

**75/80****HOUSE OF LORDS****R v SANG****Lord Scarman, Lord Diplock, Viscount Dilhorne, Lord Salmon, Lord Fraser of Tullybelton****25 July 1979****[1979] UKHL 3; [1980] AC 402; [1979] 2 All ER 1222; [1979] 3 WLR 263; (1979) 69 Cr App R 282****CRIMINAL LAW – EVIDENCE – DISCRETION TO EXCLUDE – AGENT PROVOCATEUR – EVIDENCE OF ACTIVITIES INCITED BY AGENT PROVOCATEUR – WHETHER DISCRETION TO EXCLUDE EVIDENCE.**

Two defendants were indicted on counts of conspiracy to utter forged banknotes and unlawful possession of forged banknotes. They pleaded not guilty and counsel invited the trial judge to allow a trial within a trial to determine whether the activities referred to in the indictment came about as a result of incitement by an agent provocateur. Counsel hoped that, having established the facts, he would persuade the judge to exercise his discretion to exclude any prosecution evidence of the commission of offences so incited. The judge, doubting the existence of any such discretion, invited counsel to argue the point on the assumption that the necessary facts had been established. After argument, the judge ruled that he had no such discretion. Thereupon the defendants changed their pleas, and each pleaded guilty to one count and was sentenced. The Court of Appeal upheld the judge's ruling. On appeal by one defendant—

**HELD: Appeal dismissed.**

**(1) A judge in a criminal trial always had a discretion to refuse to admit evidence if, in his opinion, its prejudicial effect outweighed its probative value**

**(2) Save with regard to admissions and confessions and generally with regard to evidence obtained from the accused after commission of the offence, the judge had no discretion to refuse to admit relevant admissible evidence on the ground that it was obtained by improper or unfair means, the court not being concerned with how it was obtained, and it was no ground for the exercise of the discretion to exclude evidence that it was obtained as the result of the activities of an agent provocateur.**

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