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one for compensation for breach of a contract in writing registered? I may add that, as to the first point, I feel, though with a good deal of doubt, of opinion that, when there is a special provision for limitation as in No. 66, it should bar the provisions of No. 116; and, as to the second, that, if the suit should have been originally brought for compensation for breach of contract, and not for money lent, that I have no power to allow the plaint to be amended now, owing to the proviso to s. 53, Act X of 1877."

The parties did not appear.

The High Court (PEARSON, J., and STRAIGHT, J.,) made the following order:

PEARSON, J.—It appears to us that this is not a suit which falls within the scope of art. 66, sch. ii of the Limitation Act XV of 1877. No day is specified in the bond for payment of the money lent. Under the terms of the bond the loan might have been repaid on any day before the expiry of two years, and might have been claimed before then on certain contingencies contemplated and defined. The plaint makes no mention of the bond, but alleges with sufficient distinctness a failure of payment within the stipulated period, or, in other words, a breach of contract, and claims the amount remaining due under the bond, which is virtually the measure of the compensation due for the alleged breach of contract. This being so, we are of opinion that the article 116, sch. ii of the Limitation Act, is applicable to the suit which may proceed upon the plaint without any amendment thereof. The Small Cause Court Judge may be advised accordingly.

FULL BENCH.

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November 1.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Oldfield, and Mr. Justice Straight.

EMPRESS OF INDIA *v.* ABDUL KADIR.

Causing disappearance of evidence of an offence—Act XLV of 1860 *(Penal Code), s.* 201.

Held that it is necessary, in order to justify a conviction under s. 201 of the Indian Penal Code, that an offence for which some person has been convicted or is criminally responsible should have been committed.

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ONE Abdul Hakim, who had caused the death of one Bandhu, was placed on his trial before the Sessions Judge of Meerut on a charge of culpable homicide not amounting to murder, an offence punishable under s. 304 of the Indian Penal Code. On the 8th April, 1880, the Sessions Judge acquitted him of that offence. Subsequently Abdul Kadir, who, in order to screen Abdul Hakim from the consequences of causing Bandhu's death, had caused Bandhu's dead body to be burnt, was tried before the Sessions Judge for causing evidence of the commission of an offence to disappear, an offence punishable under s. 201 of the Indian Penal Code; and, on the 28th April, 1880, was convicted of that offence by the Sessions Judge. He appealed from such conviction to the High Court on the ground, among others, that, as it had not been proved that an offence had been committed, he could not legally be convicted of concealing an offence. The appeal came for hearing before Straight, J., who referred the following question to the Full Bench:—

"Is it necessary, in order to justify a conviction under s. 201 of the Penal Code, that an offence for which some person has been convicted or is criminally responsible, within the definition of s. 40, should have been committed?"

Mr. *Ross* and Shah *Asad Ali*, for Abdul Kadir.

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), for the Crown.

The following judgments were delivered by the Full Bench:—

STUART, C. J.—My answer to this reference is in the affirmative. If I were trying a case under s. 201, Indian Penal Code, and it was proved in the course of the trial that no offence had been committed, I should consider it my duty to direct the jury to return a verdict of acquittal. Under the Penal Code no man can be tried for any delusion or misconception of mind, however culpable and criminal such delusion or misconception may appear to be. The whole difficulty respecting the meaning of s. 201 arises from the somewhat awkward manner in which the words "knowing or having reason to believe that an offence has been committed" are used

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or collected, which at first sight may appear to favour the idea that the mere having reason to believe was sufficient to support a conviction. According to all recognized principles of criminal jurisprudence, however, an offence must first have overtly or actually been committed, and thus the meaning of the section, and, in this sense, the opening words of s. 201, would have been more clearly expressed as follows:—"Whoever, knowing that an offence has been committed, or having reason to believe that an offence has been committed, the said offence having been actually committed." This I hold to be the legal construction to be put on s. 201.

PEARSON, J.—My answer to the question is in the affirmative. In my opinion the terms used in the section "knowing or having reason to believe" conclusively negative and preclude the view that its provisions are applicable in cases in which an offence has not been committed. For it is impossible for anyone to know or to have reason, or sufficient cause, to believe that an offence has been committed when it has not been committed. A person may fancy that he knows or has reason to believe an offence to have been committed when it has not been committed, but he is mistaken in so fancying. He may, under the influence of such a mistake, remove something which he imagines to be evidence of the offence which he supposes to have been committed, and he may be morally blameable for so doing. But it is beyond the province of criminal legislation to punish a man for a delusion, or even for an act which has not caused any actual harm to the public or any individual member of society. I am also of opinion that the words "that offence," relating back as they do to the previous words "an offence," cannot be construed to mean any other than a real offence; and similarly that the words "the offender" mean the real, and not an imaginary, offender.

OLDFIELD, J.—For a conviction under s. 201 it is necessary that an offence for which some person has been convicted or is criminally responsible shall have been committed. The language of the section precludes any other view:—"Causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment." There can be no offender liable to legal punishment unless some offence has been

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committed, and the thing which a person causes to disappear cannot be said to be evidence of an offence unless an offence has been committed. I presume the object of the law was to ensure the conviction of offenders for offences committed,—not to punish persons, who, acting on an erroneous impression that some one had committed an offence, cause the disappearance of what they believe might be used as evidence. I can conceive no reason in the interests of justice or public policy why such an act should be made penal.

STRAIGHT, J.—In answer to this reference, I would say that it is necessary, in order to justify a conviction under s. 201 of the Penal Code, that an offence for which some person has been convicted or is criminally responsible should have been committed. I have given the fullest weight in considering the matter to the argument of public expediency urged against this view; but, in construing a penal statute, I cannot apply that elasticity of interpretation contended for by the Junior Government Pleader. To do so I must read the section as if it enacted as follows :—"Whoever, having reason to believe that an offence has been committed, causes what he supposes to be evidence of the commission of the offence which he believes to have been committed to disappear, with intent to screen the person he believes to be the offender from legal punishment, &c." Now I do not feel myself warranted in introducing all this matter into the section, when, if the Legislature had contemplated the creation of any such offence, language might readily have been found to express such intention. I must take the words as I find them, and not strain them for the purpose of meeting remote contingencies that might arise. If an offence has been committed, and the evidence shows that, as a reasonable man, the accused had sufficient reason to believe that it had been committed, and under that belief caused evidence to disappear, with intent to screen the offender, then, in my judgment, he is criminally responsible, but not otherwise. This seems to have been the view of the learned Judges who decided the cases of *Queen* v. *Ram Ruchea Singh* (1) and *Queen* v. *Subbramanya Pillai* (2) ; and I see no reason to dissent from the opinions they express. The answer to this reference must therefore be as I have already indicated.

(1) 1 Wym. (Criminal Rulings), 1. (2) 3 Mad. H. C R., 251.