HOUSE OF LORDS.

Tuesday, April 7, 1914.

(Before the Lord Chancellor (Viscount Haldane), Earl of Halsbury, Lords Dunedin, Atkinson, Moulton, Parker, and Reading.)

DIRECTOR OF PUBLIC PROSECUTIONS *v.* CHRISTIE.

Criminal Law—Evidence—Children Act 1908 (8 *Edw. VII, c.* 67), *sec.* 30—*Testimony of Child of Tender Years—Corroboration.*

At the trial of a man for indecent assault upon a child of tender years the child gave evidence as an unsworn witness under section 30 of the Children Act 1908. His mother and a constable also gave evidence as to statements the child had made on being confronted with the accused shortly after the alleged assault. *Held* that while not admissible as evidence of identification, the testimony of the mother and constable was admissible to prove the accused's demeanour at the time.

Decision of the Court of Criminal Appeal *reversed* on this point, but the quashing of the conviction *sustained*, because the statements did not amount to the corroboration required by section 30.

Appeal from a judgment of the Court of Criminal Appeal (Sir RUFUS ISAACS, C.J., DARLING and ATKIN, JJ.) quashing a conviction of the respondent at the Middlesex Sessions for an indecent assault on a boy five years old.

The following statement of the facts is taken from the judgment of Lord Reading:—"This is an appeal by the Director of Public Prosecutions from an order of the Court of Criminal Appeal whereby the conviction of Albert Christie for an indecent assault upon a boy aged 5 years was quashed upon the ground of misreception of evidence at the trial.

"The Attorney-General informed their Lordships in his address that should this appeal be allowed and the conviction be restored it was not intended to take any further steps against Christie in respect of the sentence passed upon him.

"The appeal was brought under the certificate of the Attorney-General (Criminal Appeal Act 1907, section 1, sub-section 6) to obtain their Lordships' opinion as to the admissibility of certain evidence given in this case which the Court of Criminal Appeal held to be inadmissible by reason of the decision of that Court in *Rex* v. *Norton*, 1910, 2 K.B. 496.

"At the trial the mother of the boy stated in evidence that about 10 a.m. he left her, and that she next saw him about 10.30 a.m. After describing his then condition, she stated that she took him across the fields and there saw a man with whom she had a conversation, and Christie was then fetched. She was asked whether the boy said anything in the presence and hearing of Christie. She answered in the affirmative, and objection was raised to the admission in evidence of the conversation. Her evidence was then interrupted and the boy was called. He related the story of the assault, and when asked by counsel if he could see the man in Court who committed it he pointed to Christie. Counsel for the defence did not cross-examine.

"The evidence of the mother was then resumed, and she was again asked whether the boy said anything in Christie's presence. Counsel for the defence again objected and argued upon the authority of the Court of Criminal Appeal in *Rex* v. *Norton* that the evidence was not admissible inasmuch as Christie had denied the statement made in his presence. The deputy chairman was aware from the depositions of the nature of the statement and of Christie's answer to it. The evidence was admitted. The mother then stated that as she and the boy were going towards Christie the boy said 'That is the man, mum.' Crooks, a police constable, was standing close to Christie, and asked 'What man'? The boy went up close to Christie and said 'That is the old man, mum,' and proceeded to give a description of the acts done by Christie, who replied 'I am innocent.' Police constable Crooks, when called said that the boy in answer to the question 'Which is the man'? went up to Christie, touched him on the sleeve, and said 'That is the man.' The police constable asked 'What did he do to you'? and the boy then gave an account of the various acts done by Christie, who answered, 'I am innocent, I have been asleep in the fields since eight o'clock last night.' The only cross-examination was to elicit a repetition of the statement by Christie 'I am innocent.' Christie was convicted and appealed to the Court of Criminal Appeal. The Court was of opinion that it was bound to follow *Rex* v. *Norton*, and that the admission of the evidence was in contravention of the rule there formulated. It held that the evidence was inadmissible and quashed the conviction."

