Napier J. said :—

" As at present advised I think that considering that the language of the various sub-sections can be referred to specific provisions of the Code and considering that the object of the section is to allow execution against a person who is not a party to the suit or legal representative it is more proper to confine it to cases where the liability has been entered in the face of the Court, or has been recorded by the Court in accordance with the provisions of the Code. "

Sadasiva Aiyar J. said :—

" I do not think that the fact that the Court itself stayed the execution on the report made to it of security having been given outside the Court would enable the Court to allow the security to be realised in execution. The only security which could be so realised is one to be furnished to the Court, or at least filed in Court. "

I would, accordingly, set aside the order appealed against and dismiss the respondent's application with costs here and in the Court below.

GUNASEKARA J.—I agree.

SWAN J.—I agree.

Order set aside.

1950 *Present :* **Dias S.P.J.**

COSTA, Appellant, *and* GORDEN (S. I. Police), Respondent

S. C. 292—M. C. Colombo, 8,474/B

Penal Code—Sections 341 and 345—Using criminal force—Defining section formulates two definitions—" Without that person's consent "—Burden of proof—" Outraging the modesty of a woman "—No such offence—Sexual offence—Corroboration of alleged victim's evidence necessary—Evidence Ordinance, s. 153.

Where the accused was charged and convicted, under section 345 of the Penal Code, of using criminal force on a girl " with intent to outrage her modesty "—

Held, that section 341 of the Penal Code formulated two definitions of the offence of using criminal force. Under the first definition the burden of proof was on the prosecution to establish that what was done was done " without the consent " of the woman. Under the second definition no such burden rested on the prosecution.

Held further, (i) that " outraging the modesty of a woman " was not an offence and the criminal force alleged to have been used in this case was therefore that contemplated in the second definition.

(ii) that in sexual offences the evidence of the alleged victim should be corroborated by independent evidence, either oral or circumstantial.

(iii) that where a witness has been asked a question solely relating to his credit and has denied it, he cannot thereafter be contradicted—s. 153 of the Evidence Ordinance.

APPEAL from a judgment of the Magistrate's Court, Colombo.

Siri Perera, for accused appellant.

S. S. Wijesinha, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

June 14, 1950. DIAS S.P.J.—

This is an appeal from a conviction under section 345 of the Penal Code. The appellant was sentenced to undergo six months' rigorous imprisonment for using criminal force on a girl named Podina with intent to outrage her modesty on October 31, 1949.

Counsel has taken several points. It is submitted in the first place, that the Magistrate wrongly put on him the burden of proving that the girl consented to his advances. It is submitted that, like in the case of rape, the burden of proving that what was done was done without the consent of the woman, rests on the prosecution—see *R. v. Balakiriya*[1]. In the second place it is urged that the Magistrate erred in rejecting the book D2 tendered in evidence by the defence. Finally, it is contended that there is no corroboration of the story told by the woman.

Dealing with the first point—What is "Criminal Force"? section 341 of the Penal Code formulates two definitions of the offence—

(1) Whoever intentionally uses "force" to any person *without that person's consent*, in order to the committing of any offence—is said "to use criminal force to that person"; and

(2) Whoever intending illegally by the use of "force" to cause, or knowing it likely that by the use of such "force" he will illegally cause *injury, fear, or annoyance* to the person to whom such "force" is used—is said "to use criminal force to that person".

On which of these two definitions is the present charge based? If the former, then, the burden of proof undoubtedly would be on the prosecution to establish that what was done was done "without the consent" of the woman. If the latter, no such burden would rest on the prosecution. In the latter event the plea that the woman consented would be an exculpatory plea under Chapter IV of the Penal Code containing the general exceptions to criminal liability. The burden of proof in regard to such a plea would rest on the defence.

There is no offence known to our law called "Outraging the modesty of a woman". "Modesty" means the feminine sense of propriety and decorum. Therefore, "to outrage the modesty" of a woman means "to insult, affront, or abuse the feminine sense of what is proper and decent". Where a man uses "force" with the intention of insulting

[1] *(1945) 46 N. L. R. 83.*

or affronting the sense of propriety of a woman, he cannot be said to have done something "in order to the committing of an offence". I am, therefore, of opinion that the "criminal force" alleged to have been used in this case is that defined by the second definition. In that case, there is no burden cast on the prosecution to prove as an ingredient of the offence that what was done was done "without the consent" of the woman. The first point, therefore, fails.

