(1868) 08 CAL CK 0001

Calcutta High Court

Case No: None

The Queen		APPELLANT
	Vs	
Gorachand Ghose		RESPONDENT

Date of Decision: Aug. 17, 1868

Judgement

L.S. Jackson, J.

The question which I have felt it my duty to refer, for the opinion of a Full Bench, is "whether, in the event of a Jury returning a verdict of "guilty" or "not guilty," under the express direction of the presiding Judge, and such direction being held by this Court to be contrary to law, it is not competent to the High Court, on revision, to set aside such erroneous direction, and thereupon to quash the proceedings and order a new trial." I find, as indeed I had some reason to apprehend, that I have the misfortune to differ from my learned colleagues on this Bench. I need not say that that being the case, I proceed to express my opinion with great diffidence; and where a single Judge differs from four of his colleagues, he ought to act, under the strongest conviction, not only as to the correctness of his own opinion, but also with reference to the importance of the matter at issue, before expressing that opinion. But on this point I have for a long time held a very strong opinion, and I think that the point involved is one the importance of which it is impossible to overestimate. It is one on which, in several of the districts under the Government of Bengal, the successful administration of criminal justice greatly depends. I think it well to state, in the first instance, that my opinion is chiefly based on what seems to be a most important difference between the system of Jury trial in this country, and that familiar to lawyers in England. The theory of trial by Jury in this country is one wholly distinct from that at home. In England I take it that the system of Jury trial rests upon the great constitutional principle, that every person is entitled to demand that he be not restrained of his liberty, except per legale judicium parium suorum vel per legem terra, so that trial by Jury is the rule, except in the particular cases, when Parliament has, by Statute, allowed summary convictions. I understand that great principle to underlie the finality of verdicts given by English Juries. But trial by Jury in

this country is I believe altogether devoid of that constitutional character. No man here has an inalienable right to be tried by Jury. It is simply a mode of trial which the Government, by an order in the Gazette can at any time extend to a particular district for particular classes of cases, and the Government may at any time afterwards revoke such order; and in point of fact, it is only at the present moment, I believe in seven districts in Bengal, and in respect of offences under a few chapters of the Indian Penal Code, that this mode of trial is at present in use. I consider that the present system of Jury trials in India is based upon section 1, Regulation VI of 1832, by which enactment trials by Jury, either in civil or criminal matters, were first introduced into Bengal, and the system was at that time introduced, not upon the constitutional principle that a native was entitled to the privilege of trial by Jury, the fact being notoriously otherwise; but in the words of the section, it was considered "desirable to enable the European functionaries, who preside in the Courts for the administration of the civil or criminal justice, to avail themselves of the assistance of respectable natives in the decision of suits, or the conduct of trials which may come before them." By the provisions of that Regulation, the verdict of a Jury was no more than a suggestion or advice to the Judge. He was at liberty to act upon it or to disregard it, and the decision, both in civil and criminal matters, was vested exclusively in him, as it is to this day in criminal cases, where trial is conducted with the aid of Assessors. The Code of Criminal Procedure in its provisions, in respect of trial by Jury, has no doubt gone a great deal further than the Regulation of 1832. It has in much nearer, if not in entire analogy to our own home system, placed the decision of facts absolutely in the hands of the Jury, for it is declared by section 408 that, if the conviction of any person has been on a trial by Jury, the appeal shall be admissible on a matter of law only; and further by section 406, it is declared "in any case which shall be revised by the Sudder Court, it shall not be competent to the Sudder Court to reverse the verdict of the Jury, or, except as provided in this Chapter" (XXVIII), to alter or reverse the sentence or order of the Court below.

2. The difficulty, in my way therefore is in the words "it shall not be competent to the Sudder Court to reverse the verdict of the Jury."

