[APPELLATE CRIMINAL JURISDICTION.]

1873
September 25.

REG. *v.* BA'I RATAN.

Code of Criminal Procedure (Act X. of 1872) Secs. 122 and 346. Unsigned confession inadmissible—Oral evidence to prove unsigned confession.

The confession of an accused person, taken by a Magistrate having no jurisdiction to commit or try him, is imperfect, if not signed by the accused person or attested by his mark, and is inadmissible in evidence (Secs. 122 and 346, Criminal Procedure Code.)

The term "Preliminary Inquiry" in the final clause of Sec. 346 means such inquiries as are the subject of Chapters XIV. (of Inquiries and Trials) and XV. (of Inquiry into cases triable by the Court of Session or the High Court); and, therefore, that clause does not apply to confessions recorded under Sec. 122, which refers to an inquiry not during a trial or one held with a view to committal, but an inquiry for the purpose of forwarding confessions, when recorded, to the Magistrate by whom the case of the accused person is inquired into or tried. Consequently, when a confession taken under Sec. 122 is inadmissible in evidence, oral evidence to prove that such a confession was made or what the terms of that confession were, is inadmissible also (Sec. 91 of the Indian Evidence Act).

THE accused, Bái Ratan, was tried along with her paramour, Dádábhái, for the offence of murder by H. M. Birdwood, Session Judge of Surat. Dádábhái was acquitted, but Bái Ratan was convicted and sentenced to death.

The proceedings having been submitted by the Session Judge for confirmation of sentence and an appeal having also been admitted, the case was heard by MELVILL and NANABHAI HARIDAS, JJ.

It appeared during the hearing that the conviction of Bái Ratan was based solely on her own confession, taken by a ~~to~~ Second Class Subordinate Magistrate not empowered eithertry or commit the accused for trial, which confession was neither signed by her nor attested by her mark.

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The Division Bench, entertaining doubts as to the admissibility in evidence of this confession, referred four questions for the decision of the Full Bench, with the following remarks :—

The appellant, Bái Ratan, has been convicted of the murder of her husband, Jai Nathu, and sentenced to death.

She was tried together with her paramour, Dádábhái, and the Assessors found both the prisoners guilty, but the Session Judge acquitted Dádábhái on the ground of the insufficiency of the evidence. Against this judgment of acquittal, the Government has not appealed.

It is proved that Jai Nathu died from the effect of arsenic administered to him in his dinner.

Bái Ratan, while in custody of the Police, made astatement in the presence of a Magistrate (not the committing Magistrate) which was reduced into writing.

At the trial, Dádábhái's pleader objected to the admission of the document because it had not been signed by Bái Ratan. The Session Judge overruled the objection on the ground that the Magistrate, by whom the confession had been recorded, deposed that it had been duly made.

A child of Bái Ratan and the deceased has given confirmatory evidence as to most of the circumstances mentioned in the confession. There is nothing in his deposition which carries the case against Bái Ratan further, except a statement that on the night in question, she, contrary to her usual custom, cooked her husband's dinner separately from that of the rest of the family. This statement was disbelieved by the Session Judge, but we see no sufficient reason for rejecting it. There is no other evidence against Bái Ratan.

The Session Judge's reasons for convicting Bái Ratan are set forth in the following extract from his judgment :—

"Bái Ratan admits that a criminal intimacy had existed between her and Dádábhái,,and that she left her own house,

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at the summons of Dádábhái, and went to meet him in a neighbouring village. She admits that she saw Dádábhái mixing poison in her husband's dinner, and that she remained silent. She knew, according to her own admissions, that it was Dádábhái's intention to take her husband's life; for she says, in her statement, that Dádábhái had promised to give the Bhil from whom he had obtained the poison, Rs. 50, on the dead body of her husband coming out of her house. When she called in a neighbour early in the morning of the 30th April, she did not tell him what had happened, and it was not till after sunrise on that day that she says that she tried to administer an antidote, and then her husband's case was hopeless.

"Her excuse for her silence is that she was afraid of Dádábhái. But, as Jai Nathu's wife, she was bound to speak when she saw him eating poison which she knew would kill him.

