the remarks of their Lordships of the Privy Council in *Hunoomanpersaud Panday* v. *Mussumat Babooee Munraj Koonweree*.[1] There they said: "The power of the manager for an infant heir to charge an estate not his own, is, under the Hindu law, a limited and qualified power. It can only be exercised rightly in case of need, or for the benefit of the estate. But where, in the particular instance, the charge is one that a prudent owner would make, in order to benefit the estate, the *bona fide* lender is not affected by the precedent mismanagement of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded." That was a case of mortgage, but the Privy Council have held that the same principle applies to the case of a sale: *Girdharee Lall* v. *Kantoo Lall*[2].

Decree confirmed.

R. R.

[1](1856) 6 Moo. I. A. 393 at p. 423. [2](1874) 14 Beng. L. R. 187.

CRIMINAL REVISION.

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

EMPEROR *v.* RAMA NANA HAGAVNE*.

1921.

July 22.

Indian Penal Code (Act XLV of 1860), section 196—Use of false evidence by accused in his defence on a criminal charge—"Corruptly."

The accused was charged with the offence of assault. In his defence he produced a cattle-pound receipt and examined as his witness the Patil of another village to prove that he (accused) was at that village at the time of the alleged assault. The defence was disbelieved. The accused was next tried for the offence of corruptly using false evidence as true, punishable under section 196 of the Indian Penal Code:—

Held, by MACLEOD C. J., that the accused was guilty of the offence with which he was charged, since the Patil had a corrupt motive in giving false evidence on behalf of the accused.

* Criminal Application for Revision No. 34 of 1921.

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Held, by SHAH J., that as a public servant had been induced by the accused person to produce a fabricated document in order to support his false defence, it was not difficult to support the inference as to the corrupt use by him of the fabricated evidence as having been within the scope of section 196 of the Indian Penal Code.

Per MACLEOD C. J.:—Under section 196 of the Indian Penal Code "the mere user of false evidence is not sufficient, the user must be corrupt...'Corruptly' is not defined in the Code...We must give to the word 'corruptly' its ordinary dictionary meaning...I should have thought that the desire to screen an offender from the legal consequences of his act could well be designated a corrupt motive, and it would not require evidence to satisfy the Court that the witness in giving false evidence had that desire. But I very much doubt whether the user cannot be corrupt unless it involves the corruption of a third person."

"It is clear that the use of false evidence with the knowledge that it is false must ordinarily be corrupt from its very nature, and the onus lies on the accused to show that there are circumstances in the case which prevent its being corrupt. The fact that he was defending himself against a criminal charge is not enough."

Per SHAH J.:—"It is difficult to accept the proposition that as a matter of law an accused person can never corruptly use as genuine fabricated evidence so long as he uses it for his defence. There is no legislative provision to that effect...While I am not prepared to hold that an accused person when he uses the fabricated evidence as genuine in his defence can never do so corruptly, it is clear that his position as an accused person must be taken into consideration in determining on the evidence in a particular case whether he uses it corruptly or not."

THIS was an application under the criminal revisional jurisdiction against a conviction and sentence passed by C. G. Marathe, Sub-Divisional Magistrate, First Class, at Karad, confirmed on appeal by W. Baker, Sessions Judge of Satara.

One Dhondi charged the accused with having assaulted him at the village of Kharsi about noon on the 20th July 1919. By way of defence, the accused pleaded that at the time of the alleged offence he was in the neighbouring village of Chindhavli. The occasion of the visit was stated to be that the accused's buffalo had strayed into that village. To prove the plea, the accused

produced a cattle pound receipt and examined the Patil of the village to show that the accused was there to release his buffalo from the pound. The defence was not believed by the trying Magistrate, who convicted the accused of the offence of assault.

The Magistrate also directed the prosecution of the Patil and the accused for an offence under section 196 of the Indian Penal Code, for corruptly using a false receipt as true. The Patil as well as the accused were found guilty of the offence charged and sentenced. The convictions and sentences were upheld on appeal by the Sessions Judge.

The accused applied to the High Court contending, among other things, that assuming that the receipt was fabricated and that the accused knew that it was so fabricated, the use of such a document in a criminal trial put in by way of defence did not amount to an offence under section 196, Indian Penal Code.