Their Lordships took time to consider their judgment.

LORD CHANCELLOR—I concur in the opinions which are about to be expressed by Lord Atkinson, Lord Moulton, and Lord Reading. The only point upon which I desire to guard myself is as to the admissibility of the statement in question as evidence of identification, for the boy gave evidence at the trial, and if his evidence was required for the identification of the prisoner that evidence ought in my opinion to have been his direct evidence in the witness-box and not evidence of what he had said elsewhere. On that point I share the doubt which I understand Lord Moulton will express.

LORD ATKINSON—This is an appeal from an order of the Court of Criminal Appeal dated the 27th October 1913, whereby the conviction of the appellant under the 62nd section of the Offences against the Person

Act 1861 for indecently assaulting a boy named Frederick Butcher, of about five years of age, was quashed, and a verdict and judgment of acquittal directed to be entered upon the indictment upon which the appellant had been convicted.

The accused was then discharged from custody. The Attorney-General stated that there was no intention of rearresting him whatever the result of this appeal might be.

The questions of law arising on the appeal are (1) Whether a certain statement made by this boy Butcher in the presence and hearing of the accused and of a police constable was properly admitted in evidence; and (2) whether the child having been permitted under the powers of the 30th section of the Children Act 1908 by the deputy chairman before whom the case was tried to give evidence without being sworn, this judge had misdirected the jury by telling them that the statement so made by the boy in presence of the accused was within the meaning of that section material evidence implicating the accused in corroboration of the boy's testimony given at the trial.

The little boy when examined as a witness proved what had been done to him and identified the prisoner as the person who had done it, but was not asked any questions and did not give any evidence in reference to any previous identification of the accused by him, nor refer to any statement previously made by him in the presence of the accused. He was not cross-examined upon his evidence of identification given at the trial.

The boy's mother, Mrs Charlotte Butcher, and Constable William Crooks were examined. The latter proved that he was stationed at Edmonton, and that, having received certain information, he went to a field off Winchester Road, saw a number of people including the prisoner, Mrs Butcher, and her son standing there. That she made a complaint to him (the constable) that a man had assaulted her son, that he then asked the boy which was the man, whereupon the boy went up to the accused, touched him upon the sleeve of his coat, and said "That is the man"; that he (the constable) then asked the boy "What did he do to you?" In reply to which question the boy made a statement giving full particulars of the offence charged.

The Attorney-General contended that the entire statement of the boy was admissible on each of four separate grounds—(1) As part of the act of identification, or as explanatory of it. (2) As a statement made in the presence of the prisoner in circumstances calling for some denial or explanation from him, the truth of which he admitted by his conduct and demeanour. (3) As proof of the consistency of the boy's conduct before he was examined with the testimony given by him at the trial. (4) As part of the *res gestæ*.

Your Lordships intimated during the course of the argument that you would not consider this third point. It is therefore unnecessary to allude to it further.

Of course it will suffice for the Attorney-General's purpose if the statement be admissible on any of these grounds. It is, I think, clear that the principle laid down in *Reg.* v. *Lillyman*, [1896] 2 Q.B. 167, and in those cases which followed, has no application to the present case. In these cases it was decided that in rape and other sexual crimes committed against women the statement of the prosecutrix made in the absence of the accused in the form of a complaint immediately or soon after the commission of the offence is admissible in evidence, even though the full details of the crime be stated. In *Reg.* v. *Lillyman* consent was immaterial on the charge in the first count of the indictment, upon which alone the prisoner was convicted, though it was material on some of the other counts. It is admitted that such a statement is no evidence against the accused of the facts stated. There is some conflict between the authorities as to the particular grounds upon which such statements are admitted, but I think the general result of the cases is that the complaint is only admissible to negative consent. It is to be remembered that statements admitted under heads 1 and 4 are not, as against the accused, affirmative evidence of the facts stated, but only of the knowledge of, or the belief in, those facts by the person who makes the statement or of his intention in respect of them. They must, of course, in order to be admissible, be relevant to the issue, the guilt of the accused of the offence charged against him.

