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absurd; the more so when the contract is made and breach of it occurs in a town like Cawnpore, where, unless it is proved to the contrary, every workman knows that there is a law like Act XIII of 1859 and enters into a contract voluntarily and willingly. When a man enters into a contract he must carry out the terms of the contract into which he has entered unless he can show some reasonable excuse. One of the terms of the very same contract can hardly be afterwards held up as reasonable excuse for non-performance. Let the record be returned with this expression of opinion from this Court.

Record returned.

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the learned Judge's judgement may be so mischievously interpreted that we are compelled to interfere. We set aside the order of the learned District Judge and we restore that of the Magistrate. It has not been shown to us that the terms of the bond are at all beyond the means of Ramai Singh.

Ramai Singh will work from the date the order of this Court is certified to the court below until he has completed fifty months of work from the date of the contract and will pay up the sum of Rs 19-4. Until he has worked for this period and paid up this sum he will continue to be liable for work. Any period for which he worked in the past and has worked since the 6th of February, 1910, is to be deemed as work under this order and any payments made subsequent to the 6th of February, 1910, and accepted by Mr. Lucas are to be deemed as payments made in liquidation of the sum of Rs. 19-4; otherwise the order of the learned Magistrate will hold good.

APPELLATE CRIMINAL.

Before Mr. Justice Piggott.

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Act No. I of 1872 (*Indian Evidence Act*), *section* 105—*Act No. XLV of* 1860 (*Indian Penal Code*), *section* 97—*Right of private defence—Pleadings—Alternative and apparently inconsistent pleas.*

The right of an accused person to defend himself upon a criminal charge can only be limited by the provisions of the statute law.

There is nothing in the law to prevent a man on his trial on a charge of culpable homicide from setting up an alternative defence on some such lines as these:— "First, I was not present at the occurrence referred to by the prosecution witnesses, and they are giving false evidence against me; secondly, even if I fail to persuade the Court of this fact, I can show from the statements of the prosecution witnesses themselves, that if I had caused the death of any person in the manner and under the precise circumstances deposed

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*Criminal Appeal No. 736 of 1917, from an order of F. D. Simpson, Sessions Judge of Allahabad, dated the 10th of September, 1917.

to by their evidence, I should have been acting in the lawful exercise of a right of private defence."

Queen-Empress v. *Pray Dat* (1), *Queen-Empress* v. *Timmal* (2) and *Emperor* v. *Gullu* (3) referred to.

THIS was an appeal from an order of the Sessions Judge of Allahabad, convicting the appellant of an offence under section 308 of the Indian Penal Code and sentencing him to three years' rigorous imprisonment. The facts of the case are fully stated in the judgement of the Court.

Mr. *G. W. Dillon* and *Piari Lal Banerji*, for the appellant.

The Government Pleader (Babu *Lalit Mohan Banerji*), for the Crown.

PIGGOTT, J.:—On the 26th of June, last, in the moring, in a frequented part of the city of Allahabad, a scuffle took place between Yusuf Husain, who is appellant now before this Court, and one Musi Raza. The two men came to the ground, the appellant being underneath and Musi Raza uppermost. When the scuffle ended Musi Raza was found to be bleeding profusely from wounds in the chest. There were two distinct wounds, one of which was on the right side of the chest and the other on the left, over the region of the heart. The wound on the right side was long and superficial, and, so far as the medical evidence goes, might have been caused by the knife or other weapon which had just inflicted the wound on the left side slipping along the body. The wound on the left side was of a peculiar character and seems to have honestly puzzled the medical officers who examined it. The most remarkable feature about it was that it was angular in shape, with two distinct limbs each about three quarters of an inch long. The medical officer whose evidence appears the more reliable was of opinion that this wound had most probably been inflicted with a knife, but that both the injuries on the chest looked as if they had been caused by a single blow, the knife having slipped round after penetrating and then slid along the body in the course of a scuffle. It so happened that the wound on the left side, while dangerous, did not prove fatal. The pleural cavity was not penetrated, and though one of the minor arteries was severed and there was serious effusion of

(1) (1898) I.L.R., 20 All., 459. (2) (1899) I.L.R., 21 All., 122.
(3) Weekly Notes, 1904, p. 113.

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blood, at one time threatening to prove dangerous to life, the injury yielded to skilful treatment and Musi Raza recovered. Yusuf Husain was committed for trial on a charge framed under section 307 of the Indian Penal Code. The learned Sessions Judge has found that Yusuf Husain stabbed Musi Raza with a knife, that he did so with intent to cause death, or at least to cause such bodily injury as he knew to be likely to result in death, but that, even if death had resulted, the case would have been covered by Exception I to section 300 of the Indian Penal Code, in that Yusuf Husain had acted under sudden and grave provocation. He has accordingly convicted the appellant under section 308 of the Indian Penal Code and has sentenced him to rigorous imprisonment for three years.

