

1896.

R. v. DEAN AND MEAGHER.

March 5, 6, 9. *Criminal Law Amendment Act, ss. 331, 422, 423, 427—Special case—Question of law arising on the trial—When points must be submitted—Demurrer to information—Appeal from judgment in demurrer—Court of Error—Conspiracy—Indictment—Evidence—Speeches made in the Legislative Council in the hearing of prisoner and subsequently discussed by him—Report of Royal Commission.*

Stephen J.
Owen J.
and
Simpson J.

After the conviction of a prisoner sentence was deferred pending an appeal to the Full Court, and certain points were reserved. After the rising of the Court and during vacation the prisoner's attorney submitted certain other points to the Judge in his Chambers, and they were included in the special case. *Held*, that such points were not properly submitted within s. 422 of the Criminal Law Amendment Act, and could not be considered.

The prisoner demurred to the information, and the Judge overruled the demurrer. *Held*, that the question so raised was a question of law arising on the arraignment, and that the prisoner could appeal from the Judge's ruling on the demurrer by way of a case stated under ss. 422, 423.

An information alleged that M., D., and others "did amongst themselves conspire together to pervert the course of justice." This information was demurred to on the ground that it did not state the facts on which the charges were founded. *Held* (per OWEN and SIMPSON, JJ., STEPHEN, J., dissenting), that the information was good.

On the trial of the prisoners on the above information it appeared that D. had been convicted of administering poison with intent to murder his wife, and that subsequently M. had endeavoured to obtain and had obtained a Royal Commission to enquire into D.'s conviction, and that subsequently the Commissioners recommended that D. should be released. The report of the Commissioners was admitted in evidence. It contained not only the recommendation of D.'s release, but the reasons which led the Commissioners to that conclusion, and also a reference to the evidence given before them. *Held*, that it was inadmissible.

After D. had been released M. told S., who was a member of the Legislative Council, that shortly after D.'s trial, and before the Commission was appointed, D. had confessed to him that he was guilty, and a statement in writing was made by S. to that effect, and laid upon the table of the Legislative Council by the Attorney-General. M., who was a member of the Legislative Assembly, made a speech in which he denied the statement made by S. S. afterwards made a speech in the Legislative Council reiterating the charges made against M.; and W., the Attorney-General, also spoke on the same subject. During the trial on the charge of conspiracy against M. and D. there was evidence to shew that M. heard the speeches and discussed them with C., and he subsequently made a confession admitting that he knew of D.'s guilt. *Held*, that the speeches of S. and W. were inadmissible in evidence.

CROWN CASE RESERVED.

This was a special case stated by *Cohen, J.* The special case was very long and raised a number of questions which, in view

of the decision of the Court on other points, it became unnecessary for the Court to consider, and it is therefore not fully set out. That part which is taken verbatim from the special case is inserted in brackets.

1896.
R.
v.
DEAN AND
MEAGHER.

[The information, omitting formal parts, alleged that R. D. Meagher and G. Dean and certain other persons on the 8th day of March, 1895, did amongst themselves conspire together to pervert the course of justice, and the Attorney-General further charges that the said R. D. Meagher and G. Dean and the said other persons on the said 8th day of March, in the year and at the place aforesaid, did amongst themselves conspire together to pervert the course of justice.] On this information the accused were tried before *Cohen, J.*, at Darlinghurst. Meagher and Dean were convicted, the others being acquitted.

[The information was demurred to on behalf of all the accused, on the ground that it did not state the facts on which the charges were founded. Sect. 331 of the Criminal Law Amendment Act was referred to, and it was urged that the only effect of that section is to dispense with the necessity of alleging the overt acts, and that the manner of the conspiracy should be stated. It was admitted that particulars of the overt acts relied on had been furnished by the Crown, but a letter accompanying the particulars stated that the Crown reserved to itself the right of making additions to or alterations in the indictment. It was also argued that there should be the same particularity in an information for conspiracy as in an information for larceny. It was contended on behalf of the Crown that the information was sufficient. The following authorities were referred to: *R. v. Bradford* (1); *R. v. Gill* (2); *R. v. Kenrick* (3); *Starkie on Criminal Pleading* (4); s 326 of the Criminal Law Amendment Act, form 215, and subsequent forms to the Act. I overruled the demurrer, and then made an order that the particulars already furnished should be the particulars required by s. 331, and be taken as delivered *nunc pro tunc*.] The accused pleaded not guilty.

(1) 8 N.S.W. L.R. 33.

(2) 2 B. & A. 204.

(3) 5 Q.B. 49.

(4) 1st Ed. 154.

1896.

R.
v.
DEAN AND
MEAGHER.

[With regard to the facts, it appears that in March, 1895, Dean was arrested on a charge of administering poison to his wife in the preceding January. The Police Court investigation was held at North Sydney, and on the 23rd March Dean was committed for trial to the Central Criminal Court. The trial came on before his Honour Sir *William Windeyer* on the 4th April, and terminated on Saturday, the 6th April, when the jury found Dean guilty of administering poison to his wife with intent to murder her, but recommended him to mercy on account of his previous good character, and sentence of death was thereupon passed upon him. Meagher, who was in partnership with W. P. Crick, defended Dean throughout the proceedings.]

On Monday, the 8th April, Meagher told Crick, who was then a member of the Legislative Assembly, that he was dissatisfied with the behaviour of the Judge at the trial, and that he firmly believed in Dean's innocence.