A. G. Desai, for the accused:—Accused No. 2 used the cattle-pound receipt in a criminal trial and pleaded an *alibi* on the strength thereof. It is in respect of this receipt that the accused is now charged and convicted under section 196 of the Indian Penal Code. The conviction cannot stand as it is not proved that the accused used the receipt 'corruptly' within the meaning of section 196. The user may be 'fraudulent' or 'dishonest' but that is not sufficient for supporting a conviction under section 196. Section 196 requires that the user must be 'corrupt'. Corruption implies some sort of bribery: *Imperator* v. *Bhausing Jalamsing*[1]. The words 'corrupt' or 'corruptly' are advisedly used in a very few sections of the Code: vide e.g. sections 162, 198, 200, 219 and 220. It cannot be denied that the word "corrupt" or 'corruptly' in sections 162, 219 and 220 at any rate implies giving or

[1] (1909) Criminal Revisional Application No. 26 of 1909, decided by Scott C. J. and Chandavarkar J. on 31st March 1909 (Unrep.).

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taking of some sort of gratification. The receipt in this case was prepared by accused No. 1. It is not alleged, much less proved, that accused No. 2 held out any inducement to accused No. 1 to prepare the receipt. No offence is, therefore, committed under section 196.

In a criminal trial the accused enjoys special privileges. He cannot be prosecuted for giving false evidence in respect of any false statement he might make in the course of the trial: section 342 of the Criminal Procedure Code. He cannot similarly be charged for using fabricated evidence in such a trial: *Emperor* v. *Ram Khilawan*[1]. True, section 342 refers in terms to the first and not to the second event. But that is because apt and appropriate words like 'dishonestly', 'fraudulently,' 'corruptly,' &c., are used in the Indian Penal Code itself which exempt him from any criminal liability in respect of the second event also.

S.S. Patkar, Goverment pleader, for the Crown:— The word 'corruptly' cannot be given the restricted meaning as proposed by the applicant or as suggested in the unreported case of *Imperator* v. *Bhausing Jalamsing*[2]. Bribery no doubt may be an important element, but for that reason the word 'corruption' cannot be turned into a synonym for 'bribery'. 'Corruptly' means 'with some improper motive'. In this particular case, why does accused No. 1 give the false certificate to save accused No. 2? There must be some improper motive in doing so and if section 196 requires that some sort of gratification must be given by one party to the other, then that can very easily be presumed in in this case to have been done. As, under section 342, Criminal Procedure Code, an accused person cannot be examined on oath, he enjoys the privilege of lying.

(1) (1906) 28 All. 705.

(2) (1909) Criminal Revisional Application No. 26 of 1909, decided by Scott C. J. and Chandavarkar J. on 31st March 1909 (Unrep.).

An accused person cannot also claim the privilege of fabricating false evidence. There is no special or general exception conferring on an accused person immunity from prosecution for fabricating false evidence in his defence. Even if a person in a civil suit fabricates false evidence, in support of his true case, he is guilty of fabricating false evidence. If a person uses false evidence to perpetrate a fraud on the Court, he uses it corruptly.

Desai, in reply:—In a criminal case you cannot draw on 'presumption' when 'proof' is available and is not given or when proof fails. In this particular case there is absolutely no evidence on record to prove that any gratification was paid or received.

MACLEOD, C. J. :—The accused was convicted by the First Class Magistrate, Karad Division, of an offence under section 196, Indian Penal Code. He was originally charged with having committed an assault on one Dhondi on the 20th July 1919. His defence was an *alibi* and in support of that defence he produced a cattle pound receipt and called the Patil of Chindholi to prove that he was at that village on the day of the alleged assault. The defence was not believed and the accused was convicted. He was then sent for trial together with the Patil under the provisions of section 476 of the Criminal Procedure Code. The Magistrate found that the Patil fabricated evidence in order to save the present applicant and that they both corruptly used that evidence with full knowledge of its false character.

An appeal to the Sessions Judge was dismissed.

We have been asked to exercise our revisional jurisdiction on the ground that it has been held by this Court in *Imperator* v. *Bhausing Jalamsing*[1] that an

[1](1909) Criminal Revisional Application No. 26 of 1909, decided by Scott C. J. and Chandavarkar J. on 31st March 1909 (Unrep.).