3. I wish it to be understood that what I would do, and what, with the greatest deference, I think the Court has power to do, is not to reverse the verdict of the Jury, but to set aside the enunciation of erroneous law upon which that verdict of the Jury is grounded. I of course admit that the words of the law and the intention of the Legislature are too clear to admit of any doubt; that, where the facts of the case were such that they could be properly, and were, referred to the Jury for a verdict, the verdict of the Jury, as a finding simply upon those facts, is irrevocable; and if the Jury, in coming to the finding, were unfettered and uninfluenced by any direction of law by the Judge, there could be no ground for the interposition of the Court, and the verdict would remain undisturbed.

4. This is all that in my opinion the Legislature meant by the words of section 406, viz., "it shall not be competent to the Sudder Court to reverse the verdict of the Jury." On the other side, I think I am entitled to refer to the terms of section 403. That section which, no doubt, refers immediately to convictions, may, at all events, be cited for the purpose of showing that in this country there is not the difficulty which exists in a certain class of cases in England of setting aside, in favour of the prisoner, the verdict of a Jury on the ground of misdirection. The prisoner, therefore, has some sort of remedy in such a case, irrespective of appeal, if the last clause of section 406 be not in the way.

5. I think it is not, because I see a distinction, which whether I can make it manifest to the minds of others or not, is at least clear to my own between "reversing the verdict of the Jury," and setting it and the remainder of the proceedings aside, on account of an antecedent error in the direction, which the Judge is bound to give to the Jury before they consider their verdict, and which has presumably misled them in coming to that verdict.

6. I understand reversing the verdict of a Jury to mean "coining to an opposite conclusion on the same facts, where the same law has been applied."

7. I will give an example of each case, taking up first the side of convictions. Suppose that a man were charged with murder, and three witnesses to the fact appeared, and the Judge, directing the Jury, said the witnesses were apparently credible, and there was no obvious reason why they should be disbelieved, and the Jury thereon took the same view and found the prisoner guilty. The Court here, on revision, might think the statements improbable and the witnesses not entitled to credit; but the question would be purely one of fact, and the Court could not reverse the verdict. Again, suppose that in a similar case there was only one witness for the prosecution, who was an accomplice, and three witnesses for the defence, who were cousins of the prisoner, and the Judge should have refused to allow these witnesses to be examined by reason of their relationship to the prisoner, and should have told the Jury that the accomplice witness was entitled to full credit, and therefore that they ought to convict the prisoner.

8. If the Court were to say, on revision, this trial is bad, because evidence for the defence has been improperly excluded, and because the jury has not been properly directed as to dealing with the evidence for the prosecution, that I take it would be ground, not for reversing the verdict, because the Court would probably, if so directed on the same facts, have come to the same conclusion, but for setting aside the proceedings, and ordering a new trial and this, I have not the least doubt, ought to be done, whether the prisoner appealed or no.

9. It is suggested that the record would remain, and that there could be no new trial; why not? It seems to me that, in this country, no record or sentence is in any sense valid or has any efficacy, which has been declared by a competent Court, to be bad

in law, and has been for that reason set aside. It cannot be said that section 55, Code of Criminal Procedure, is in the way; because if the words of that section are to be interpreted literally, they would be in conflict with the concluding words of section 405, which expressly enables the Sudder Court to order a new trial, and with many of the provisions relating to appeal. It seems to me, too, that there is a particular significance in the words of section 403, which empowers the Sudder Court to call for a report of the Judge''s direction to the Jury, to review that direction, and thereafter to determine any point of law arising out of the case, and pass such order, at it thinks fit. For what other purpose could these words have been used, except for the purpose of enabling the Court to deal with any mis-directions, by which the prisoner had been prejudiced, to set them aside, and order a new trial? I think the Court can do this under the express terms of section 403, in cases of conviction non obstinate section 406. If so a verdict is not final; and in that case what is to prevent the Court from dealing with a case of acquittal u/s 404.