As to the first point, it cannot, I think, be open to doubt but that if the boy had said nothing more as he touched the sleeve of the coat of the accused than "That is the man," the statement was so closely connected with the act which it accompanied, expressing, indeed, as it did, in words little if anything more than would have been implied by the gesture *simpliciter*, it should have been admitted as part of the very act of identification itself. It is on the admissibility of the further statement made in answer to the question of the constable that the controversy arises. On the whole I am of opinion that this statement only amplifies what is implied by the words "That is the man," plus the act of touching him.

A charge had been made against the accused of the offence committed on the boy. The words "That is the man" must mean "That is the man who has done to me the thing of which he is accused." To give the details of the charge is merely to expand and express in words what is implied in the act of identification. I think, therefore, that the entire statement was admissible on these grounds, even although the boy was not asked at the trial anything about the former identification.

As to the second ground, the rule of law undoubtedly is that a statement made in the presence of an accused person, even upon an occasion which should be expected reasonably to call for some explanation or denial from him, is not evidence against him of the facts stated save so far as he accepts the statement so as to make it in effect his own. If he accepts the statement in part only, then to that extent alone does

it become his statement. He may accept the statement by word or conduct, action or demeanour, and it is the function of the jury which tries the case to determine whether his words, action, conduct, or demeanour at the time when a statement is made amounts to an acceptance of it in whole or in part. It by no means follows, I think, that a mere denial by the accused of the facts mentioned in the statement necessarily renders the statement inadmissible, because he may deny the statement in such a manner and under such circumstances as may lead a jury to disbelieve him, and constitute evidence from which an acknowledgment may be inferred by them.

Of course if at the end of the case the presiding Judge should be of opinion that no evidence has been given upon which the jury could reasonably find that the accused had accepted the statement so as to make it in whole or part his own he can instruct the jury to disregard the statement entirely. It is said that, despite this direction, grave injustice might be done to the accused, inasmuch as the jury, having once heard the statement, could not or would not rid their mind of it. It is therefore in the application of the rule that the difficulty arises. The question, then, is this—Is it to be taken as a rule of law that such a statement is not to be admitted in evidence until a foundation has been laid for its admission by proof of facts from which, in the opinion of the presiding Judge, a jury might reasonably draw the inference that the accused had so accepted the statement as to make it his own in whole or in part, or is it to be laid down that the prosecutor is entitled to give the statement in evidence in the first instance, leaving it to the presiding Judge, in case no such evidence as the above mentioned should be ultimately produced, to tell the jury to disregard the statement altogether?

In my view the former is not a rule of law, but it is, I think, a rule which in the interest of justice it might be most prudent and proper to follow as a rule of practice.

The course suggested by Pickford, J., in *Rex* v. *Norton*, where workable, would be quite unobjectionable in itself as a rule of practice, and equally effective for the protection of the accused.

The course pursued when accomplices are examined as witnesses is very analogous to that suggested. It is not a rule of law that the evidence of an accomplice must be corroborated in order to render a conviction on his evidence valid—*Rex* v. *Atwood*, 1 Leach 464; *re Meunier*, [1894] 2 Q.B. 415, but it is a general rule of practice that judges should advise juries not to convict on the evidence of an accomplice unless it be corroborated, and this is a matter entirely for the discretion of the Judge before whom a case is tried—*Reg.* v. *Stubbs*, 1 Dears. C.C. 555; *Reg.* v. *Boyes*, 1 B. & S. 311.

Again, if two persons are jointly indicted and tried together the statements made by each are generally only evidence against him who makes them. Under certain circumstances they may be evidence against both, but if they be only evidence against him who makes them, injustice to the other accused is guarded against by the presiding Judge telling the jury that this is so. There is no sufficient reason, I think, to suppose that injustice to the accused could not be effectually guarded against by the Judge instructing the jury that they should discard from their minds a statement not found to have been accepted by the accused as his own.