When the master of the woman Podina was cross-examined, in order to impeach his credit, it was suggested that he was a committee member of a certain co-operative society, and that he dishonestly altered the amount of some bills. The witness denied the imputation. This evidence was totally irrelevant to the issue before the Magistrate, except on the question of the credit of the witness. The defence sought to contradict the witness by producing the book marked D2. The Magistrate refused to admit it on the ground that it contained no translation. Without entering into the question whether under section 301 of the Criminal Procedure Code, the Magistrate was right in rejecting the book, it is clear that the evidence was rightly rejected under section 153 of the Evidence Ordinance. A witness who has answered a question which goes solely to his credit, cannot be contradicted. The second point, therefore, fails also.

It is settled law that in sexual offences, there is necessity that the evidence of the alleged victim should be corroborated by independent evidence, either oral or circumstantial. There is no such evidence of corroboration in this case. Podina was employed under a Mr. Jayasekera. On October 31, 1949, at about 3 p.m. she went to the co-operative store to buy provisions. She says she was accompanied by a child called Lily. Who Lily is, whether she is a fellow servant of Podina, and how she came to accompany Podina on this day, do not appear in the evidence. She is the best available witness to corroborate Podina as to what happened. Not only has she not been called, but there is no explanation at all as to why she was not called.

Podina says that one plank of the boutique was open when she got there. She asked the appellant whether there were vegetables. He replied that there were vegetables, and invited her in, and asked Lily to stand near the opening. The appellant then is alleged to have closed Podina's mouth with his hand and threatened her. He took the cloth off her body and unfastened the pins from her jacket, lay on her, when some liquid was "emitted" on the girl. The accused then gave her a towel to wipe herself. She did so, got up, clothed herself and came out. She said she came out weeping. She was then seen by Thomas and Saibran.

The clothes of the girl have not been sent to the analyst for examination. She was not examined by any doctor. Saibran has not been called. Thomas says that when he was walking along the road he saw Podina coming out of the boutique with a little girl. He says the shutters of the boutique were all closed, and that the accused opened a shutter for the girl who came out weeping. On this material point this witness is contradicted by Podina who says that one plank was open all the time.

It is improbable that the accused, who had just committed a serious offence on an unwilling girl, would actually open the shutter and come out to be seen by people on the road. The Magistrate, however, has failed to address his mind to the question of corroboration at all. The failure of the prosecution to call Lily or to explain her absence is a circumstance which tells strongly against the prosecution. In my opinion, this is a case in which the Magistrate would have had a reasonable doubt, had he properly addressed his mind to the ingredients which have to be proved in cases like this. I quash the conviction and acquit the appellant.

Appeal allowed.

1950 *Present :* **Basnayake J.**

RODRIGO, Appellant, *and* PARANGU, Respondent

S.C. 119—C.R. Colombo, 15,683

Rent Restriction Act, No. 29 of 1948—Section 13—Death of landlord—Right of administrator to maintain action—Civil Procedure Code, section 472.

The administrator of the estate of a deceased landlord is entitled, by virtue of section 472 of the Civil Procedure Code, to maintain an action under the Rent Restriction Act for the purpose of ejecting a tenant of the deceased and putting into possession the deceased's widow and children if the premises in question are reasonably required for their occupation.

APPEAL from a judgment of the Court of Requests, Colombo.

E. B. Wikramanayake, K.C., with *M. M. Kumarakulasingham*, for plaintiff appellant.

H. W. Tambiah, with *S. Sharvananda*, for defendant respondent.

Cur. adv. vult.

June 2, 1950. BASNAYAKE J.—

The plaintiff-appellant is the administrator of the estate of one D. C. Karunaratne deceased. He seeks to have the defendant-respondent ejected from premises Nos. 414/1 and 414/2 in Baseline Road, Colombo. He claims that he is entitled to maintain the action *qua* administrator as the premises are reasonably required for the occupation of the widow and children of the deceased.