10. I am told of the safeguards provided by the system of trial by Jury, I confess that I am much more concerned for the public than for the case of individuals, and interest reipublica ne maleficia remaneant impunita. Suppose, a man were to be tried for a brutal assault, and the Judge were to tell the Jury, "one of the witnesses is the brother of the prosecutor, and is not a competent witness, the second has no religious belief and is, therefore infamous, there remains but one witness, and his testimony is by law insufficient;" and the Jury, thereupon, acquitted the prisoner would it not be better for the public that this man should be re-tried than that he should go free on account of the sacredness of Juries verdicts?

11. If the High Court be not at liberty to make such order as I have suggested, I confess that I see no remedy for evils of very serious dimensions. The Code of Criminal Procedure is a compact system of law, which the Legislature passed after long consideration, and the Government would be naturally unwilling to alter that law as to any of its fundamental principles, and therefore remedy by legislation would be very difficult. I am quite sure, however, that my learned colleagues will agree with me that it is of the last importance that Courts of Justice should interpret that law with due attention to its terms, but not so as to create impediments in the way of administering justice, which are not absolutely forced upon them by its provisions. My own experience teaches me that unless the Court can apply the remedy which I advocate, failure of justice in the mofussil will be of almost daily occurrence. I think, with great deference, that the Court possess the power for which I have contended, and that it ought to be exercised in the present instance.

12. Peacock, C.J. (concurred in by Mitter J.)--I entirely agree with my honorable colleague (Mr. Justice L.S. Jackson) that the Code of Criminal Procedure ought to be administered with due attention to its terms, and it is for that very reason that I come to an opposite opinion from that at which he has arrived as to the proper answer to be returned to the question which has been propounded. The question is

whether, in the event of a Jury''s returning a verdict of "guilty," or "not guilty," under the express direction of the presiding Judge, and such direction being held by this Court to be contrary to law, it is not competent to the High Court on revision, to set aside such erroneous direction, and thereupon, to quash the proceedings, and order a new trial. If ever there was a point based upon firm ground according to the English constitution, it is that a verdict of not guilty, by a Jury in a criminal prosecution, cannot be set aside by a Court. In cases of conviction for misdemeanors, a verdict of guilty may, in some cases, be set aside for misdirection of a Judge, or upon the ground that the verdict was against evidence. I am speaking of convictions in cases which have been removed into the Court of Queen''s Bench by certiorari, and tried there, or at nisi pries. But in the case of felony, even a verdict of guilty cannot be set aside upon the ground of misdirection of the Judge, or upon the ground that the verdict is against the weight of evidence. The only remedy for a prisoner in such a case is to obtain a respite of the execution to enable him to apply for a pardon.

13. In the case of convictions in this country, in which there is no distinction made by the Penal Code between felonies and misdemeanors, the law is more favorable to a prisoner than the law of England for if a prisoner be convicted on a trial by Jury, he has a right of appeal upon a point of law. Section 408 of the Code of Criminal Procedure enacts that "any person convicted on a trial, held by a Court of Session, may appeal to the Sudder Court. If the conviction is on a trial held with the aid of assessor, the appeal may be on a matter of fact as well as on a matter of law. If the conviction is on a trial by Jury, the appeal is admissible on a matter of law only."

14. Further, section 403 enacts that "the Sudder Court, in any case tried before a Court of Session, in which upon a review of the abstract statement or calendar of prisoners punished without reference, it shall appear that there has been an error in the decision of the Court of Session on a point of law, or that a point of law should be considered by the Sudder Court, may call for the record, or such portion thereof as it may deem necessary, together with a report of the Judge''s direction to the Jury, if the case have been tried by a Jury; and upon reviewing the depositions of the witnesses, the direction of the Judge, and the conviction, may determine any point of law arising out of the case, and, thereupon, pass such order as to the Sudder Court shall seem right."