The boy's statement was so separated by time and circumstance from the actual commission of the crime that it was not, I think, admissible as part of the *res gestæ*. In *Thompson and Wife* v. *Trevanion*, (1693) Skin. 402, tried before Holt, C.J., sitting at Nisi Prius, it was held that what a woman said immediately on a hurt being received by her, and before she had time to contrive anything for her own advantage, might be given in evidence. The rule is here stated to rest on the absence of time or opportunity for concoction. In *Reg.* v. *Bedingfield*, 14 Cox C.C. 341, a woman rushed out of a room with her throat cut almost through, made a statement to some women she met, and expired in a very short time. Her husband was found in this room with his throat cut also. The question at issue was murder or suicide. Cockburn, C.J., said the woman's statement was not admissible, "for it was not part of anything done or something said while something was being done, but something said after something done. It is not as if, while being in the room and while the act was being done, she had said something which was heard." In other cases, such as *Rex* v. *Foster*, 6 Car. & P. 325, and *Reg.* v. *Lunny*, 6 Cox C.C. 477, the rule was applied with less strictness. I have found no authority, however, which would justify the admission of any part of the boy's statement as part of the *res gestæ*.

Even, however, if the boy's statement was admissible in evidence if properly dealt with, I think the verdict should be quashed. The deputy chairman never explained properly to the jury that it is what the accused accepts as his own of the statement made in his presence that is evidence against him, not the statement itself. Again, he treated the evidence of the mother of the boy and the constable as to what the boy said and did on the occasion of the identification as corroboration of his testimony at the trial, within the meaning of section 30 of the Children Act of 1908. This is, of course, wholly erroneous. If the boy himself had been examined, either in chief or on cross-examination, and had detailed what took place at the identification, this portion of his evidence could not be treated as corroboration of the other portion proving the charge. He could not be his own corroborator. It can make no possible difference when others tell what he did and said on that occasion. Their evidence is no more "material corroborative evidence in support of his evidence at the trial implicating the accused" than his would be.

The appeal, so far as it is directed to reverse the decision appealed from, should

I think be dismissed, although the Crown have succeeded on the point as to the admissibility in evidence of the statement.

I have been requested by my noble and learned friend Lord Parker to express his concurrence in this judgment.

LORD MOULTON—The evidence admitted in this case, the admissibility of which is the question raised by the appeal, consists of the statements of more than one witness as to one and the same event, namely, that which passed on the occasion when the little boy on whom the assault is alleged to have been committed came into the presence of the prisoner almost immediately after that assault is alleged to have taken place. For the purpose of considering the point it will suffice to take the evidence of one of these witnesses, inasmuch as the same point is involved in each case. I will therefore select the evidence given by the boy's mother.

She says that she took the boy back to the field where the prisoner was standing and that he said in the prisoner's presence, pointing him out, "That is the man." The constable then asked, "which man," and the boy went up and touched the prisoner and said, "That is the old man who did so and so" (giving particulars of the assault). The prisoner said "I am innocent."

The admission of this evidence has been defended on three grounds—(1) That it was evidence of identification of the prisoner by the boy; (2) that it was a statement made in the presence of the prisoner coupled with evidence of his behaviour on hearing the statement; and (3) that it was relevant to the issue of "consistent complaint," and therefore admissible in the case of an offence such as an indecent assault committed on a small child.

I do not propose to deal with the third ground, because it is not necessary to do so for the purpose of deciding this appeal, and it raises very difficult questions which would be better decided in some case where the admission of the evidence turns directly on the point. I shall therefore confine myself to the first and second of the above grounds. They do not depend in any way on the youth of the person making the statement, and the issue is therefore free from the complications which might arise from the fact that he was a child of tender years.

