mentioned in the last clause of illustration (*p*). Therefore, I think that section 14 does not permit of this evidence being admitted. The authorities also support this view. In *The Public Prosecutor* v. *Bonigiri Pottigadu*[1] it was held that in a case under section 400, Indian Penal Code, the evidence of the commission of other offences than dacoity is only evidence of bad character and is inadmissible under section 54 of the Indian Evidence Act. The remarks in *Emperor* v. *Debendra Prosad*[2] and in *Emperor* v. *Panchu Das*[3] support the view I have taken. In the last-named case even the dissenting Judge, Chaudhuri J., at page 709 says:

"No doubt, evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment is not admissible, unless upon the issue whether the acts charged against the accused were designed or accidental, or unless to rebut a defence otherwise open to them".

I hold, therefore, that the proposed evidence is inadmissible except in the case where the accused himself has given evidence that he has a good character, in which case it is admissible under section 54.

G. G. N.

[1] (1908) 32 Mad. 179. [2] (1909) 36 Cal. 573 at p. 584.
[3] (1920) 47 Cal. 671 at pp. 692-696.

ORIGINAL CRIMINAL.

Before Mr. Justice Fawcett.

KING-EMPEROR *v.* HAJI SHER MAHOMED AND OTHERS (Accused)*

1921 December 21.

Evidence Act (I of 1872), section 25—Statement by accused during police inquiry regarding property produced by him—Whether admissible if self-exculpatory but involving an admission of an incriminating circumstance—Penal Code (Act XLV of 1860), section 400—Practice.

* Fifth Criminal Sessions of 1921 : Case No. 4

1921.

EMPEROR v. HAJI SHER MAHOMED.

An accused was charged with the offence of belonging to a gang of persons associated for the purpose of habitually committing dacoity. During the police inquiry he had made a statement to an Inspector of Police that a bundle of ammunition produced by him was given to him by two other accused who were charged with him as being members of the gang. A question having arisen whether such statement was admissible against the accused,

Held, that the statement though self-exculpatory was inadmissible as it amounted to an admission of an incriminating circumstance and was therefore excluded under section 25 of the Indian Evidence Act.

Emperor v. *Mahomed Ebrahim*[1], distinguished.

Queen-Empress v. *Javecharam*[2], and *Barindra Kumar Ghose* v. *Emperor*[3], followed.

THE facts of the case are sufficiently stated in the judgment of Fawcett J.

FAWCETT, J. :—During Police inquiries into the present case the accused No. 16, Mahomed Ubhayya, was questioned by an Inspector of Police, Mr. Satham, regarding a bundle of ammunition which he produced. He is said thereupon to have made a statement that it had been given to him by Mahomed Jaffer and Mahomed Karim and it is sought to put in evidence this statement to the Police Inspector. The question is whether it is not excluded as being a confession made to a Police Officer under section 25 of the Evidence Act. Mahomed Jaffer is accused No. 11, and Mahomed Karim was accused No. 10, but has since been made an approver. Mahomed Karim has given evidence that this particular ammunition belonged to the gang of dacoits, of which he and accused Nos. 11 and 16, with others, were members.

Mr. Velinkar for the Public Prosecutor argues that this statement does not amount to an admission of an incriminating circumstance so as to constitute a confession within the meaning of section 25, and he relies upon the case of *Emperor* v. *Mahomed Ibrahim*[1], where

[1] (1903) 5 Bom. L. R. 312. [2] (1894) 19 Bom. 363.

[3] (1909) 37 Cal. 467 at pp. 520-523.

a statement made by an accused to a Police Officer that a box, which he was found carrying away at night, belonged to him, was held to be admissible, inasmuch as it did not amount directly or indirectly to an admission of a criminating circumstance. There is of course no doubt that a statement of a self-exculpatory kind, which, if true, is in favour of the accused, is admissible, in spite of the fact that, if it is shown to be false, it raises an inference of guilt; and a distinction must be made between such statements and statements which, although intended to be made in self-exculpation and not as a confession, nevertheless contain an admission of an incriminating circumstance, on which the prosecution relies. Instances of the latter class of statements are to be found in *Imperatrix* v. *Pandharinath* [1] and *Queen-Empress* v. *Javecharam* [2]. The leading cases on the subject are collected in the judgment of Carnduff J. in *Barindra Kumar Ghose* v. *Emperor* [3] and I agree with his conclusion that it is for the Court to decide, according to the particular circumstances of each case, whether a statement of an accused amounts to a confession or not. In this particular case the statement of accused No. 16 that Mahomed Jaffer and Mahomed Karim had given him the ammunition is clearly of an incriminating kind, inasmuch as both Mahomed Jaffer and Mahomed Karim are alleged by the prosecution to have been members of the same gang of dacoits as the one to which the accused No. 16 is charged with having belonged. The mere fact that the accused in making this statement may have intended it to be self-exculpatory is insufficient. The real test is what is its effect: and having regard to the circumstances I have mentioned, there can, I think, be no doubt that it is a

[1] (1881) 6 Bom. 34. [2] (1894) 19 Bom. 363.

[3] (1909) 37 Cal. 467 at pp. 520-523.

1921.

EMPEROR v. HAJI SHER MAHOMED.

statement which can properly and would presumably be relied upon by the prosecution as a true statement and an admission that he was associated with members of the alleged gang of dacoits.

The case is in some respects similar to that of *Queen-Empress* v. *Javecharam*[1] where a statement of one accused that he had received certain property, which was alleged to have been stolen, from his co-accused was held to be inadmissible as being an admission of a criminating circumstance, on which the prosecution evidently relied.

Following this and similar rulings I hold that the statement in question is inadmissible under section 25 of the Evidence Act.

G. G. N.

[1] (1894) 19 Bom. 363.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Coyajee.

1922.

January 20.

DEVU JETIRAM GUJAR (ORIGINAL DEFENDANT), APPELLANT *v.* REVAPPA SATAPPA SHIRKE AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS*.

Dekkhan Agriculturists' Relief Act (XVII of 1879), section 15 B—Decree—Payment by instalments—No application to a person who was not an agriculturist at the time of the decree.

A person who only becomes an agriculturist after the passing of a decree, is not entitled to the benefit of section 15 B of the Dekkhan Agriculturists' Relief Act, 1879.

SECOND appeal from the decision of C. E. Palmer, District Judge of Belgaum, confirming the order passed by A. K. Asundi, Subordinate Judge at Chikodi.

Execution proceedings.

The plaintiffs obtained a redemption decree for Rs. 4,999 against the defendant who was then not an agriculturist. Subsequently the defendant acquired

* Second Appeal No. 581 of 1921.