15. That section applies only to convictions, and, therefore, does not bear upon the present question so far as it relates to acquittals. But there is a term which is contained in section 406, which appears to me to be conclusive upon the question propounded. It provides that, in any case which shall be revised by the Sudder Court, under chapter 29 of the Code of Criminal Procedure, it shall not be competent to the Sudder Court to reverse the verdict of a Jury. No language can be clearer; and whatever our opinions may be as to whether other language might or might not have been more expediently used, we must, I think, follow the strict words of the

Act, and hold that a verdict of a Jury cannot be reversed by a Court of Revision, even if it be a verdict of guilty. This is no great hardship upon a prisoner; because if there be error in a point of law, be has a right of appeal against the conviction. I should not object to allow a verdict of conviction to be reversed upon revision, as well as upon appeal; but as the Legislature has, in clear and express terms, declared that it is not to be done, I feel bound by the terms of the Act. I would, therefore, answer the first portion of the question by saying that this Court, upon revision, cannot reverse a verdict of guilty, even though it be caused by misdirection of the Judge, and that the only remedy in such a case is an appeal, or an application to the Executive Government.

16. But when we come to the other part of the question, whether the Court can, upon revision, reverse a verdict of not guilty on account of a misdirection of the Judge, the case assumes a very different aspect. Section 407 enacts that there shall be no appeal from a verdict of acquittal passed in any Criminal Court. The Government prosecutor cannot appeal from a judgment of acquittal, however erroneous the law may be, which the Judge has laid down for the guidance of the Jury. Whether the trial be by Jury or before a Judge, with the aid of Assessors, it matters not; "there shall be no appeal from a verdict of acquittal." Can we, then hold that, upon revision, a verdict of not guilty may be reversed by the Court for misdirection in the teeth of section 406, which emphatically declares that it shall not be competent to the Court, upon revision to reverse the verdict of a Jury?

17. We all know how ably and eloquently Mr. Erskine contended for the rights of Juries at a time, when I may say that the rights and liberties of Englishmen were in jeopardy. We all know that a Jury is entitled to give a general verdict of not guilty, and that they are not bound to say, whether they acquit upon the facts or upon the law. If a Court of Revision could set aside a verdict of acquittal on the ground of misdirection, it must assume that the Jury did not intend to acquit upon the facts, and would thereby deprive the prisoner of the benefit of that right, which a Jury has to pronounce a general verdict.

18. My honorable colleague has said that trial by Jury in this country is very different in principle from trial by Jury in England; that it is in the discretion of the Government to allow, or not to allow, trial by Jury; that the Government may limit that mode of trial to a particular class of cases, or to a particular district; and that having ordered trials to be by Jury, it may revoke its order at pleasure. Trial by Jury in the mofussil in this country is in its infancy; but it is not, because we have not the full constitutional benefit of trial by Jury, that this Court, contrary to the express words of the Legislature, are to deprive trial by Jury, where it does exist, of those elements of safety which that mode of trial provides. I am thankful to say that we are not living in times in which our liberties depend upon trial by Jury, but we are not for that reason, even if we had the power, to deprive the people of that safeguard which in times of danger and of vindictive prosecutions, is provided by the power of

a Jury to pronounce a general verdict. If at the time to which I allude, when prosecutions against the press were instituted, which would not be tolerated in the present day, a Judge had correctly told a Jury that, in point of law a particular publication was a libel, and the Jury had, notwithstanding, found a general verdict of not guilty, no Court could have set aside that verdict; and if, with reference to the same publication, the Judge had told a Jury that it was not a libel, and the Jury had found a general verdict of not guilty, the Court would have had DO greater power to set aside the verdict on the ground of misdirection. Why then in the case of misdirection should the verdict be set aside upon revision, when, if a proper direction in point of law had been given, the verdict could not have been set aside? To allow the Court to set aside the verdict in the one case, and not in the other, would strike at the very root of the principle which allows a Jury to deliver a general verdict of not guilty. If the view taken by my honorable colleague is correct, the Court, upon revision, might on the ground of the misdirection of the Judge, set aside the general verdict of the Jury in the one case, when they could not in the other. In short, the verdict might be set aside when the Judge and Jury agree that the prisoner ought to be acquitted, but not when the Jury acquits in opposition to the direction of the Judge.