The memorandum of appeal to this Court, apart from calling in question the severity of the sentence, raises two distinct pleas. The first is whether the prosecution evidence, even if accepted at the value put upon it by the learned Sessions Judge, justifies a finding that the appellant intended to cause death or even injury likely to result in death. The other is that the appellant was acting in the lawful exercise of his right of private defence and is completely protected by the provisions of section 97 of the Indian Penal Code. On this latter point there has been considerable argument before me. With regard to the legal aspects of the case, I have been referred more particularly to three reported cases of this Court. *Queen-Empress* v. *Prag Dat* (1), *Queen Empress* v. *Timmal* (2) and *Emperor* v. *Gullu* (3).

The first of these rulings seems to have only a remote bearing on the facts now before me. It lays stress upon the provisions of section 105 of the Indian Evidence Act, and there can be no doubt whatever that, if the present appellant is to secure an acquittal on the ground that he acted in the exercise of his lawful right of private defence, it must be because the court finds this affirmatively, after laying the burden of proof on the accused person. With regard to the second of these two cases, it seems to me that the head-note goes very considerably beyond anything that was decided in the case itself. The learned Judges did not confine their consideration of that case to the fact that the right

(1) (1898) I.L.R., 20 All., 459. (2) (1899) I. L. R., 21 All., 112.
(3) Weekly Notes, 1904, p. 118.

of private defence had not been pleaded by the persons whose case they were considering. The contention before them on behalf of the prosecution did not limit itself to this fact, but it was pleaded further "that there was no evidence on the record upon which any circumstance could be inferred which would substantiate a plea of private defence." This was the contention which found favour with the Court and upon which the case was definitely decided. There is nothing to the contrary in the third of the cases to which I have above referred. The right of an accused to defend himself upon a criminal charge can only be limited by the provisions of the statute law, and in this case the provisions to be considered are those of section 105 of the Indian Evidence Act already referred to. I cannot see anything in the law to prevent a man on his trial on a charge of homicide from setting up an alternative defence on some such lines as these:—"*Firstly*, I was not present at the occurrence referred to by the prosecution witnesses, and they are giving false evidence against me; *secondly*, even if I fail to persuade the court of this fact, I can show from the statements of the prosecution witnesses themselves that, if I had caused the death of any person in the manner and under the precise circumstances deposed to by their evidence, I should have been acting in the lawful exercise of a right of private defence."

Now in the present case the accused has done something like this, but not precisely this. He said that he was coming along the road on his bicycle when he was set upon and assaulted by Musi Raza; that he fell off his bicycle on to the ground, and Musi Raza on the top of him, the two of them being mixed up with the bicycle, which fell to the ground at the same time. Musi Raza received his injuries in the course of this fall, and they must presumably have been caused by some portion of the bicycle. The defence as thus set up was not substantiated by the evidence. If it were necessary for me to go into the matter, I could give my reasons for concurring in the finding of the learned Sessions Judge that Musi Raza was not injured by falling on the bicycle, but that he was struck in the chest by the appellant Yusuf Husain, holding a pen-knife or some similar implement in his hand. I do not feel called upon to go into this question in detail, because the appeal has been

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argued before me, in substance, upon the admission that this was what actually happened. It is unfortunate that Yusuf Husain was not sufficiently well advised to have admitted this fact frankly in the trial court. The result has been to involve him in that necessity for arguing two inconsistent defences on which stress is laid in more than one of the rulings to which I have just referred. He endeavoured to support his position by calling a number of witnesses, and these witnesses themselves laboured under the disadvantage which the accused had imposed on the entire conduct of the defence. They gave evidence as to the circumstances under which the affray between the two men commenced, which evidence has in the main been accepted by the trial court in preference to that of the prosecution witnesses. They described Musi Raza as the aggressor, and as having set upon Yusuf Husain while the latter was riding by on his bicycle. They said that the two men fell together on the ground with Musi Raza uppermost; but there they had to stop, unless they were to give away the defence principally relied upon at the trial. None of the defence witnesses would admit that he saw Yusuf Husain strike a blow with any weapon or instrument whatsoever. They could only say that when the two men stood up Musi Raza was bleeding at the chest. The defence evidence given under these limitations can not be relied upon further than it has been by the learned Sessions Judge himself. It was not accepted even by the assessors, who would have preferred to find the accused not guilty. They were both of opinion that the injuries on Musi Raza's person were caused by a blow or blows struck by Yusuf Husain. On the principles already laid down the only question which remains is whether the plea of private defence can be made out on the evidence of the prosecution witnesses themselves. I have to criticize that evidence in connection with the other plea taken in the memorandum of appeal, and I need not anticipate those criticisms. It is sufficient for me to say that even the evidence of the witness Safdar Husain, who is certainly the most reliable of the prosecution witnesses, falls short of making out a satisfactory answer to the charge on the ground of private defence. He admits that he saw the two men struggling on the ground; that Yusuf Husain was underneath

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with Musi Raza on the top of him, and that Musi Raza had his hands, one on the back of the accused's neck and one underneath it; then he says he saw two distinct blows struck by the accused, inflicting stabs on the chest of his opponent. We have no statement from Yusuf Husain himself that he was being throttled, that the pressure upon his neck was such as to inspire him with fear for his own life; in fact, we have no exposition from the accused himself of the motives for his action. On the evidence, therefore, as it stands I am not prepared to find that the right of private defence of the person in favour of Yusuf Husain, even admitting such right to have arisen in consequence of an assault commenced by Musi Raza, was not vitiated by the fact that harm was caused more than was necessary for the purposes of defence.