"By her silence, then, and by her failure to use any prompt remedies after Dádábhái had left the house, she caused Jai Nathu's death. She was guilty of an 'illegal omission,' and as, under Sec. 32 of the Indian Penal Code, words, which refer to acts done, extend also to omissions, the word 'act' as used in Section 299 of that Code, would apply to Bái Ratan's conduct, as it was described by herself on the 6th May last.

" She did not admit any such intention as is contemplated in the first three clauses of Section 300, but under the circumstances, as admitted by herself, she must have known that her illegal comission was 'so imminently dangerous that it must in all probability cause death' (Clause 4 of Section 300), and she was guilty of the omission, 'without any excuse for incurring the risk causing death'; for fear of Dádábhái was not, under the circumstances, any excuse—(see Section 94 of the Indian Penal Code).

" Bái Ratan can, I am of opinion, be properly convicted, on her own past admissions, of the offence of murder."

The points of law, on which we desire to have the advantage of a decision by the Full Bench, are the following :—

1. Whether the statement or confession is admissible in evidence, the same not having been signed by Bái Ratan ?

2. If that document be not admissible, whether oral evidence is admissible to prove that a confession was made by Bái Ratan, and the terms of such confession ?

3. Whether the statement or confession amounts to a confession of murder, or of any other offence ?

4. Whether, regard being had to the circumstance that Dádábhái has been acquitted, Bái Ratan can be legally convicted, on the evidence above stated, of murder or of any other offence ?

The reference was heard by WESTROPP, C.J., and MELVILL, WEST, PINHEY, and NANABHAI HARIDAS, JJ.

Ghanashám Nilkanth, as *amicus curiae*, for the accused, commented upon, with reference to the first question, Sections 122, 345, and 346 of the Criminal Procedure Code, (Act X. of 1872). Observing that Section 346 of the new Procedure Code corresponds to Section 205 of the late Procedure Code, he cited *Reg.* v. *Timmi* (*a*), *Reg.* v. *Mussamut Nirumi* (*b*), and *Reg.* v. *Bhikaree* (*c*).

With respect to the second question : whether, the confession being inadmissible, oral evidence was admissible to prove that it was made by Bái Ratan and the terms of that confession, he relied on Section 91 of the Indian Evidence Act, and mentioned 3 Russell on Crimes and Misdemeanors 449, Taylor on Evidence §·36, *R.* v. *Hollingshead* (*d*), *Phillips* v. *Wimburn* (*e*), *Shekh Ibrahim* v. *Parvátá* (*f*), and commented on Sections 4, 21 (7), 115, 122, and 346 of the Criminal

(*a*) 2 Bom. H. C. Rep. 125. (*b*) 7 Calc. W. Rep. Cr. R. 49.
(*c*) 15 Calc. W. Rep. Cr. R. 63. (*d*) 4 C. and P. 242.
(*e*) Ibid. 273. (*f*) 8 Bom. H. C. Rep. A C. J. 163.

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Procedure Code of 1872, and Section 65 of the Indian Evidence Act, and submitted that both the first and second questions should be answered in the negative.

It is unnecessary to notice the arguments on the other questions.

Dhirajlál Mathurádás (Government Pleader):—With respect to the 1st question, Section 346 of the Criminal Procedure Code contemplates two modes of recording the examination of the accused. The first is when the examination is taken in the handwriting of the Magistrate, and the second is when it is not so taken. The word "record" in the clause "the accused person shall sign or attest, by his mark, such record," refers to the next preceding clause, which contemplates the second of the two modes above stated. The signature or mark of the accused is required only in the case when the Magistrate does not record the statement in his own writing. It is only in such case the provision under consideration is to be enforced and not otherwise.