19. I do not understand exactly what my honorable colleague means, when he says that setting aside a verdict upon the ground of misdirection is not setting aside a verdict within the meaning of the section referred to, section 406. As I understand him, he would set aside the misdirection of the Judge, and leave the verdict to drop of itself. But in that case, there could be no new trial. If in such a case the consequence of setting aside the misdirection would be that the verdict would drop, the act of the Court would substantially amount to a reversal of the verdict. In my opinion the Court cannot, and ought not to do indirectly that which it is prohibited by the express words of the Legislature from doing directly. If the Court is expressly prohibited from directly setting aside a verdict of acquittal, it appears to me that it is equally prohibited from resorting to any ingenious device, by which that result would be brought about by other means. But I do not believe that such a mode of proceeding would be successful, because I apprehend that, when once a verdict of "not guilty" has been pronounced by a Jury and recorded, nothing that the Court can do can get rid of it. To question or set aside the summing up of the Judge, after a verdict of "not guilty" has been recorded, would not, in my opinion, get rid of the effect of that verdict. If a Judge should say to a Jury--"I do not think it necessary to give you any direction in this case: you will say whether the prisoner is guilty or not guilty" a verdict of "not guilty" could not be set aside in such a case. If so, why should the setting aside of a misdirection get rid of such a verdict? If this Court, upon revision, should go further back and quash the charge upon which the prisoner was tried the record must still remain. No order quashing the direction of the Judge or quashing the charge upon which a prisoner has been tried and acquitted, can get rid of the acquittal. The order might be recorded at the foot of the

acquittal, but it would ha a mere nullity, and could not authorize a new trial of the prisoner.

20. If the country is not ripe for trial by Jury, it would be better to amend the Code of Criminal Procedure, than to have trial by Jury shorn of the Safeguards which it provides. But when it is being tried experimentally, and the Legislature has declared that a verdict of acquittal is not to be set aside upon appeal, or reversed upon revision, we ought not to put such a construction upon the express words of the Legislature as to deprive that mode of trial of its moat important and essential principles. For the above reasons. I am of opinion as to the second branch of the question that a verdict of "not guilty" pronounced by a Jury cannot be reversed by this Court as a Court of Revision; and it is clear that it cannot be reversed on appeal.

Bayley, J.

21. I think that the question, in its two branches, should he answered as proposed by the Chief Justice.

Macpherson, J.

I concur in the proposed answer which, on an accurate construction of the several sections of the Criminal Procedure Code which bear on the subject, is, I have no doubt, right.

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[1]Before Mr. Justice Phear and Mr. Justice Hobhouse.

The Queen v. Baikantha Nath Banerjee. [14th July, 1868.]

JUDGMENT.

Phear, J.--We think that there has been a mistrial in this case. The whole of the charge against the prisoner depended upon the evidence of the two approvers. It is undoubted that a Judge, in cases where the material supporting the charge against the prisoner is afforded by the evidence of an approver, is bound very carefully to warn the Jury of the infirmity which necessarily attaches to that evidence. He is bound also to call to their attention the circumstance, if it be in fact the case, that the approver is speaking under the influence of a conditional pardon, that is, a pardon conditional upon his telling the truth to the satisfaction of the Crown, who is the prosecutor. We think that, in this case, the Judge had a desire to warn the Jury of the suspicious character of an approver''s evidence, although he possibly was not altogether happy in the language which he used for the purpose. But it is clear that he omitted entirely to point out to them that the two principal witnesses were speaking under the influence of a promise of a pardon. He was further bound to tell the Jury that, although the testimony of persons so situated as these two men were was legally receivable, and might be believed by them, if on all the facts of the case they, in their judicial discretion, thought fit to do so, yet that they ought not to act