Speaking for myself, I have great difficulty in seeing how this evidence is admissible on the ground that it is part of the evidence of identification. To prove identification of the prisoner by a person who is, I shall assume, an adult, it is necessary to call that person as a witness. Identification is an act of the mind, and the primary evidence of what was passing in the mind of a man is his own testimony, where it can be obtained. It would be very dangerous to allow evidence to be given of a man's words and actions in order to show by this extrinsic evidence that he identified the prisoner, if he was capable of being called as a witness, and was not called to prove by direct evidence that he had thus identified him. Such a mode of proving identification would in my opinion be to use secondary evidence where primary evidence was obtainable, and this is contrary to the spirit of the English rules of evidence.

There remains the second ground, namely, that it is evidence of a statement made in the presence of the accused and of his behaviour on that occasion. Now in a civil action evidence may always be given of any statement or communication made to the opposite party, provided it is relevant to the issues. The same is true of any act or behaviour of the party. The sole limitation is that the matter thus given in evidence must be relevant. I am of opinion that as a strict matter of law there is no difference in this respect between the rules of evidence in our civil and in our criminal procedure. But there is a great difference in the practice. The law is so much on its guard against the accused being prejudiced by evidence which though admissible would probably have a prejudicial influence on the minds of the jury which would be out of proportion to its true evidential value that there has grown up a practice of a very salutary nature, under which the judge intimates to the counsel for the prosecution that he should not press for the admission of evidence which would be open to this objection, and such an intimation from the tribunal trying the case is usually sufficient to prevent the evidence being pressed in all cases where the scruples of the tribunal in this respect are reasonable. Under the influence of this practice, which is based on an anxiety to secure for everyone a fair trial, there has grown up a custom of not admitting certain kinds of evidence which is so constantly followed that it almost amounts to a rule of procedure. It is alleged on the part of the respondent that an instance of this is the case of the accused being charged with the crime and denying it or not admitting it.

It is common ground that if on such an occasion he admits it evidence can be given of the admission and of what passed on the occasion when it was made. It seems quite illogical that it should be admissible to prove that the accused was charged with the crime if his answer thereto was an admission, while it is not admissible to prove it when his answer has been a denial of the crime, and I cannot agree that the admissibility or non-admissibility is decided as a matter of law by any such artificial rule. Going back to first principles as enunciated above, the deciding question is whether the evidence of the whole occurrence is relevant or not. If the prisoner admits the charge the evidence is obviously relevant. If he denies it, it may or may not be relevant. For instance, if he is charged with a violent assault and denies that he committed it, that fact might be distinctly relevant if at the trial his defence was that he did, but that it was in self-defence. The evidential value of the occurrence depends entirely on the behaviour of the prisoner, for the fact that someone makes a statement to him subsequently to the commission of the crime cannot in itself have any value as

evidence for or against him. The only evidence for or against him is his behaviour in response to the charge, but I can see no justification for laying down as a rule of law that any particular form of response, whether of a positive or negative character, is such that it cannot in some circumstances have an evidential value. I am therefore of opinion that there is no rule of law that evidence cannot be given of the accused being charged with the offence and of his behaviour on hearing such charge where that behaviour amounts to a denial of his guilt. This is said to have been laid down as a rule of law in *Rex* v. *Norton*, and to have been followed by the Courts since that decision. If this be so, I think that the decision was wrong, but I am by no means convinced that it was intended in that case to lay down any such rule of law.

But while I am of opinion that there is no such rule of law, I am of opinion that the evidential value of the behaviour of the accused where he denies the charge is very small either for or against him, whereas the minds of the jury of his being publicly or repeatedly charged to his face with the crime might seriously prejudice the fairness of his trial. In my opinion, therefore, a judge would in most cases be acting in accordance with the best traditions of our criminal procedure if he exercised the influence which he rightly possesses over the conduct of a prosecution in order to prevent such evidence being given in cases where it would have very little or no evidential value. Subject to these words of caution I am of opinion that this appeal should be allowed on this point, because we have to decide upon the admissibility as a matter of law, and so regarded I have no doubt that the evidence in question was rightly admitted. I think the direction as to corroboration was wrong, and that therefore the conviction should not stand.