But supposing the confession to be inadmissible, yet oral evidence can be received in proof of it under the last proviso of Section 346, because the confession was taken by the Magistrate at a preliminary inquiry. The word "investigations" applies to police action, and the word "inquiry" to the action of a Magistrate or Sessions Court. When the Police brought the accused to the Magistrate who recorded the confession of the prisoner, the process of investigation ceased and that of inquiry commenced. Section 122 provides that when the magistrate, *upon inquiry*, has reason to believe that the confession was made voluntarily, then only he shall record the confession. This shows that the action of the Magistrate is to be in connection with the inquiry. But supposing the action of the Magistrate, who recorded the confession, fell under the term "Police investigation," yet as there is no separate definition of the term "preliminary inquiry," and as the term "inquiry" defined

in Section 4 is large enough to include any proceeding conducted by a Magistrate, it may be concluded that the Legislature intended that the recording of a confession by any Magistrate was in connection with an inquiry preliminary to the trial. Oral evidence is, therefore, admissible under Section 346. By Section 80 of the new Evidence Act, the Court is bound to presume that the confession was duly made.

[WESTROPP, C.J.:—But, on the face of it, the confession was not duly taken, because it does not bear the signature or mark of the accused as required by law.]

According to English law, oral evidence may be received—see Taylor on Evidence, Section 817; 3 Russell on Cr. 455 and 456. In *Lambe's case* (*g*) the signatures both of the Magistrate and the prisoner were omitted. The Magistrate's signature was necessary under the statutory provision of law. And yet the Magistrate's clerk was called to give evidence as to what the prisoner had said independently of the prisoner's confession as contained in the record.

[MELVILL, J.:—But the English statute does not contain the prohibition in Section 91 of our Evidence Act.]

Where a document is inadmissible for want of stamp or registration, it may be used for the purpose of refreshing one's memory—see 2 Taylor on Evidence, Section 1268, and Section 159 of the Evidence Act. This case may be remanded in order that evidence may be taken in proof of the confession of the accused.

Ghanashám Nilkanth in reply:—The contention, that the accused's signature or mark is required only when the statement of the accused is not taken down in the handwriting of the Magistrate, is both fallacious and opposed to the drift and natural construction of Section 346. The making of a memorandum does not give the examination of the accused the character of a record. If clause 1 be put together with

(*g*) 3 Leach, 552.

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clause 3 of Section 346, it will be seen that the examination must be called a record, whether it is taken down in the handwriting of the Magistrate or not. The limit, therefore, sought to be put on the provision which requires the signature or mark of the accused, is groundless. The record must be signed or attested by the mark of the accused in either case. In the present case, it not having been so signed or attested, has been illegally admitted in evidence.

With respect to the 2nd question, it has been contended that the confession of Bái Ratan was taken at a preliminary inquiry. The expression in Section 122, that when the Magistrate, *on inquiry*, shall be satisfied that the confession was freely made, then only he shall record it, has been relied on by the Goverment Pleader to settle the meaning of the action of the Magistrate who recorded the confession in this case. That inquiry only means an inquiry into the voluntariness of the confession. The first portion of the section shows in antithesis that the Magistrate, who records the confession, shall forward the same to the Magistrate *by whom the case is inquired into or tried*. The Magistrate, in the present case, has recorded the confession not upon an inquiry into the case. Besides, the authorities already cited show that a preliminary inquiry means an inquiry before the committal or trial of a case, and that it must be held by a Magistrate having jurisdiction to commit for trial—Sections 357, 358, 471 of the Procedure Code. The confession of Bái Ratan was, therefore, not recorded at a preliminary inquiry, and, hence, the last proviso of Section 346 does not assist the prosecution in the present case. There is another reason why that proviso is not applicable. The proviso refers to a defect in recording the examination of the accused, while the statement of Bái Ratan was not an examination taken before a Magistrate having jurisdiction under Section 193 of the Criminal Procedure Code. The distinction of examination before a Magistrate having jurisdiction, and a confession to a Magistrate having no

jurisdiction, is drawn by Section 45 of the Code. Section 91 of the Indian Evidence Act completely bars the admission of oral evidence to prove the confession which is forthcoming. If the secondary evidence were admissible either under the Procedure Code or the Evidence Act, then the confession might have been permitted to be used to refresh the memory of the Magistrate under Section 159 of the Evidence Act. But as the case stands at present, the confession cannot be used at all.

The judgment of the Full Bench was delivered on the 18th September 1873 by—

WESTROPP, C.J. :—Four questions have been submitted to the present Full Bench by the Division Court.