solely upon this testimony, unless it was corroborated, that is corroborated so far as regards the charge against the prisoner at the bar. In this case the Judge has not very distinctly given the Jury this warning, though he has more than once told them that the evidence of the approvers was corroborated, but I think it is apparent that he has, in regard to this point, labored under considerable misapprehension. In one place he said that it was certain that many of the facts spoken to by the approvers were true. This of course might well be, and yet their testimony, so far as it affected the prisoner at the bar, might be entirely uncorroborated and valueless. It has often been observed by Judges that, in the nature of things, no one knows so well the actual facts of the case as the approver, who by his own admission has taken a part in them. And as he has confessed his own guilt, there is generally no reason why he should misrepresent them, except so far as it may be possible for him thereby to shift a measure of culpability from his own shoulders to those of some one else, viz., of course to those of the prisoner against whom he is giving testimony. Hence the question always is in any given case, is the approver speaking the truth, not merely when he details the general facts, but when he says that the prisoner participated in the transaction, and did that which it was necessary that he should have done, in order for him to become criminally liable to the charge made against him. In saying then that, before the evidence of an accomplice can be safely depended upon, so far as it affects the prisoner, it ought to be corroborated. I understand, that other evidence from sources, independent of the approver, should be forthcoming relative to facts which implicate the prisoner in the same way as the story of the approver does. Now, if we look at this case by the light of this explanation, it seems that the corroboration of the approver''s testimony against the prisoner centers in one single fact. For it is not true, as the Judge said, that Tarak Koer deposed that the notes were unendorsed at the time of Kali Kant''s death. It is quite clear, from the evidence of Tarak Koer that there was a possibility of these notes having been endorsed before Kali Kant died. That witness merely says this, namely, that the notes were not endorsed when he last saw them, but then he says also that he had not seen them since some point of time, two or three months antecedent to Kali Kant''s death. It may possibly be immaterial as a fact in the case, whether the notes were endorsed before or after Kali Kant''s death, but it is most important in considering whether the evidence of the two approvers is corroborated or not, that, while they swear the notes were not endorsed until after the death, there should be a possibility, on the evidence of the person who is supposed to have corroborated them, that, they were endorsed before the death.

But even if the Judge''s statement to the Jury on this head were strictly correct, he would have been mistaken in thinking that Tarak Koer thus afforded any corroboration of the approvers'' testimony against the prisoner. Obviously the bare confirmation of the statement, made by the approvers, that the endorsing took place after Kali Kant''s death, is no confirmation of their statement as to the person who effected the endorsement.