[On Tuesday morning, 9th April, the *Daily Telegraph* contained a leading article on the conduct of the trial, and Crick said that he thereupon determined to bring the matter before Parliament, he being then a member of the Legislative Assembly of this colony. On that morning he said to Meagher: "I have thought this matter over, and am determined to bring it before the Assembly, but before doing so I am anxious to know whether it is safe, in Dean's interest to re-open it; if we re-open it, and succeed in proving Dean absolutely guilty, it will not reflect much credit on us as professional men. Has Dean told you anything with regard to his guilt?" Meagher said, "Dean has all along protested his innocence." Crick said, "Did you ask him whether he was guilty or innocent?" Meagher said, "There was no necessity, on account of the man's continued protestations of being innocent, and the whole thing was a mystery to Dean." Crick said, "What ground have you for coming to the conclusion that the verdict of the jury is wrong, outside the action of the Judge?" Meagher said, "That both Mrs. Seymour and Mrs. Dean had sworn that up to the time of this charge about the lemon syrup or chops they never had any suspicion that Dean was trying to poison Mrs. Dean, and he knew for a fact from Detective Keating that six weeks before then they heard

Keating was trying to make out a case of poisoning against Dean." Crick said, "Was that fact before the jury?" Meagher said, "No; I was told it in confidence, and would not break it." Crick said, "There is no such thing as confidence where human life is concerned, and you had a right to bring it out. Suppose Keating denies this?" Meagher said, "I can be corroborated by two reporters." Crick sent for the reporters; one came and corroborated Meagher in every particular, and, according to Crick's recollection, told Crick that the other reporter could do the same. On the same day Crick said further to Meagher, "This is not only a matter for ourselves, but Dean has to be considered, and if this matter is reopened it will be reopened on all sides; it will be for the Crown to give evidence against Dean as well as for evidence to be brought in Dean's favour, and I don't want to be made a laughing-stock of. I want to be assured that the man is innocent."]

1896.

R.

v.

DEAN AND
MEAGHER.

Accordingly on the 9th April, Meagher at Crick's request went to Darlinghurst Gaol and saw Dean, and obtained from him a confession of his guilt. Meagher, however, concealed this from Crick, and still protested that Dean was innocent. On the evening of that day, Crick asked the Premier certain questions in the Legislative Assembly relative to Dean, and the questions asked and the Premier's answers were put in evidence (see *Hansard*) (1).

[On the 17th April, Crick being still a member of the Legislative Assembly, and taking part in the business of the Assembly as such member, asked Mr. Reid, the Premier, a question about the case of Dean, and received a reply from Mr. Reid that the Government had commuted the death sentence passed upon Dean to imprisonment for life. Crick on the same day moved the adjournment of the House to discuss "the trial and conviction of George Dean," and made a speech thereon, in which he requested the Government to appoint a Royal Commission to enquire into the case of George Dean. After this, two committees were formed (1. The Central Defence Committee; 2. The North Shore Defence Committee), and public meetings were held to urge upon

1896.

R.

v.

DEAN AND
MEAGHER.

the Government the appointment of a Royal Commission to enquire into the case.]

Meagher was present at one of the public meetings held at the Town Hall, and spoke. Amongst other things he said "he was not present in his professional capacity as defender of Dean, but merely as a private citizen, to raise his voice on behalf of truth." He reviewed the facts of the case, dealt with the recommendation for mercy, and said that "facts had since come to light which justified a rehearing of the case without delay." On the 30th April, the Premier made a statement in the Legislative Assembly in which he announced that the Government had decided to appoint a Royal Commission. On the 7th May a Royal Commission was appointed "to make certain investigations in the case of George Dean . . . to examine all witnesses, and call for any documents which may tend in any way to throw new light upon the case, or which may vary, explain, or bear upon any of the evidence given by the witnesses at the trial of George Dean, and after receiving such additional evidence to report whether in their opinion, as the result of such further enquiries, the prisoner should serve his sentence, or be released from further imprisonment." On the 28th June, the Commission made its report to the Lieutenant-Governor, and by a majority recommended that Dean should be released from further imprisonment; and on the same day Dean was so released, and granted a Royal pardon. The report of the Commission was put in evidence by the Crown, after objection by Meagher. Meagher objected to the report being received in evidence on the ground that "it is the sequence of a cognate fact" (*sic*). The report contained the commendation by two of the Commissioners that Dean be released from prison, and also the reasons why they came to that conclusion, and a reference to the evidence given. The third Commissioner also stated his reasons why he could not come to the same conclusion. It was proved that Meagher was in constant attendance at the Royal Commission instructing counsel for the defence of Dean, and was in constant communication with members of the defence committee in preparing Dean's defence. The evidence tendered on Dean's behalf had for its object the proving of the innocence of Dean of the charge on which he had

been convicted. On the 26th September, Mr. Want, the Attorney-General, laid on the table of the Legislative Council a written statement of that date made by Sir Julian Salomons. In this statement Sir Julian Salomons alleged that Meagher had consulted him with reference to a paragraph which appeared in the *Daily Telegraph* commenting on Meagher's conduct of the Dean case; and that during the consultation Meagher told him that Dean had confessed his guilt to him (Meagher) shortly after the trial.

1896.
R.
v.
DEAN AND
MEAGHER.

[After the statement was laid on the table, and on the same evening, Crick went to Parliament House and told a messenger to tell Meagher that he wanted him in the refreshment room. Meagher went up, taking with him an *Evening News* containing the statement of Sir Julian Salomons as laid on the table by the Attorney-General. Mr. Levien, who was there, said to Crick, "He brings you into it"; Crick said to Meagher, "Levien says he brings my name into it. Does he?" Meagher pointed to the part of the statement in which Crick's name was mentioned. Crick afterwards read the statement through. Objection was taken on behalf of Meagher and Dean to the statement of Sir Julian Salomons being received in evidence. It was contended by Meagher that the statement was made in violation of the privilege existing between counsel and client, the alleged confession of Meagher having been made (as was admitted by Mr. Heydon, who appeared for the Crown) whilst such relation existed. On behalf of Dean it was submitted that as there was no evidence of an authority by Dean to Meagher to divulge that confession, said by Meagher to have been made to him by Dean, the statement was inadmissible. In support of the admissibility of the evidence, Mr. Heydon urged that it divulged a crime, a continuing crime, a conspiracy still being carried on, and affecting Mrs. Dean and her mother, Mrs. Seymour. The admission by Meagher having been divulged, it may be made use of. It is incorporated by Meagher by reference in his declaration of the 8th October, 1895.] In that declaration he stated that having become aware of Dean's guilt he concealed that fact from everyone until Sir Julian Salomons became from him the repository of the secret, which was substantially given by him in his statement read in the Legislative Council; that after he had told Sir Julian

1896.
R.
v.
DEAN AND
MEAGHER.

Salomons he denied to Crick that there was any foundation for the rumour of an alleged confession, and that he contradicted Sir Julian in the Assembly in the belief that, in loyalty to his client, he was justified in fighting with any weapons.