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accused person who uses false evidence which he knows to be false for the purpose of his defence cannot be said to use it corruptly within the meaning of that word in section 196, Indian Penal Code, unless it can be proved that the witness called to give the false evidence had a corrupt motive. In that case the applicant who had been charged with having committed an assault was found to have used false evidence knowing it was false to support an *alibi* which failed, and was convicted under section 196, Indian Penal Code. It seems to have been argued in appeal against the sentence that it was necessary to prove that the person charged under section 196 had illicit inducement, but the Sessions Judge was of opinion that the word 'corruptly' was a mere reproduction of the phraseology of the law of England. On an application for revision to the High Court it was urged that section 196 of the Indian Penal Code did not apply to the case of an accused person who used false evidence in his own defence. The argument was supported by a citation from a report of Lord Macaulay upon the Indian Penal Code addressed to Lord Auckland as Governor General. The Court, after reciting the portion of the report relied upon, observed :

'Our duty is to see whether the facts of this case come within the terms of section 196 of the (Indian) Penal Code irrespective of the intentions of Lord Macaulay as appearing from his report."

It seems to me, with all due respect, unfortunate that the Court allowed the report to be mentioned, as it was clearly irrelevant, and still it might tend to influence the Court towards interpreting the section in consonance with it. The Court said :

"But it is not clear that in so using it (the false evidence) there was any element of corruption. We think that the word 'corruptly' in the section is not used in the sense of 'fraudulently' ; for in the Penal Code the language is precise and consistent and in section 471 a somewhat analogous section we find the word 'fraudulently' used to indicate one of the alternative

elements in the offence. Nor do we think that 'corruptly' is the same as 'dishonestly' in the sense in which that word is used in section 24, of having the intention of causing wrongful gain or wrongful loss. We cannot attempt here to give an exhaustive definition of the word 'corruptly' but we think that in the present case in order to bring the accused within the section, there should have been evidence that the witnesses mentioned in the charge had been induced to come forward by some corrupt motive provided by the accused. Bribery in some form would be a corrupt motive. There is, however, in the case, so far as we have been able to ascertain, no evidence of the motive which induced the witnesses mentioned in the charge to come forward and give false evidence."

Accordingly the accused was held entitled to an acquittal. It is certainly strange that a decision of such importance was not considered a fit one to be referred to the Reporter. No doubt we must endeavour to attach some meaning to the word 'corruptly' in section 196. The mere user of false evidence is not sufficient, the user must be corrupt. There may be cases in which the user of false evidence will not support a conviction, but must the case of an accused person using false evidence necessarily be one of such cases unless corrupt motive on the part of a false witness is shown? 'Corruptly' is not defined in the Code, but I see no necessity to consider whether it is used in the sense of fraudulently or dishonestly. If the user had to be fraudulent or dishonest the Legislature would have said so. We must give to the word corruptly its ordinary dictionary meaning. 'Corrupt' is an adjective of very general application. It refers to anything which has been changed so as to become putrid, vitiated, tainted. The method by which the change is effected is immaterial, though no doubt because a living person's character becomes vitiated by taking bribes, bribery and corruption have come to be considered as synonymous terms.

But that is due to a confusion in thought between cause and effect, which has led to an inexact use of the

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word corruption. Moreover, bribery is not the only cause which produces corruption. The learned Judges held that it must be proved that the witnesses had been induced to give evidence on behalf of the defence from some corrupt motive. I should have thought that the desire to screen an offender from the legal consequences of his act could well be designated a corrupt motive, and it would not require evidence to satisfy the Court that the witnesses in giving false evidence had that desire. But I very much doubt whether the user cannot be corrupt unless it involves the corruption of a third person.

The question must be whether the action of an accused person in using false evidence for the purpose of his defence is of a different character to similar action by any other person. It would never be argued that any person other than an accused person could not be convicted under section 196 unless it was proved he had procured the false evidence by bribery or that the false witnesses were influenced by corrupt motive. There must, therefore, if this defence is to succeed, be some element in the position of an accused person which prevents his action being considered as vitiated, tainted or putrid. This can only be if we hold that an accused person is entitled to do what would otherwise constitute an offence because he is on his trial for a criminal offence. If the Legislature intended this, it is unfortunate they did not give a plain effect to their intention, though no doubt it would seem strange to read in the Code "an accused person who uses false evidence for the purposes of his defence does not use such evidence corruptly."