The only other corroboration which the Judge alludes to in his address to the Jury, is to be inferred from the fact that a 500 rupees note, accompanied by a slip of paper, covered with copies of the forged endorsement, was found in a pot sunk in the floor of a room, which formed part of the prisoner''s house. Probably the corroboration which the Judge sees in the finding of the 500 rupees note under these circumstances, is very much less than he supposes. But, no doubt, the corroboration which is traceable to the copy of the endorsement is strong indeed, if only one thing is made out, namely, that the pot and its contents was placed in its position of concealment, either by the prisoner himself, or by some one with his cognizance and by direction. Now as I read the evidence, the fact that the pot was found in a portion of the prisoner''s premises, is the one single link which connects the prisoners if I may say so, with the contents of this pot. The pointing out of the pot by the wife is, I think, no evidence against the husband. But, certainly, if it is evidence against the husband it never ought to have been allowed by the Judge to go to the Jury, because it is hearsay evidence. And the same observation applies to the remark which the wife is said to have made as to her husband having put something away in the place where the pot was found. Clearly if the wife could give evidence, which was material to the charge against the prisoner, she should have been called as a witness. It was not proper to allow hearsay evidence afforded by her conduct and her words to get under the attention of the Jury. It seems to me that inasmuch as the corroboration of the approvers, so far as their story makes the prisoner a participator in their crime, depends entirely upon the fact that this pot was found in the prisoner''s house, this cardinal point upon which the whole case hinges, has not been properly singled out and brought before the Jury. They ought to have been told that there, in fact, hinged every thing which was in the nature of corroboration of the approvers'' evidence. It was for them to say, in view of the evidence which bore upon this particular point, whether they, as judges of fact in the case, considered the 500 rupees note and the copy slip sufficiently brought home to the prisoner to make the story of the approvers credible and trustworthy, and the Judge ought to have aided them to a conclusion, by carefully summing up that evidence. If the apparent concealment of the pot, with the enclosed papers in the prisoner''s house taken above told against him, on the other hand, there certainly were facts in evidence which tended to lessen the force of the adverse presumption, and not a little to suggest that the whole affair was a trap laid by the approvers. If so, of course, all shadow of corroboration vanished. The Judge should have taken care that this side of the case did not escape the Jury''s notice. I think he certainly ought to have called their attention to the circumstance that the place where the pot was found, was not a portion of the interior of the living house, so far as can be gathered from the evidence, and also that at least Dinanath, one of the approver, had access to it. This follows I think from the evidence of Tewarri, who says he found Dinanath with the wife in another part of the house, that means I suppose the inner apartments; and if he could get there, it can hardly be doubted that he could have got to this comparatively public portion of the building. And, indeed, there is

nothing in the evidence to show that, considering the unfinished state of the room where the pot was discovered, other persons, as well as Dinanath, might not readily have entered it or that it is in any way necessary to infer that anything which was found-buried there was buried by the act, or with the knowledge of the master of the house. Then, again, the evidence as to what led to the discovery, should have been reviewed; and in particular, the absence of the principal witness should have been commented upon. Without going further through all those portions of the evidence, which tend to throw suspicion upon this matter, and to suggest difficulty as to the value properly attributable to the apparent concealment of the pot in the prisoner''s house, it seems to me clear that there was so much of importance banging upon this point that the Judge was wrong in omitting carefully to bring it under the notice of the Jury, and to tell them their duty in regard to coming to a conclusion on the facts which surround it.

Finally, there is no doubt that the Judge was wrong in allowing any matter of prejudice, not being direct evidence of fact relevant to the charge against the prisoner to go to the Jury while they were trying the accused. All evidence of character and previous conduct of the prisoner ought to have been excluded; and if by accident any such had come out in open Court, then the Judge ought most distinctly to have told the Jury that they were carefully to guard themselves from being influenced by it. But, unfortunately, the Judge has taken exactly the opposite course. He has not only allowed statements as to the prisoner''s character for forgery to be made in Court, but he has founded upon it a portion of his charge to the Jury. He has, in effect, told the Jury that they would not be right if they allowed their judgment of the value of the evidence before them to be influenced by a consideration of the prisoner''s previous character for forgery. And this is the more unfortunate, because this evidence of the prisoner''s previous character comes from no one, but from the approvers. For all these reasons I think that the Judge has not conducted the trial in the way in which it ought to have been conducted. He has not directed the Jury upon points with regard to which it was essential, that they should receive instruction from the Judge, in order to their coming to a proper verdict. He has allowed matter to come in as part of the evidence in the case, and has, indeed, pressed it upon their attention, which ought to have been studiously kept away from them altogether, and he has certainly misinformed them with regard to the question of corroboration and the existence of corroborative evidence in this case. I think that the verdict, which has been arrived at under the guidance of a direction like this must be set aside, and of course the sentence which was passed thereon quashed. The prisoner must be discharged from custody.

We think it desirable to add, although, perhaps, it may be superfluous to do so, that this decision has not the effect of an acquittal, so as to protect the prisoner from being tried again. At the same time we do not think it necessary to order a new trial.