At the same time I think that the case comes very near the limit, and that it is at least possible that a full defence on these lines might have been made out if the appellant had been better advised at his trial. It does not seem to me at all necessary to take as serious a view of this case as has been done in the court below. The prosecution evidence is scanty to a degree. The statement of Musi Raza is corroborated by two witnesses only—Safdar Husain and a woman named Musammat Sakina. The learned Sessions Judge has distrusted the evidence of the woman, and I think it sufficient to say that the record discloses abundant grounds for putting her statement aside as altogether unreliable. The long and short of the matter is that Musi Raza elected to come into court with a version of the facts which diverges very widely from the truth as regards the origin and commencement of the affray. He found it difficult to get any witness to support his false statements on this point. The learned Sessions Judge remarks that the investigating Police Officer found it difficult to obtain evidence because the sympathies of persons in the neighbourhood seemed to be with Yusuf Husain. He does not appear to have adequately appreciated the importance of this remark. What the investigating officer found difficult to obtain was evidence supporting Musi Raza's version of the facts, and his difficulty arose simply from the fact that the shop-keepers of the neighbourhood saw no adequate

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reason for perjuring themselve to oblige Musi Raza. Their sympathy for the accused amounted to mere disinclination to see him involved in a serious charge upon a version of the facts which they knew to be in material points untrue. When a number of them finally decided to come in court as witnesses for the defence, they unfortunately thought themselves to be precluded, under the circumstances already referred to, from telling the whole truth; but their version of the commencement of the affray has been in substance accepted by the trial court. The result of this is that Musi Raza has been disbelieved by the learned Sessions Judge in very material parts of his evidence and, this being the case, I do not find myself able to follow the learned Sessions Judge in accepting as established beyond reasonable doubt Musi Raza's version as to the particular manner in which he was struck by the accused. The medical evidence is not merely consistent with the assertion that only one blow was struck, but it tends to make that assertion probable. The appearance of the wounds as described by the medical officer, whose evidence I agree with the learned Sessions Judge in accepting as reliable, suggests that the theory formed by that officer as to the manner in which the injuries were caused is probably correct. I think it quite unlikely that Musi Raza is speaking the truth when he says that the superficial cut on the right side of his chest was inflicted first and was followed by a stab aimed directly at his heart. It is true that Musi Raza's statement on this point is to some extent corroborated by the evidence of Safdar Husain. The latter speaks of two distinct blows being struck, though of course he cannot say which of the two injuries was caused by which blow. In some respects Safdar Husain has shown himself an impartial witness, and I do not see that the learned Sessions Judge was in any way justified in rejecting that portion of his evidence which bears out the statements of the defence witnesses as to the position of Musi Raza's hands at the moment when the accused struck him. It must be remembered, however, that this witness is admittedly a friend of Musi Raza and that his account of the manner in which the affray commenced has been rejected by the learned Sessions Judge, who has preferred the version

given by the defence witnesses. It seems to me that to hold that Yusuf Husain struck two blows at his assailant, or even to hold that the curiously shaped injury on the left side of Musi Raza's chest was the result of a blow intentionally aimed at that portion of his anatomy, is to place an unwarranted degree of reliance on the veracity of Safdar Husain and on his opportunities of observing precisely what took place in what must have been a very brief souffle.

In my opinion the prosecution evidence, fairly considered, so far from warranting the conclusion that when Yusuf Husain struck at Musi Raza with the pen-knife, or whatever other implement he had about his person at the time, he did so with the intention or knowledge referred to in section 299 of the Indian Penal Code, does not even justify the conclusion that the hurt which he intended to cause or knew himself likely to cause was grievous hurt, reference being made to the provisions of section 322. The offence committed, therefore, would be that made punishable by section 324 were it not for the fact that the appellant acted on grave and sudden provocation. This has been found by the learned Sessions Judge himself and I agree with him. The offence committed, therefore, must be reduced to one punishable under section 334, Indian Penal Code. The result is that I set aside the conviction and sentence in this case, convict Yusuf Husain of an offence punishable under section 334, Indian Penal Code, and sentence him to pay a fine of Rs. 100. I allow one week within which the fine may be paid, the appellant's security remaining in force till that period. In default of such payment the appellant will suffer simple imprisonment for a period of one month.

Conviction altered. Sentence reduced.