rebut a defence that G. was in the room for a proper purpose. It was strenuously contended that once there was proof of his being in the room, then there was a tacit admission or an inevitable conclusion that he was there for an unlawful purpose. If that is assumed, it may be said that the evidence is irrelevant. I fail to see, however, that there was any such admission or any such inference. And if not, the distinction attempted to be made to differentiate the judgment of their Lordships of the Privy Council in Makin's case fails.

The remark of His Honour Mr. Justice Chapman has to be noted—that the jury may well have believed that G. was in the room, but that they might have come to the conclusion that he may have been there lawfully. The possibility of the jury arriving at such a conclusion is strengthened by the occurrence of the passages I have already quoted from the depositions and from the evidence in cross-examination of the Crown witnesses. If such a defence were open it can hardly be contended that the evidence was not admissible. And is this Court to assume that a jury will not listen to a defence unless it appears in the speech of counsel? Experience in the Courts shows that often a jury will seize on a piece of evidence showing a course of conduct to be reasonable if not contradicted, and act upon it. In Rex *v.* Bond ([1906] 2 K.B. 389) the headnote is, "The prisoner, a medical man, was indicted for feloniously using certain instruments on a certain woman to procure her miscarriage. At the trial evidence was tendered on behalf of the prosecution to show that some nine months previously the prisoner had used similar instruments upon another woman with the avowed intention of bringing about her miscarriage, and that he had then used expressions tending to show that he was in the habit of performing operations for the same illegal purpose. The evidence was admitted and the prisoner convicted." It was held by Kennedy, Darling, Jelf, Bray, and A. T. Lawrence, JJ. (Lord Alverstone, C.J., and Ridley, J., dissenting), that the evidence was rightly admitted, and that the conviction should be upheld. Was this taking or having G. in the private room—if the jury believed he was in the room—accidental, or was it a course of conduct the prisoner had followed with others? If that issue had to be put to the jury the evidence would, under the authority of Rex *v.* Bond ([1906] 2 K.B. 389), clearly be admissible. Kennedy, J., thought it was necessary to show a "systematic pursuit" of the same object. In the course of his judgment he said (*Ibid.* 405), "In my opinion it does not follow that to prove a criminal intent it is competent to the prosecution to prove the occurrence of a single prior act of the like criminal nature. The admissibility, not merely the weight, of the evidence depends, in my view, upon the evidence which it is proposed to adduce being evidence of such conduct as would authorize a reasonable inference of a systematic pursuit of the same criminal object." Was the evidence admitted not evidence that would lead to the conclusion that there was systematic pursuit of the same criminal object—a number of boys in the private room at night, one at a time, "lollies" given, &c.?

In Rex *v.* Ball ([1911] A.C. 47) there was a conflict of judicial opinion, the decision of the Court of Criminal Appeal being overruled by the House of Lords. The headnote states the case as follows: "The defendants, who were brother and sister, were indicted under the Punishment of Incest Act, 1908, for having had carnal knowledge of each other during stated periods of 1910. Evidence was given on behalf of the prosecution to the effect that, at the times specified in the indictment, the defendants were seen together at night in the same house, which contained only one furnished bedroom; and that there was in the bedroom a double bed which bore signs of two persons having occupied it. The witnesses for the prosecution were not cross-examined. The prosecution then tendered evidence of previous acts of the defendants with the view of showing what were the relations between them. This evidence was objected to, but was admitted. The evidence was to the effect that the male defendant, in November, 1907, took a house to which he brought the female defendant as his wife; that they lived there as husband and wife for about sixteen months; that at the end of March, 1908, the female defendant gave birth to a child, and that she registered the birth, describing herself as the mother and the male defendant as the father. The defendants having been convicted, they appealed, and the Court of Criminal Appeal quashed the conviction; and directed a 'judgment and verdict of acquittal to be entered,' on the ground that the evidence objected to was not in the first instance admissible, and that nothing had occurred in the conduct of the defence to render it admissible as evidence in rebuttal. *Held* by the House of Lords, reversing the order of the Court of Criminal Appeal, That the evidence objected to was admissible on the issue; for the object of that evidence was to establish that the defendants had a guilty passion towards each other, and to rebut the defence of innocent association as brother and sister."