His Honour overruled the objection, and admitted the statements as against Meagher.

On the 1st October, Meagher, being then a member of the Legislative Assembly, delivered a speech in the ordinary course of its business, in which he stated that Dean had never made any confession to him; and secondly, that he had never told Sir Julian Salomons that Dean had done so. (See *Hansard*) (1).

On the 2nd October, Sir Julian Salomons and Mr. Want, the Attorney-General, delivered speeches in the Legislative Council (see *Hansard*) (2). In his speech, which was very long, covering 25 pages of *Hansard*, Sir Julian Salomons reiterated that Meagher had made a statement to him admitting that Dean had confessed his guilt to him (Meagher), and went very fully into the circumstances under which Meagher had made the statement to him, and also giving his reasons for making that statement public. Mr. Want in his speech denounced Meagher, and answered certain charges which had been made against him by Meagher, and stated the communications he had had with Sir Julian Salomons in the Dean case, and how they came to be made; and also pointing out how implicitly Sir Julian Salomons was to be believed in his version of the case.

[Crick swore that he and Meagher afterwards discussed these speeches, and he pointed out to Meagher how strong the evidence in them was against him. Crick, who gave evidence on his own behalf, was present during the delivery of the entire speeches, which were delivered partly before and partly after tea, and although there was much strong evidence to shew that Meagher was only present after tea during the delivery of the speeches, there was some evidence to shew that he was present also before tea during the delivery of the speech by Sir Julian Salomons. Crick, however, stated that at tea time he saw Meagher and told him what Sir Julian had been saying, and after the speech his

(1) Vol. 80, p. 1242.

(2) Vol. 80, p. 1286 & 1317.

confidence in Meagher had been terribly shaken. On the 5th October, Crick, Meagher, and Dean were arrested on the charge for which they were tried, and by arrangement Meagher on the following day went to Crick's house and talked the matter over.]

[On the 7th October, also by arrangement, Crick and Meagher met at their offices in Sydney; Crick urged upon Meagher that the public view was in favour of Sir Julian Salomons and against Meagher. In the evening at a second interview Meagher said to Crick, "I have to admit I cannot or will not keep the secret any longer; I am forced to admit the fact that I did know of Dean's guilt." Crick urged upon Meagher that the time for loyalty to his client had gone. Meagher insisted it was his duty as a lawyer to preserve absolute silence as to what he heard from his client, and that it was no reason he should break confidence because Sir Julian had done so, and he strongly maintained that attitude that night. On the 8th October, Crick pointed out to Meagher that if it were a mere matter of fidelity to a client he would have nothing further to say, but it was now a matter to do the right thing by the guilty and the innocent. Crick put a copy of the *Daily Telegraph* him before and said, "look at that," pointing to a paragraph, "Arrest of other prominent persons to be made," and further said, "are you going to let other innocent people be charged with a crime with the knowledge you have?" but he could not move Meagher from the view he took with regard to his client. Upon Crick's advice Meagher then sent for his wife, and the three then talked the matter over, and finally, after much further consideration, Meagher wrote out and made the declaration] above referred to, in which he admitted that Dean had confessed his guilt to him. Crick told him he would read the declaration in the Legislative Assembly, and he did so that evening. He also told Meagher it was his duty to resign his seat in Parliament. Meagher concurred, and wrote out his resignation, which Crick handed to the Speaker on that night.

[The evidence of the questions asked and answers given and of the speeches delivered in Parliament was objected to on behalf of the accused, on the ground—(1) That when made by any of the accused they are absolutely privileged; and (2) that when made by a person other than the accused there is no opportunity for

1896.

R.
v.
DEAN AND
MEAGHER.

1896.
R.
v.
DEAN AND
MEAGHER.

the accused, even if he be present, to answer them. The following authorities were referred to:—*Odgers on Libel* (1); *Heurne's Gov. of England* (2); *The Bill of Rights*; *Starkie on Slander* (3); *Ex parte Wason* (4); *Melen v. Andrews* (5). Mr. Heydon pressed the evidence, and contended as to (1) that the privilege of Parliament only extended to actions or prosecutions for defamation or a conspiracy to defame, and cited *Gipps v. McElhone* (6); *Chubb v. Salomons* (7); *Long Wellesley's Case* (8); *Kay's Practice of Parliament* (9). And as to (2), that under the circumstances of the case they were admissible. I admitted the question by Crick and the answer by Mr. Reid of the 9th April, on the ground that there was evidence that they were brought about by the procurement of Meagher, that as the privilege of Parliament is a privilege for the protection only of the member who asks the question or makes the speech, the question was evidence of an overt act in pursuance of the conspiracy as against Meagher and any others at that time conspiring with him. For the same reason I admitted the evidence of the question by Crick and the answer by Mr. Reid and the speech by Crick of the 17th April. I admitted Meagher's speech of the 1st October as evidence of an overt act by him, and as against him of any admissions it might contain, on the ground that a member of Parliament could not make use of his position as a member of Parliament for the furtherance of a crime pursued outside Parliament (not being conspiracy to defame or an act of defamation committed outside Parliament), and then claim the privilege of Parliament as a protection; and the speeches of Sir Julian Salomons and Mr. Want of the 2nd October, on the grounds that there was evidence that they were heard by Crick and Meagher, were subsequently discussed by them, and that Meagher's conduct was afterwards influenced by these speeches (see *Taylor on Ev.*) (10); *Phipson on Ev.* (11). I directed the jury that they must not regard the speeches of Sir Julian Salomons and Mr. Want of the 2nd

(1) 1890 Ed., pp. 185 & 191.