Of these the first is: "Whether the statement or confession of the accused Bái Ratan is admissible in evidence, the same not having been signed by her ?"

This question depends upon the construction of Sections 122 and 346 of the Criminal Procedure Code, and upon the extent to which the latter section is applicable to the confession made under the former section.

Those sections are the substitutes for the latter part of Section 149 and for Section 205 of the late Criminal Procedure Code, neither of which contained any provision as to the accused signing the confession made by him or his examination.

With Section 205 of that Code, the Courts required a strict compliance: *Reg.* v. *Mussamut Niruni* (*h*), *Reg.* v. *Bhikaree* (*i*), *Reg.* v. *Timmi* (*j*), *Reg.* v. *Kallá* (*k*), *Reg.* v. *Pevádi* (*l*), *Reg.* v. *Vithojí* (*m*), *Reg.* v. *Ganú* (*n*). In some of the last-mentioned instances, the Court remanded the cases in order that the evidence of the writer of the alleged confession or

(*h*) 7 Calc. W. Rep. Cr. R. 49. (*i*) 15 Ibid. 63.
(*j*) 2 Bom. H. C. Rep. 125 2nd. ed. (*k*) Ibid. 395.
(*l*) Ibid. 397. (*m*) Ibid. 398. (*n*) Ibid. 399.

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of some other person present might be taken to prove that it had been made, the record of it being inadmissible on account of its want of accordance with the requirements of Section 205.

In *Reg.* v. *Váhálá Jethá* (*o*), it was held that the words "a Magistrate" in Section 149 of the same Code mean "any Magistrate," and, therefore, that although the practice of taking prisoners before a Magistrate, not having jurisdiction to try or commit for trial, for the purpose of having a confession recorded, was not generally desirable, yet such a confession was legally admissible.

The new Code, adopting that decision, has, in its 22nd and 122nd sections, expressly authorized any Magistrate to record a confession of the accused. The final clause in Section 45 renders such confessions, as that section relates to, admissible in evidence in all subsequent proceedings.

The confession of Bái Ratan has been recorded by a Second Class Magistrate, who has not original jurisdiction either to commit or try such a case as the present, and who was not deputed under Section 115, by a Magistrate having jurisdiction, to hold a preliminary inquiry or otherwise to dispose of it. Accordingly, the Second Class Magistrate only recorded the confession, the matter having been brought before him previously to the inquiry held by the committing Magistrate.

Section 122 of the new Criminal Procedure Code especially treats of such confessions. It is to be noted that it is part of the Chapter (X.) relating to "investigation" by the Police, which is carefully distinguished in the glossary of the Code (Section 4) from "inquiry" by a Magistrate or Court; and that Sections 21 (cl. 7) and 22cl. 2.) describe such confessions as confessions "during a Police investigation."

Section 122 enacts that "Any Magistrate may record any statement made to him by any person, or *any confession made*

(*o*) 7 Bom. H. C. Rep. Cr. Ca. 56.

to him by any person accused of an offence by any Police Officer or other person. Such statements shall be recorded in the manner hereinafter prescribed for recording evidence, *and such confession shall be taken in the manner provided in Sections* 345 *and* 346, *and shall, when recorded, be forwarded to the Magistrate by whom the case is inquired into or tried.*" Pausing here, it is, with especial reference to the concluding passage in Sec. 346, important to remark: 1st—that Sec. 122 only provides that the confession "shall be taken," (and not that it shall also be otherwise dealt with, or its defects, if any, supplied,) "in the manner provided in Sections 345 and 346;" 2ndly—that the taking of such a confession is clearly distinguished in Sec. 122 from the inquiry into the case, because that section provides that when the confession is recorded, it shall "be forwarded to the Magistrate by whom the case is inquired into or tried." The same section then proceeds thus: "No Magistrate shall record any such confession unless, upon inquiry, he has reason to believe that it was made voluntarily, and he shall make a memorandum at the foot of any such confession to the following effect: 'I believe that this confession was voluntarily made.'

(Signed) A. B.
Magistrate."

The inquiry, spoken of in this latter portion of Sec. 122, is not an inquiry into the case, but simply into the question whether the confession is voluntarily made.