LORD READING, *after stating the facts, continued:* — The Attorney-General submitted that this evidence was admissible, first, because it was part of the act of identification by the boy; secondly, because it was a statement made in the hearing and presence of Christie which had a bearing upon his conduct and demeanour at the time of hearing it; thirdly, because it proved that the boy's conduct after the offence was committed and before he gave evidence was consistent with the statements made by him at the trial; and fourthly, because it was part of the *res gestæ*.

During the argument your Lordships intimated that it was not convenient on this appeal to consider the third ground, and there was no further discussion upon it.

As to the first ground. No objection was raised by Mr Dickens, for the respondent, to the admission of the first part of the statement, namely, "That is the man." It implied that Christie was the man designated by the boy as the person who had committed the offence, and meant little, if anything, more than the act of touching the sleeve of Christie or pointing to him. The importance is as to the admission of the additional words describing the various acts done by Christie. These were not necessary to complete the identification or to explain it. There was no dispute that in the presence of his mother and the police constable the boy designated Christie as the man who had committed the offence. According to the constable's evidence, the additional statement was made in answer to his question to the boy, "What did he do to you?" At the trial, and before the statement was admitted, the boy identified Christie in Court and was not cross-examined. The additional statement was not required by the prosecution for the purpose of proving the act of identification by the boy. The statement cannot, in my judgment, be admitted as evidence of the state of the boy's mind when in the act of identifying Christie, as that would amount to allowing another person to give in evidence the boy's state of mind when he was not asked, and had not said anything about it in his statement to the Court.

If the prosecution required the evidence as part of the act of identification it should have been given by the boy before the prosecution closed their case. In my judgment it would be a dangerous extension of the law regulating the admissibility of evidence if your Lordships were to allow proof of statements made, narrating or describing the events constituting the offence, on the ground that they form part of or explain the act of identification, more particularly when such evidence is not necessary to prove the act and is not given by the person who made the statement. I have found no case in which any such statement has been admitted.

As to the second ground, a statement made in the presence of one of the parties to a civil action may be given in evidence against him if it is relevant to any of the matters in issue; and equally such a statement made in the presence of the accused may be given in evidence against him at his trial.

The principles of the laws of evidence are the same whether applied at civil or criminal trials, but they are not enforced with the same rigidity against a person accused of a criminal offence as against a party to a civil action. There are exceptions to the law regulating the admissibility of evidence which apply only to criminal trials, and which have acquired their force by the constant and invariable practice of judges when presiding at criminal trials. They are rules of prudence and discretion, and have become so integral a part of the administration of the criminal law as almost to have acquired the full force of law. A familiar instance of such a practice is to be found in the direction of judges to juries strongly warning them not to act upon the evidence of an accomplice unless it is corroborated—see *Reg.* v. *Stubbs*, Dears. C.C. 555; *Reg.* v. *Boyes*, 1 B. & S. 311; *re Meunier*, [1894] 2 Q.B. 415; *Rex* v. *Wilson*, 6 Cr. A.R. 125; *Rex* v. *Blatherwick*, 6 Cr. A.R. 281. Such a practice has also long existed in reference to the admissibility in evidence of such a statement as that now under consideration—see

Reg. v. *Welsh*, 3 F. & F. 275, and *Reg.* v. *Smith*, 18 Cox. C.C. 47, *per* Hawkins, J., which the Court of Criminal Appeal refused to follow as a rule of law in *Rex* v. *Thompson*, [1910] 1 K.B. 640.

Such practice has found its place in the administration of the criminal law because judges are aware from their experience that in order to ensure a fair trial for the accused, and to prevent the operation of indirect but not the less serious prejudice to his interests, it is desirable in certain circumstances to relax the strict application of the law of evidence. Nowadays it is the constant practice for the judge who presides at the trial to indicate his opinion to counsel for the prosecution that evidence which, although admissible in law, has little value in its direct bearing upon the case, and might indirectly operate seriously to the prejudice of the accused, should not be given against him, and speaking generally counsel accepts the suggestion and does not press for the admission of the evidence unless he has good reason for it.