(2) p. 4.

(3) p. 125.

(4) L.R. 4 Q.B. 573.

(5) 1 M. & M. 336.

(6) 2 N.S.W.L.R. 18.

(7) 3 C. & K. 75.

(8) 2 R. & My. 639.

(9) 4th Ed. 196.

(10) ss. 12, 810, 816.

(11) 147 *et seq.*

October as proof of the truth of the statements contained in them, except so far as those statements were admitted by Meagher either directly or indirectly, and they were, subject to that exception, received in evidence for the purpose of shewing how the subsequent conduct of Meagher was influenced by them.]

After the jury retired to consider their verdict Meagher handed to the Judge in writing several points to be reserved on his behalf other than those above referred to. The decision of the Full Court in no way turns upon them, and it is therefore unnecessary to set them out.

The jury found Meagher and Dean guilty of a continuing conspiracy from the 9th April, 1895, to the 8th October, 1895.

As a number of points were reserved for the Full Court his Honour deferred passing sentence until the hearing of the appeal. After the rising of the Court, and during vacation, his Honour was requested by Mr. Slattery on behalf of Meagher to reserve a number of other points. These his Honour set out in the special case. As, however, the Full Court held that they were not taken in time, it is unnecessary to enumerate them.

Barton, Q.C., O'Connor and Pollock appeared for Meagher.

Colonna Close appeared for Dean.

Wade and *Mocatta* appeared for the Crown.

Wade took two preliminary objections. (1) The points taken after the rising of the Court and during vacation were taken too late, and as they are not properly before the Court they cannot be considered. The Court is sitting under s. 422 of the Criminal Law Amendment Act, and can only consider questions of law which have arisen on the trial, or are submitted before sentence passed. That intends that points submitted before sentence shall be submitted at the trial whilst the Court is still sitting.

Barton, Q.C. My learned friend will remember that after the verdict was given Meagher was unable to find these points, which he had written out, but had mislaid amongst his papers; and so his Honour, as I understood, with the consent of the Crown, said that it would be sufficient, since sentence was

1896.

R.

v.

DEAN AND
MEAGHER.

deferred, if the points intended to be taken were submitted to him at any time before the special case was stated. Accordingly Mr. Slattery afterwards submitted the points. There is nothing in s. 422 to prevent points being submitted in this way before sentence is passed.

Wade. I have no recollection of any such arrangement being made, and it is not referred to in the special case.

STEPHEN, J. In the absence of any agreement by which the Crown considers itself bound, I am of opinion that the objection must prevail. It cannot be that the word "Court" in s. 422 is intended to mean the Judge sitting in his Chambers in vacation. The points affected by this objection cannot therefore be argued.

OWEN and SIMPSON, JJ., were of the same opinion.

Objection upheld.

Wade. The second objection is, that the Court cannot now consider any point as to the sufficiency of the information. The information was demurred to at the trial, and judgment was given overruling the demurrer. This Court cannot review that ruling. It is a matter for a Court of Error. The judgment on demurrer is that the prisoner answer over: s. 311. Writs of error are provided for by s. 427. But ss. 422 and 423 only contemplate appeals where there has been a conviction by a verdict following on a trial. And for the purposes of this point there was no trial, because the trial does not begin till issue is joined: see *R. v. Faderman* (1), *Archbold* (2). The latter part of s. 422 which says that the like proceedings may be taken where any question of law arises on the arraignment of any person, does not include cases of demurrer; but was intended to meet pleas of autrefois acquit or convict, or of pardon. Under s. 427 the Court has power to amend, but the judgment of the Court under s. 422 is final, and if the matter is dealt with under the latter section the Crown will be deprived of its right to an amendment. He referred to *R. v. Goldsmith* (3); *Taylor v. R.* (4); *R. v. Munslow*

(1) 1 Den. 565.

(2) 19th Ed. 138.

(3) L.R. 2 C.C.R. 74.

(4) [1895] 1 Q.B. 25.

(1). The words of s. 423, which allow the Court to make "such other order as justice requires," do not apply to a case like this. They only empower the Court to make an order allowing bail, or orders of that nature: see *R. v. O'Keefe* (2), quoting *Mellor's Case* (3).

Barton, Q.C. The latter part of s. 422 provides specially that questions arising on the arraignment may be made the subject of a case stated, and that enactment was evidently intended to apply to cases of this kind. The Crown is not deprived of any right, because amendments can only be made of formal matters, and no amendments could be ordered in this case. The Court can consider any point which appears from the special case, and goes to the root of the information: *R. v. Wilson* (4); *R. v. Tierney* (5). He also referred to *R. v. White* (6); *R. v. Finn* (7); *R. v. Webb* (8).

STEPHEN, J. I am of opinion that this objection cannot be sustained. The matter seems to me to be concluded by the express terms of the latter part of s. 422. But for that provision I admit that Mr. *Wade's* position would be unassailable, but in face of it I think we have no option but to hold that the point as to the information is properly before us. The *ratio decidendi* of *R. v. Faderman* (9) appears to be that if the Court had reviewed a judgment given on demurrer in favour of the Crown, the prisoner might have been deprived of his right of appeal. That does not apply here, because this is the only Court to which the prisoner can appeal. I do not think the Crown will suffer any hardship from the loss of power to have the information amended, because under s. 423 no merely formal defect can avail the prisoners.