That case is, in my opinion, applicable to this case. There the House of Lords approved of the judgment of Lord Herschell in Makin *v.* Attorney-General ([1894] A.C. 57, 64; 17 Cox C.C. 704, 708), Lord Loreburn, L.C., saying ([1911] A.C. 47, 71), "My Lords, the law on this subject is stated in the judgment of Lord Chancellor Herschell in Makin *v.* Attorney-General for New South Wales ([1894] A.C. 57, 64; 17 Cox C.C. 704, 708); it is well known, and I need not repeat it—the question is only of applying it. In accordance with the law laid down in that case, and which is daily applied in the Divorce Court, I consider that this evidence was clearly admissible on the issue that this crime was committed—not to prove the *mens rea*, as Darling, J., considered, but to establish the guilty relations between the parties and the existence of a sexual passion between them, as elements in proving that they had illicit connection in fact on or between the dates charged. Their passion for each other was as much evidence as was their presence together in bed of the fact that when there they had guilty relations with each other." If a passion for each other is provable, why not a system of conduct in treating pupils?

Rex *v.* Fisher ([1910] 1 K.B. 149), relied on by counsel for the prisoner, was quite different. The headnote to that case is, "At the trial of a prisoner on an indictment charging him with obtaining a pony and cart by false pretences on June 4, 1909, evidence was admitted that on May 14, 1909, and on July 3, 1909, the prisoner had obtained provender from other persons by false pretences different from those alleged in the indictment. The prisoner was convicted. *Held*, That the evidence was wrongly admitted, as it did not show a systematic course of fraud, but merely that the prisoner was of a general fraudulent disposition, and therefore it did not tend to prove the falsity of the representations alleged in the indictment; that although there was sufficient evidence of the false pretences alleged to justify the conviction, the evidence as to the other cases might have influenced the jury, and the conviction must therefore be set aside." There the false pretences had varied; there was no system. Mr. Justice Channell said in delivering the judgment of the Court (*Ibid.* 152), "Whenever it can be shown that the case involves a question as to there having been some mistake or as to the existence of a system of fraud, it is open to the prosecution to give evidence of other instances of the same kind of transaction, notwithstanding that the evidence goes to prove the commission of other offences, in order to negative the suggestion of mistake or in order to show the existence of a systematic course of fraud." If systematic fraud can be proved, why not systematic assaults on pupils? I fail to see any distinction.

Rex *v.* Ellis ([1910] 2 K.B. 746) was a similar case to Rex *v.* Fisher ([1910] 1 K.B. 149); there was a distinct kind of fraud alleged, and hence there could be no system. Rex *v.* Barron (24 Cox C.C. 83) was a peculiar case. The prisoner was indicted for sodomy, and evidence was given of a charge of sodomy which had been abandoned. This was held wrongly admitted, the ground being stated in the judgment thus: "A statement was undoubtedly made that the appellant must be presumed to have been entirely innocent of the alleged offence committed on the 6th day of June. But unfortunately a good deal was said as to a charge for an alleged offence on that date, and evidence relating to it was admitted as being material to meet the defence raised. With regard to that ruling, we may say at once that evidence as to the offence in June, of which the appellant was presumably innocent, could not have any bearing on the offence in July. If it is assumed that the appellant might have been guilty of the offence in June, though no evidence with regard to that date could have been given at the trial for the offence in July, the evidence admitted would tend greatly to prejudice the accused. But the Court is satisfied that the evidence was not admitted for that purpose. It was put forward, it was said, to show that the defence set up by the appellant of innocent association with the boys was not sound, and that when once proof of the former charge was established it became material evidence with regard to the alleged event in July. We think that evidence of the former charge was not admissible at the trial for the offence in July." This case was therefore decided on the ground that of the offence in June the prisoner was presumably innocent. It follows, I suppose, that if he had not been presumed innocent—if, for example, the offence had not been investigated—the evidence would have been admissible. The case seems to conflict with Reg. *v.* Ollis ([1900] 2 Q.B. 758; 19 Cox C.C. 554), the headnote of which in Cox states: "A person was charged with obtaining money by false pretences, the false pretence being that a cheque drawn by him would be honoured, the fact being that he