That there is danger that the accused may be indirectly prejudiced by the admission of such a statement as in this case is manifest, for however carefully the judge may direct the jury, it is often difficult for them to exclude it altogether from their minds as evidence of the facts contained in the statement.

In general such evidence can have little or no value in its direct bearing on the case unless the accused upon hearing the statement, by conduct and demeanour, or by the answer made by him, or in certain circumstances by the refraining from an answer, acknowledged the truth of the statement either in whole or in part, or did or said something from which the jury could infer such an acknowledgment, for if he acknowledged its truth he accepted it as his own statement of the facts. If the accused denied the truth of the statement when it was made, and there was nothing in his conduct and demeanour from which the jury notwithstanding his denial could infer that he acknowledged its truth in whole or in part, the practice of the judges has been to exclude it altogether. In *Rex* v. *Norton*, Pickford, J., in delivering the judgment of the Court of Criminal Appeal, said—"If there be no such evidence"—that is, of acknowledgment by the accused—"then the contents of the statement should be excluded; if there be such evidence, then they should be admitted." If it was intended to lay down rules of law to be applied whenever such a statement is tendered for admission I think the judgment goes too far. They are valuable rules for the guidance of those presiding at trials of criminal cases when considering how the discretion of the Court with regard to the admission of such evidence should be exercised, but it must not be assumed that the judgment in *Rex* v. *Norton* exhausts all the circumstances which may have to be taken into consideration by the Court when exercising its judicial discretion.

It might well be that the prosecution wished to give evidence of such a statement in order to prove the conduct and demeanour of the accused when hearing the statement as a relevant fact in the particular case, notwithstanding that it did not amount either to an acknowledgment or some evidence of an acknowledgment of any part of the truth of the statement. I think it impossible to lay down any general rule to be applied to all such cases save the principle of strict law to which I have referred.

Upon the whole, therefore, I come to the conclusion that the rules formulated in *Rex* v. *Norton*, and followed in this and other cases, must be restricted in their application as above indicated, and cannot be regarded as strict rules of law regulating the admissibility of such evidence.

I think therefore that this statement was in law admissible as evidence against Christie.

As to the fourth point. The statement under review formed no part of the incidents constituting the offence. It was not made whilst the offence was being committed or immediately thereafter. It took place after Christie had left the boy, and the mother had found him and taken him across the fields and had spoken to another man. In my view it was not so immediately connected with the act of assault as to form part of the *res gestæ*. In the words of Cockburn, C.J., in *Reg.* v. *Bedingfield*, 14 Cox, C.C. 341—"It was not part of anything done, or something said while something was being done, but something said after something done. It was not as if, while being in the room, and while the act was being done, she had said something which was heard."

This ruling was given at the trial of an indictment for the murder of a woman when it was sought by the prosecution to give in evidence as part of the *res gestæ* a statement made by the deceased. It appeared that she, with her throat cut, came suddenly out of the house, and pointing backwards to the house, made a statement to two women whom she employed. She had left the prisoner in the house, and his throat was also cut. She succumbed to the injuries within a few minutes after making the statement.

Cockburn, C.J., refused to admit the statement, giving his decision in the words above quoted. Later he said—"It was something stated by her after it was all over, whatever it was, and after the act was completed." See also Cockburn, C.J., in *Reg.* v. *Wainwright*, 13 Cox, C.C., 171, and Bovill, C.J., in *Reg.* v. *Pook*, 13 Cox, C.C., 172 N. In *Thompson and Wife* v. *Trevanion*, Skin. 402, Holt, C.J., held in a civil action that a statement by a woman immediately upon receiving the hurt in question in the action, and, as the report says, "before that she had time to devise or contrive anything for her own advantage, might be given in evidence." The decision rests upon the ground that the statement was made immediately upon receiving the injury. *Rex* v. *Foster*, 6 Car. & P. 325, is another instance of a statement made immediately after the event. There evidence was admitted of a statement as to the cause of the accident made by the de

ceased at the instant of receiving the injury. In *Reg.* v. *Lunny*, 6 Cox, C.C., 477, at a trial for murder, a girl heard a cry and then found the deceased, weak and injured, who made a statement immediately on her coming up to him. Monahan, C.J., admitted it as part of the *res gestæ*. In this case the rule as to admissibility seems not to have been so rigidly enforced, but neither that case nor any of the authorities would support the admission of the statement in the case now before us.

