.