OWEN, J. I am of the same opinion. If our Act were in the same terms as the English Act, I should be inclined to give full

(1) [1895] 1 Q.B. 758.

(2) 15 N.S.W.L.R. at 15.

(3) 2 D. & B.C.C. 468.

(4) 12 S.C.R. at 263.

(5) 1 W.N. 114.

(6) 13 S.C.R. 322.

(7) 1 S.C.R. N.S. 259.

(8) 1 Den. at 348.

(9) 1 Den. 565.

1896.

R.
v.
DEAN AND
MEAGHER.

Owen J.

effect to the argument of the learned counsel for the Crown. It appears to me that this case falls within the latter portion of s. 422. The English cases seem to shew that questions of law arising on the arraignment cannot be considered except by a Court of Error, but the provision in our Act appears to me to have been introduced for the express purpose of giving a wider scope to s. 422.

SIMPSON, J. I concur with their Honours, and I am quite content to rest my judgment on the concluding portion of s. 422. I think there is no doubt that the question is one which arises on the arraignment. The section was passed subsequent to the decision in *R. v. Faderman* (1), and, I should say, in consequence of that decision.

Objection overruled.

The first point argued was as to the sufficiency of the indictment.

Barton, Q.C. The information is bad. It contains no particularity. It does not set out the acts which constitute the crime. It is not sufficient in an indictment to allege that the prisoner committed a certain crime, but all the facts and circumstances constituting the offence must be set out. A prisoner can then tell exactly what the charge against him is. On this information it is impossible to say what the specific crime is for which the prisoners are indicted. There are two counts in the same information presumably charging the prisoners with different offences, and yet in exactly the same words. That shews the absurdity of such an indictment and the impossibility of determining what is the offence charged. You cannot indict a man for "larceny" or "burglary" without setting out the acts committed which constitute those offences. There may be the crime of perverting the course of justice, but when prisoners are indicted for that crime the indictment must specify the particular nature of the crime. Under the Criminal Law Amendment Act certain forms of indictment are prescribed by the Judges. No form is prescribed for conspiracy to pervert the course of justice, and therefore the old rules of pleading apply. Although s. 331 of the

(1) 1 Den. 565.

1896.

 R.
v.
DEAN AND
MEAGHER.

Criminal Law Amendment Act relieves the Crown from the necessity of setting out the overt acts in an indictment for conspiracy, it does not relieve the Crown from stating the object of the conspiracy. If it be necessary to plead the overt acts to shew what the conspiracy was, then, in order to give the indictment sufficient particularity, the overt acts must still be pleaded. The indictment does not shew in what way the course of justice was perverted. It is an offence to conspire to falsely accuse another of a crime, but the indictment for such an offence particularises the crime, *e.g.* rape, of which they conspire to accuse the person. Before the Act it was necessary to plead the overt acts and particularise the kind of conspiracy; now, although it is unnecessary to plead the overt acts, it is still necessary to particularise the kind of conspiracy. In *R. v. Gill* (1), a case relied upon by the Crown, there was a vast deal more particularity in the indictment than in the present case. There the object of the conspiracy was stated, though the means by which it was to be carried out were not. In the case of *R. v. Parker* (2) the prisoners were charged with conspiring to obtain "from divers liege subjects of our said Lady the Queen divers goods and merchandise, and to cheat and defraud the liege subjects of the said goods and merchandise." In that case the indictment was held bad for not stating whose the goods were. *Denman*, C.J., says, "The most general form of indictment which has been held admissible was that in *R. v. Gill*; but if we allowed this to be a good indictment we should go beyond any line that has hitherto been drawn." Even in that case there was more particularity than here, because the nature and objects of the conspiracy were specified. Again in *R. v. Kenrick* (3), another case relied upon by the Crown, the objects of the conspiracy were stated.

[STEPHEN, J. Suppose on an indictment such as this the prisoners were acquitted and subsequently charged with the same offence and pleaded *autrefois acquit*, I do not see how any Court, looking at the indictment, could say what the charge was.]

It would be absolutely impossible. And the impossibility of the thing is shewn by the Crown itself, because there are in

(1) 2 B. & Ald. 204.

(2) 3 Q.B. 292.

(3) 5 Q.B. 49.

1896.

R.
v.
DEAN AND
MEAGHER.

this indictment two counts in exactly the same language. The particulars furnished in this case cannot be looked at to construe the indictment. They are no part of the indictment and are not now before the Court.

Even in a civil case the particulars cannot be taken as part of the record, except under our rule of Court (*Pilcher*, 319); see *Dempster v. Purnell* (1).

[OWEN, J. Under s. 331 the Court can order particulars to be given before plea pleaded. In this case particulars were given and the prisoners did not ask for further particulars, but pleaded to the indictment. How can they now say that there is not sufficient particularity in the indictment?]

The indictment is either good or bad apart from the particulars. If bad, then the particulars cannot make it good. If the indictment had charged the prisoners with conspiring to obtain the release of Dean, that would have shewn what the charge was; but if that was the charge then the jury did not find the prisoners guilty of that charge, because Dean was released on the 28th June, and the jury found that there was a continuing conspiracy from the 9th April until the 8th October. Conspiracy consists of an agreement to do something, and the indictment should specify the nature and objects of that agreement. In *R. v. Norton* (2) an indictment charging a prisoner with being guilty of a corrupt practice, was held bad because it did not specifically allege what the corrupt practice was. A corrupt practice is an offence just as perverting the course of justice is an offence. If the indictment in that case was not sufficient, surely in this case also it is not sufficient.

He also referred to *R. v. Peck* (3); *R. v. Richardson* (4); *R. v. Fowle* (5); *R. v. Biers* (6); *R. v. Rowed* (7); *R. v. MacDaniel* (8).

Colonna Close, for Dean, followed, and referred to *Arch. Cr. Cases* (9).

(1) 3 M. & Gr. at p. 386.

(2) 16 Cox 59.

