nudum pactum. The document could not be relied on as a voluntary equitable assignment when it was obviously drawn on the basis of a different set of facts.

E. I. SYKES*

EVIDENCE.

Criminal Practice: Statement from the dock.

In *R.* v. *McKenna* [1951] St. R. Qd. 299, an accused at his trial had made a statement from the dock in which he stated what he asserted were the facts of the case. The trial Judge in his summing up directed the jury that the statement was merely the accused's explanation of the facts and not evidence of them, and later instructed the jury that it was their duty to determine the facts from the evidence. The prisoner, who was convicted, appealed on the ground of misdirection. The Court of Criminal Appeal held that there was no misdirection because an unsworn statement by an accused person is not evidence; it should be accorded persuasive rather than probative force, being something less than evidence but something more than mere argument.

The review of the authorities and the statement of principle contained in this judgment is particularly important because the practice of prisoners making statements from the dock is a very common one in Queensland. The reason of course is that the law of Queensland, unlike that of England and most if not all of the other Australian States, allows a prisoner who gives sworn evidence to be cross-examined as to his previous convictions and bad character. When in England a prisoner was first made a competent witness, it was provided by *The Criminal Evidence Act of* 1898 that a prisoner could not be cross-examined as to matters of this kind unless proof of the previous offence or conduct was admissible to establish the offence with which he was charged or unless he had sought to establish his own good character or to impugn that of witnesses for the prosecution. Viscount Sankey L.C. has said (in *Maxwell* v. *Director of Public Prosecutions* [1935] A.C. 309) that it was impossible to allow a prisoner to be treated as an ordinary witness and that to permit his cross-examination as to previous convictions would have offended against one of the most deeply rooted and jealously guarded principles of our criminal law. Section 3 of the Queensland *Criminal Law Amendment Act of* 1892, which treats the prisoner as an ordinary witness, thus does what Lord Sankey regarded as impossible. In *R.* v. *McKenna*, the Court of Criminal Appeal made the welcome suggestion that the Queensland legislation be amended on the English model and that if that were done it would be desirable to abolish the right to make statements from the dock.

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Estoppel.

The Privy Council in *Fung Kai Sun* v. *Chan Fui Haing* [1951] A.C. 489, considered the question, which is often a difficult one, of when an estoppel is created by the failure of a party to disclose facts of which he was aware. By means of forgery and fraud, the respondents' land had been mortgaged to the appellants. When the respondents discovered this, they did not notify the appellants for about three weeks and in the meantime the forger had disappeared. It was held that, although no contractual or other relationship existed between the parties, when a person becomes aware that another person holds a forged deed purporting to be signed by him he has a duty to inform that person accordingly. The respondents therefore had kept silent at their peril. However, although the forger had in fact escaped, the facts did not establish that the appellants' chance of recovering from the forger had been materially prejudiced by the delay. Since the silence of the respondents resulted in no detriment to the appellants, the former were not estopped from asserting that the mortgages were forged. A further argument, that it was the duty of the respondents to advise the appellants not only of the fact of the forgery but also of the name of the forger, was rejected, *i.e.*, the Board refused to approve the proposition that, although one party may have clearly stated to the other at the right time the fact which he wishes to prove, yet he will be estopped from continuing to assert that fact because he has withheld some other information which it was in his power to give.

Public Documents.

In *Thrasyvoulos Ioannou* v. *Papa Christoforos Demetriou* [1952] A.C. 84, the Judicial Committee laid it down that the dictum of Lord Blackburn in *Sturla* v. *Freccia* (1880) 5 App. Cas. at 643 contains an authoritative statement of the law as to the admissibility of public documents which are brought into existence as a result of a survey, inquiry or inquisition carried out or held under lawful authority. To be admissible, the document must not only be in fact available for public inspection, but must have been brought into existence for this very purpose and the survey or inquiry that preceded it must have been an inquiry of a judicial or quasi-judicial kind. Further, the statements contained in the document must be statements with regard to matters which it was the duty of the public officer holding the inquiry to inquire into and report on.

Similar Acts.

The comments in *Noor Mohamed* v. *R.*, [1949] A.C. 182, on *R.* v. *Sims*, [1946] K.B. 531 (see U.Q. Law Journal Vol. 1, No. 2, p. 76), caused some doubts to arise as to the principles applicable in determining the question of the admissibility of evidence of similar acts in criminal cases—see, for example, *R.* v. *Hall*, [1951] 2 T.L.R. 1264, and *R.* v.

Miller, [1951] V.L.R. 346. However, in *Harris* v. *Director of Public Prosecutions*, [1952] 1 T.L.R. 1075, the House of Lords has now given an authoritative exposition of the principles involved. The House has laid it down that the principle stated by Lord Herschell in a famous passage in *Makin* v. *The Attorney General*, [1894] A.C. at 65, remains the proper principle to apply. The prosecution may adduce all proper evidence which tends to prove the charge, and evidence of similar facts will be admissible if they are connected in some relevant way with the accused and with his participation in the crime. However, evidence of other occurrences which merely tend to deepen suspicion does not go to prove guilt and is not admissible. The prosecution need not withhold evidence of this kind until after the accused has set up a specific defence which calls for rebuttal, but it may not drag in evidence of similar facts to the prejudice of the accused without reasonable cause. Besides the rule governing the admissibility of the evidence, there is a rule of judicial practice allowing the Judge a discretionary power to exclude evidence of similar acts, though admissible, because the probable effect of the evidence would be out of proportion to its true evidential value. This rule results from the duty of the Judge to set the essentials of justice above the technical rule if the strict application of the latter would operate unfairly against the accused.

In *Kemp* v. *R.* [1951] A.L.R. 659, evidence was given on a criminal trial of similar conduct by the accused on former occasions, but the accused had already been acquitted on charges in respect of all or some of those former occasions. The High Court held that since the accused must be taken to have been innocent of the charges on which he had been acquitted the evidence of conduct on the occasions covered by those charges was inadmissible. The conviction was therefore quashed.

H. T. GIBBS*

FAMILY LAW.

Matrimonial Offences and the Standard of Proof.

The decision of the House of Lords in *Preston-Jones* v. *Preston-Jones* [1951] A.C. 391 had a speedy repercussion in Queensland when the Full Court ordered a new trial in *Mackie* v. *Mackie and Sorrenson* [1952] St. R. Qd. 25. Stanley J. in delivering the judgment of the Full Court, did not attempt an analysis of the basis of the *Preston-Jones* decision, but merely examined the speeches to determine whether the seal of approval had been placed upon the proposition that the standard of proof of matrimonial offences in suits for divorce is proof beyond reasonable doubt. And he held that the speeches of the Law Lords did approve of the higher standard.

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