But, in my opinion, it is clear that the user of false evidence with the knowledge that it is false must ordinarily be corrupt from its very nature and the onus lies on the accused to show that there are circumstances in

the case which prevent its being corrupt. The fact that he was defending himself against a criminal charge is not enough. In *Emperor* v. *Ram Khilawan*[1] the Court expressed the opinion that a man accused of an offence could use or fabricate false evidence with impunity, but in that case the accused had been sentenced to death for murder and also to a sentence of imprisonment under section 196 and the question whether the latter sentence was valid did not require very serious consideration. But, in my opinion, to hold that an accused person may use and fabricate false evidence with impunity so long as he does not bribe anyone to assist him would appear to me to open a very wide door to the fabrication of false defences. We are not entitled to say that the end justifies the means except with the direct sanction of the Legislature. It might have been necessary to refer the case to a Full Bench considering the decision of this Court in *Imperator* v. *Bhausing Jalamsing*[2] but as I am of opinion that it is obvious the Patil had a corrupt motive in giving false evidence on behalf of the applicant, if we dismiss this application we are to some extent following that decision.

Rule discharged.

SHAH, J. :—It is contended on behalf of the applicant that he did not use the fabricated evidence corruptly within the meaning of section 196, Indian Penal Code, as he used it merely in his defence at his trial on the charge of causing hurt. There can be no doubt that accused No. 1 who produced the document, which is found to be fabricated, used it corruptly. He was a public servant and it is not suggested that his conviction under section 196, Indian Penal Code, is open

[1](1906) 28 All. 705.

[2](1909) Criminal Revisional Application No. 26 of 1909, decided by Scott C. J. and Chandavarkar J. on 31st March 1909 (Unrep.).

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to any objection. It is a reasonable inference under the circumstances that the present applicant, at whose instance the document was produced, induced the Patil to use it corruptly, and that in doing so he also used it corruptly. Both the lower Courts have drawn that inference, and in revision I see no good ground to disturb that finding so far as it is based upon evidence.

It is urged, however, that as the applicant acted in his defence and used the fabricated evidence for the purpose of establishing his innocence he could not be said to have used it corruptly. It is difficult, however, to accept the proposition that as a matter of law an accused person can never corruptly use as genuine fabricated evidence so long as he uses it for his defence. There is no legislative provision to that effect; for instance, section 342, Criminal Procedure Code, provides that the accused shall not be liable to be prosecuted for giving false evidence in respect of any statement by him as an accused person. There is no provision giving him such immunity as regards the use of fabricated evidence; and I do not think that such immunity could be implied in his favour simply because he uses it as an accused person in his defence. The opinion expressed in *Emperor* v. *Ram Khilawan*[1] no doubt supports the applicant's contention. But with great deference to the learned Judges it appears to me to have been too broadly stated, and must be taken to have been expressed with reference to the special facts of that case. Mr. Desai has also relied upon the decision in *Imperator* v. *Bhausing Jalamsing*[2]. I accept the view taken in that case that 'corruptly' is not the same as 'dishonestly' or 'fraudulently.' I do not read the

[1](1906) 28 All. 705 at p. 706.

[2](1909) Criminal Revisional Application No. 26 of 1909, decided by Scott C. J. and Chandavarkar J. on 31st March 1909 (Unrep.).

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judgment in that case as laying down that an accused person can never be guilty of corruptly using fabricated evidence when he uses it in his defence. In that particular case, the accused was acquitted as there was no evidence of the use being corrupt. But that case does not present any insuperable difficulty in the way of our holding in this case that the use of fabricated evidence was corrupt. While I am not prepared to hold that an accused person, when he uses the fabricated evidence as genuine in his defence, can never do so corruptly, it is clear that his position as an accused person must be taken into consideration in determining on the evidence in a particular case whether he uses it corruptly or not. It is not necessary for the purpose of this case to define the scope of the word 'corruptly' : but where a public servant has been induced by an accused person to produce a fabricated document in order to support his false defence, it is not difficult to support the inference as to the corrupt use by him of the fabricated evidence as being within the scope of section 196, Indian Penal Code. I, therefore, concur in the order proposed by the Chief Justice.

Rule discharged.

R. R.

APPELLATE CIVIL.

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

1921.

July 27.

GULABCHAND CHHOTIRAM MARWADI AND ANOTHER (ORIGINAL PLAINTIFFS NOS. 2 AND 3), APPELLANTS *v.* RAMNATH CHHOTIRAM MARWADI AND OTHERS (ORIGINAL PLAINTIFF NO. 1 AND DEFENDANTS), RESPONDENTS*.

Partition suit—Rent notes and bonds assigned to plaintiffs' share—Separate suit for rents recovered and amount due on bonds—Maintainability of a separate suit—Negligence, charge of, against the manager of family—The charge