(3) 9 Ad. & E. 686.

(4) 1 M. & Rob. 402.

(5) 4 C. & P. 592.

(6) 1 Ad. & E. 327.

(7) 3 Q.B. 180.

(8) 1 Leach 52.

(9) 19th Ed. p. 54.

Wade, for the Crown. The indictment here specifies the particular kind of conspiracy with which the prisoners are charged.

1896.

R.

v.

DEAN AND
MEAGHER.

The distinction between this case and *R. v. Norton* is that there the prisoners were charged with corrupt practices; that includes a number of offences, such as bribery, intimidation and treating. "Corrupt practices" is a generic term, conspiracy to pervert the course of justice is a species of the genus conspiracy, it is one kind of conspiracy amongst a large class of conspiracies. The means by which a conspiracy is to be carried out need not be stated; *Starkey Cr. Pl.* (1). If the prisoners were in any doubt as to what the offence charged was, they could have asked for further and better particulars under s. 331.

[OWEN, J. Under that section it seems to me the Court would have power to order particulars of any kind to clear up any doubt whatever.

STEPHEN, J. The particulars there referred to are particulars of overt acts.

OWEN, J. If that were so the Act would have said "particulars of overt acts."

STEPHEN, J. The point we have now to decide must be decided apart from particulars. Particulars cannot make a bad indictment good.]

Before the Act overt acts had to be pleaded, and if there were any vagueness in the earlier part of the indictment the overt acts could be considered to explain that vagueness: *R. v. Spragg* (2); *R. v. King* (3). Now the overt acts need not be pleaded, but the overt acts in the particulars can be looked at to explain the indictment.

[STEPHEN, J. Suppose the prisoners had been overheard to say "We agree to pervert the course of justice," could they have been indicted?]

I submit they could, just as if they had been overheard to say "We agree to defraud John Brown."

To charge persons with conspiring to cheat and defraud another is a good indictment: *R. v. Kenrick* (4). There the

(1) p. 154.

(2) 2 Burr. 993.

(3) 7 Q.B. 782.

(4) 5 Q.B. 49.

1896.

R.
v.
DEAN AND
MEAGHER.

indictment did not set out the way in which they were going to cheat and defraud the person.

He also referred to *R. v. Mawbey* (1); *R. v. Eccles* (2); *R. v. Hamp* (3); *R. v. Latham* (4); *R. v. O'Connell* (5); *R. v. Vreones* (6); *Taylor v. R.* (7).

Barton, Q.C., in reply. The particulars cannot be looked at to construe the pleading: *Dempster v. Purnell* (8). That was a civil case, but the rules of pleading are the same in criminal and civil cases.

[OWEN, J. No doubt if the indictment be bad, particulars cannot make it good, but in determining whether or not it is bad the Court can take into consideration the fact that particulars may be given.]

No particulars were filed at the time the demurrer was argued.

[SIMPSON, J. No injustice can be done by holding a general indictment, such as this, good, because any injustice which might arise can be got over by applying for particulars.]

Then, although an indictment may be bad for generality, it may be made good by particulars. "Every pleading, civil or criminal, must contain allegations of all the facts necessary to support the charge or defence set up by such pleading. An indictment must, therefore, contain an allegation of every fact necessary to constitute the criminal charge preferred by it. If in order to support a charge, it is necessary to shew that certain acts have been committed, it is necessary to shew that those acts were in fact committed. If it is necessary to shew that those acts when they were committed were done with a particular intent, then it is necessary to aver that intention." (*Per Brett, J.*, in *R. v. Aspinall*) (9). Here it should have been stated in the indictment what end they had in view.

[SIMPSON, J. Was not that to pervert the course of justice?]

The thing they agreed to do here was to obtain the release of Dean, regardless of whether or not they were perverting the course of justice.

(1) 6 T.R. 619.

(2) 1 Leach 274.

(3) 6 Cox 167.

(4) 9 Cox 516.

(5) 11 Cl. & F. 155.

(6) [1891] 1 Q.B. 360.

(7) [1895] 1 Q.B. 25.

(8) 3 M. & Gr. 375.

(9) 2 Q.B.D. at p 56.

[OWEN, J. According to your argument the indictment would be good if it went on to say, "With intent to procure the release of Dean."]

1896.
R.
v.
DEAN AND
MEAGHER.

If the indictment had said that Dean had been convicted and that they conspired by unlawful means to procure the release of Dean, thereby to pervert the course of justice, then it might have been sufficient.

[OWEN, J. That would be stating the means.]

It would be stating the nature and object of the conspiracy. The specific thing they agreed to do was to obtain the release of Dean by unlawful means; the result of which was to pervert the course of justice.

Colonna Close followed. Sect. 331 provides that where conspiracies, substantially different, are charged in the same indictment, the prosecutor may be put to his election as to the one on which he will proceed. Now here were two counts in exactly the same words, apparently one offence charged was procuring the arrest of Gale, and the other was procuring the release of Dean. But it was impossible to tell from the indictment what the charges were, and ask the Judge to put the prosecutor to his election.

STEPHEN, J. I have made up my mind that the indictment is wholly bad, but as my brothers think otherwise, the argument must proceed on the other points.

The next point argued was as to the admission in evidence of the speeches made in Parliament and the report of the Royal Commission.

Barton, Q.C. The speech made by Meagher was inadmissible, because it was made by him in the ordinary course of business in Parliament.

He referred to the *Bill of Rights*; *Ex parte Wason* (1); *Bradlaugh v. Gossett* (2); *Gipps v. McElhone* (3)

The Court having decided the case upon other grounds, it became unnecessary to consider this question. The arguments are therefore omitted.

(1) 4 L.R.Q.B. 573.

(2) 12 Q.B.D. 271.

(3) 2 N.S.W.L.R. 18.

1896.