Assuming that your Lordships were of opinion that the boy's statement was admissible, this conviction, for other reasons, could not stand, and was properly quashed. The Court of Criminal Appeal acted upon the authority of *Rex* v. *Norton*, and did not think it necessary to consider any further point in the appeal. By virtue of section 30 of the Children Act 1908, Christie could not be convicted unless the boy's testimony was "corroborated by some other material evidence in support thereof implicating the accused." There was no sufficient direction, and there was misdirection to the jury of the requisites of corroboration under this statute. Such direction as was given by the deputy chairman was erroneous, inasmuch as it treated the statement by the boy, given in evidence by the mother and the constable, as corroboration of the boy's evidence implicating the accused. This is manifestly wrong. It was for the deputy chairman to satisfy himself that there was evidence of corroboration fit to be submitted to the jury within the meaning of the statute, and then to direct them not to convict unless they accepted the evidence of corroboration. He did not give this direction, and therefore notwithstanding the view I have expressed about *Rex* v. *Norton*, and of the admissibility of the boy's statement in this case, I am of opinion that the conviction was rightly quashed, and that the appeal should be dismissed.

I have been requested by Lord Dunedin to say that he concurs in this judgment.

Their Lordships dismissed the appeal.

Counsel for the Appellant—Attorney-General (Sir John Simon, K.C.)—Branson—Comyns Carr—Purchase. Agent—Director of Public Prosecutions.

Counsel for the Respondent—Dickens, K.C.—Bryan. Agents—Avery, Son, & Fairbairn, Solicitors.

HOUSE OF LORDS.

Tuesday, May 5, 1914.

(Before Lords Dunedin, Atkinson, Shaw, Sumner, and Parmoor.)

HADSLEY *v.* DAYER-SMITH.

(On Appeal from the Court of Appeal in England.)

Contract—Agreement in Restraint of Trade—Provision that an Outgoing Partner should not Carry on Business within a Certain Area.

Where there was a clause in a contract of partnership between house agents prohibiting an outgoing partner from carrying on or engaging or being interested in a similar business within a given area, *held* that an outgoing partner could be restrained from advertising houses to be let within the area although his place of business was outside.

The facts are detailed in their Lordships judgment, which was given at the conclusion of the appellant's argument.

Lord Dunedin—The appellant in this case was in partnership with the respondent, and carried on with him the business of a house agent. Under the partnership articles there were provisions for bringing the partnership to an end and for the partners retiring, or under certain circumstances being expelled. The partnership, so far as these two persons were concerned, was brought to an end. I use a neutral expression because I understand that it is a matter of controversy, and is indeed being litigated at this moment, whether the way in which the partnership was brought to an end was by expulsion or retirement. But for the purposes of the question upon which we are engaged it matters not, because article 29 of the articles of partnership was in these terms—"An outgoing, retiring, or expelled partner" (and it is certain that the appellant comes within one or other of those designations) "shall not, nor, in the event of the partnership property being realised under clause 26, shall either or any partner for the term of ten years from the time of the dissolution of the partnership as aforesaid, carry on or engage or be interested, directly or indirectly, either as principal or as servant or agent of another, in any business of a nature similar to or competing or interfering with the business of the partnership, or any part of such business, within a radius of one mile from the premises of the said partnership." Now the offices of the partnership were somewhere in Motcomb Street, Belgravia. The appellant set up in business for himself in Duke Street, Grosvenor Square, and it is admitted that Duke Street is at a distance of more than one mile from Motcomb Street. When there he inserted in the *Morning Post* two advertisements regarding houses to be let in Wilton Crescent, Wilton Crescent being