R.
v.
DEAN AND
MEAGHER.

Barton, Q.C. The speeches made by Sir Julian Salomons and Mr. Want were not admissible in evidence. The mere fact that Meagher was present when the speeches were delivered would not make them admissible, seeing that they were made in a place where Meagher could not reply to them, and at a time when Meagher had no opportunity of answering them.

[STEPHEN, J. You need not argue that point. Confine yourself to the point that Meagher afterwards discussed the speeches with Crick.]

Because Meagher referred to the speech in a discussion with Crick, that would not make it admissible. The only evidence that could be given on that point would be what took place during the discussion.

[OWEN, J. Even if Sir Julian Salomons' speech was admissible, how could Mr. Want's speech be admissible?]

The Crown contends it was admissible because there was a discussion between Crick and Meagher with reference to it, but that does not make it admissible. Mr. Want was no party to the controversy, and therefore his speech could not possibly be evidence. If evidence has been wrongly admitted, the conviction must be set aside: *R. v. McLeod* (1); *R. v. Makin* (2).

[SIMPSON, J. This is a misdemeanour. Can we not order a new trial?]

I submit not. The Court will set aside the conviction and leave it to the Crown if it sees fit to ask for a new trial. Dean was released on the 28th June; there could therefore be no conspiracy to pervert the course of justice after that date, and the speeches made in Parliament could not affect the question. Nothing that took place after Dean's release can be considered unless it is something in the shape of a confession. The report of the Commission could not in any way be evidence, all that could be shewn was that Dean was released; but the report contains the reasons of the Commissioners and a reference to the evidence on which they based their finding.

Colonna Close for Dean followed.

(1) 11 N.S.W.L.R. 218.

(2) 14 N.S.W.L.R. 548.

Wade. The speeches of Sir Julian Salomons and Mr. Want were admissible in evidence, because it was shewn that Crick and Meagher discussed them. It was competent to shew that these speeches influenced Meagher's conduct and subsequently led up to his confession. The speeches were not admitted to prove the facts stated in them, and the jury were told by the Judge not to consider them as such. The speeches were made in Meagher's presence, and were admissible on that ground. Any statement made in the presence of a prisoner, and what the prisoner says or does afterwards, can be given in evidence against him: *Taylor on Ev.*, s. 816.

1896.

R.
v.
DEAN AND
MEAGHER.

[SIMPSON, J. In Mr. Want's speech there is this statement, "In the course of my duty I found that Mr. Meagher had been interfering with the course of justice." Ought that statement to have gone before the jury?]

The Judge told the jury not to consider the statements of facts as evidence of those facts, and we must assume the jury acted in accordance with the direction of the Judge. The statements of facts so far as proof of those facts goes, were not before the jury, but they were before the jury to shew Meagher's state of mind when he made his confession.

As to the report of the Royal Commission, that was only put in to shew that Dean's release was recommended. It was not read to the jury. I do not contend that the whole report was evidence.

[STEPHEN, J. But it was admitted in evidence.]

But it was only put in to shew that the Commissioners recommended Dean's release. It was admissible to prove that fact. A whole book is often put in evidence where it is only intended that one page or passage should be used.

Barton, Q.C., was not called upon in reply.

STEPHEN, J. I have already stated my opinion that the information is absolutely insufficient, and my judgment upon the case is, therefore, that upon that ground the conviction ought to be quashed. Seeing that I am in a minority upon that point, I do not think it would serve any useful purpose for me to elaborate

1896.
R.
v.
DEAN AND
MEAGHER.
Stephen J.

my views upon the matter. Since, however, I am overruled by the majority of the Court upon that point, it became necessary to consider the grounds raised as to the improper reception of evidence. As to these grounds it is not necessary for me to say anything, because my judgment on the case proceeds upon the other point. But when their Honours have delivered their judgments, it may be that I shall have no objection to stating that I concur in their views, and that, supposing the information to have been a good one, the conviction ought to be set aside on the ground of the improper reception of evidence. For the present, however, I confine my judgment to the first point, and hold that the conviction should be quashed because, the information being insufficient, the whole proceedings were void *ab initio*.

OWEN, J. Upon the point of pleading Mr. Justice *Simpson* and I are of opinion that the information is sufficient.

The question is one which is undoubtedly of very considerable difficulty, and when so experienced a Judge as Mr. Justice *Stephen* differs from me I confess that I pronounce my opinion with the greatest possible diffidence. If it were merely a matter of opinion I should feel inclined to yield my opinion to that of his Honour; but as far as I can understand, the case is covered by authorities, and I am bound on those authorities to exercise my own discretion and decide as best I can. Accordingly I have come to the conclusion that the information is sufficient.

But another question has arisen outside the question of pleading altogether, and that is as to whether certain evidence was not admitted which was inadmissible, and on that the question arises whether the conviction can stand if inadmissible evidence was admitted. There is one portion of the evidence received which was admittedly inadmissible, and that was the report of the Royal Commission. It would be quite enough for me to rest my judgment on that, because that report, which not merely states what was the recommendation of the Commissioners but the reasons which induced them to make the recommendation, was, in my opinion, improperly before the jury, and therefore the conviction cannot stand.

But there was a great deal of evidence of a much more important character admitted, which, in my opinion, was clearly inadmissible. I allude to the speeches of Sir Julian Salomons, and of the Attorney-General, which were delivered in the House on the 2nd October, 1895. Those speeches, as I understand, were put in to shew the inducement which led Meagher to make his confession. Now, in the first place I cannot see what the jury had to do with inducement at all. If Meagher made a confession, that was all that was required; the grounds that led him to make it were altogether beside the question. But that is not the important question for consideration in dealing with this evidence. The most important objection is that the speech of Sir Julian Salomons contained a mass of facts telling against Meagher, and if his speech was to be treated as an inducement to Meagher to make his confession, those facts must be taken to have been believed by Meagher, because if he had not believed them, they could not have operated as an inducement to confess. If that was so, the jury had these facts before them, not upon oath and not tested by cross-examination, but merely appearing in a speech delivered in the Upper House by Sir Julian Salomons, with no test whatever of their veracity. At the same time, no doubt, the Judge did tell the jury that they were to disregard the statements of facts in Sir Julian Salomons' speech; that is to say, that they were not to treat them in the same way as if they had been proved on oath. But how could the jury do that? How was it possible for anyone to disregard these facts and not pay any attention to them? How was it possible for the jury to disregard them, and at the same time give weight to the facts because they operated as an inducement to Meagher to make his confession? The two things were contradictory, and could not operate in the minds of the jury together.

Again, it is important to consider that the facts referred to by Sir Julian Salomons were facts which purported to be within the knowledge of Meagher. They were not merely questions of opinion which possibly might have been right or wrong, but they were questions of fact which purported to be within the knowledge of Meagher; and if the jury knew that, and considered that they did operate on the mind of Meagher, that would

1896.

R.
v.
DEAN AND
MEAGHER.*Owen J.*

1896.

R.

v.

DEAN AND
MEAGHER.

Owen J.

have been an additional reason for the jury giving credence to the statement made by Sir Julian Salomons in the Upper House. The speeches appear to me, therefore, to have been improperly admitted as evidence in the case. It is not merely informal matter or of trifling import, but a matter which appears to me to strike at the root of the whole case. I am, therefore, clearly of opinion, upon these grounds, that the conviction cannot be allowed to stand.

I may add that I have purposely refrained from dealing with the question of the admissibility of the speeches of Sir Julian Salomons and the Attorney-General, regarded from the point of view of public policy or privilege of Parliament. That question is a most important one, and one that would require to be very carefully considered, but though it has been argued before us it appears to me that it is not necessary for us to decide it.

SIMPSON, J. I also do not intend to express any opinion upon the question of the privilege attaching to speeches made in the Houses of Parliament, as it is not necessary to our decision in this case. It would be a most difficult point to decide, and if at any future time it becomes necessary to decide it, I think it should be argued before a full Bench of Judges.

As to the report of the Royal Commission, it is admitted that that was wrongly received in evidence. It must be taken that the whole of the report of the Commission was admitted in evidence, and that it was submitted for the consideration of the jury as being evidence in the case and part of the proof of the guilt of the prisoners. That being so, the conviction cannot stand, as it has been abundantly decided by this Court that where improper evidence has been admitted, the conviction must be quashed: *R. v. McLeod* (1); *R. v. Makin* (2); *R. v. O'Keefe* (3). As was laid down by *Windeyer, J.*, in *R. v. McLeod*, and the Privy Council in *R. v. Makin*, it is impossible for the Court to take upon itself the duty of determining what the effect upon the jury of inadmissible evidence might be. Here the whole of the report was received in evidence, and not merely the recommenda-

(1) 11 N.S.W.L.R. 218; 7 W.N. 36. (2) 14 N.S.W.L.R. 548; 10 W.N. 134.

(3) 14 N.S.W.L.R. 345; 10 W.N. 71.

tion of the Commissioners, and as this evidence was inadmissible, it follows as a necessary consequence that the conviction must be set aside.

1896.

R.

v.

DEAN AND
MEAGHER.*Simpson J.*

I am further of opinion that the speeches of Sir Julian Salomons and of the Attorney-General were absolutely inadmissible. That the speech of Sir Julian Salomons was calculated to have an effect upon the jury which was prejudicial to Meagher, I have no doubt whatever. It was a most powerful and able speech, and as the special case states had such an effect on Crick that he subsequently had an interview with Meagher which brought about the latter's confession. There is in my opinion no justification for the admission as against Meagher of the statements made by Sir Julian Salomons. They are not evidence in any way. They were not upon oath, and yet they were put before the jury just as if they had been made in Court, and the jury may have paid as much respect to them as if they had been on oath. It is said that the Judge warned the jury not to pay any attention to these assertions of fact unless they were admitted by the defendant Meagher, but it is utterly impossible as a matter of common sense and human experience to suppose that the jury could avoid paying attention to the reiterated assertions in the speech. The Judge did not, after all tell the jury that they were to pay no attention to these assertions of fact. If he had told them that they were to pay no attention to them, we might be compelled to hold that the jury did follow the specific instructions of the Judge to pay no attention to the specific statements of fact. But he did nothing of the kind. He told the jury that they were to pay no attention to the assertion of facts unless Meagher admitted them, so that practically there was a transfer from the Judge to the jury of the right to determine what portion of the speech was relevant and what was not. I do not think the Judge's direction was right, and it would be utterly impossible for a jury to take the long speeches of the Attorney-General, Sir Julian Salomons and Meagher, compare one with the other, and draw a conclusion as to how much was admitted by Meagher here, and how much there. The thing was impossible, and looking at the ability of the speeches, their force and earnestness, no one can say what influence might have been

1896. exercised upon the minds of the jury by the statements contained in them. Indirectly the speech of Sir Julian Salomons was placed before the jury—as containing statements which might be taken by the jury as being true.

R.
v.
DEAN AND
MEAGHER.

Simpson J. For these reasons I am of opinion that the conviction should be quashed.

STEPHEN, J. I do not wish to throw the responsibility of this decision altogether upon my colleagues, and although, as I have already pointed out, it is not incumbent upon me to give a decision upon the question of the admissibility of this evidence, still, since I agree with their Honours in the conclusions at which they have arrived, I think I ought to say so. Assuming that the information was good, I am of opinion that the conviction must be set aside upon the ground of the wrongful admission of evidence.

The conviction of Meagher and Dean is therefore quashed. The form of the order should be “that the defendants ought not to have been convicted,” and an entry to that effect must be made on the record.

Order accordingly.

Attorney for Meagher: *Slattery.*

Attorney for Dean: *Tighe.*