Section 346, taken *per se*, would appear to apply only to examinations of the accused taken on inquiries (as distinguished from investigations) and trials. We find it in the sub-division of Chapter XXV. relating to "The examination of accused persons" which seems to be quite a distinct process from a statement or confession made during the Police investigation. Were this not intended to be so, Sec. 122 would have been superfluous.

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Section 346 consists of five portions, which, for convenience of reference, we have marked with the letters (*a*), (*b*), (*c*), (*d*) and (*e*), and enacts that :

(*a*)—"Whenever an accused person is examined, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, and shall be shown or read to him, and he shall be at liberty to explain or add to his answers.

(*b*)—"When the whole is made conformable to what he declares is the truth, the examination shall be attested by the signature of the Magistrate or Sessions Judge, who shall certify under his own hand that it was taken in his presence and in his hearing, and contains accurately the whole of the statement made by the accused person.

(*c*)—"In cases in which the examination of the accused person is not recorded by the Magistrate or Sessions Judge himself, he shall be bound, as the examination proceeds, to make a memorandum thereof in the vernacular of the District, or in English, if he is sufficiently acquainted with that language; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall be annexed to *the record*. If the Magistrate or Sessions Judge is precluded from making a memorandum as above required, he shall record the reason of his inability to do so.

(*d*)—"The accused person shall sign or attest by his mark such record.

(*e*)—"If the examination be taken in the course of a preliminary inquiry, and the Court of Session find that the provisions of this section have not been fully complied with, it shall take evidence that the prisoner duly made the statement recorded: Provided that, if the error does not prejudice the prisoner, it shall not be deemed to affect the admissibility of the statement so recorded."

For the Crown it has been argued that this 346th section contemplates two cases: 1st—where the examination is taken down in the handwriting of the Magistrate or Sessions Judge himself, and is signed by him; 2nd—where it is taken down in the handwriting of another person in the presence of the Magistrate or Sessions Judge, but is signed by the Magistrate or Sessions Judge; in which second case he is required (if able) to make the memorandum mentioned in clause (*c*); and that the signature or mark of the accused, mentioned in clause (*d*), is required only in the second case, inasmuch as the confession, not being written by the Magistrate or Sessions Judge himself, stands in greater need of confirmation of its accuracy by the signature or mark of the accused, than in the first case, when it is written by the Magistrate or Sessions Judge personally.

We do not concur in that argument.

Were we to refer the phrase "such record" in clause (*e*) to its immediate antecedent, the record, which the accused person would be required to sign, would be that of the inability of the Magistrate or Sessions Judge to make the memorandum enjoined in clause (*d*). To attribute such an intention to the Legislature would be absurd. Moreover in Secs. 333, 334, and 335, where a similar memorandum is required, no special safeguard is provided. Whether the examination is written down by the Magistrate or Sessions Judge himself, or by some other person for him, and in his presence and hearing, the record of it must be shown or read to the accused person, who has in either case an equal opportunity of explaining or adding to his answers; so that we see no greater reason for requiring his signature to it in one case than in the other. The reason for requiring that signature was probably the same in both cases, namely, to furnish a new and strong test whether the confession was voluntary and free from controlling influences, and to afford him a *locus penitentiæ*—an ultimate opportuuity, before the final completion of the record,

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of indicating that the confession was not voluntary, or was made under improper influence, if such were the case, and also an additional opportunity of denying the accuracy of the record of that confession.

We think, too, that if the Legislature intended that the signature of the accused should be required to the record in the event only of its having been written by some person other than the Magistrate or Sessions Judge, it would, as it easily might, have expressly said so.

It follows from this that, in our opinion, the confession in the present case was defective for want of the signature of the accused. The error of the Second Class Magistrate, in omitting to ask her to sign, was, having regard to the probable intention of the Legislature in requiring the signature of the accused, of such a nature as may have seriously prejudiced her, and, therefore, as we think, rendered the thus imperfect record of the confession inadmissible in evidence against her. See *Reg.* v. *Mussamut Niruni* and *Reg.* v. *Bhikaree* (*supra*).

It remains, then, to be decided whether this error can now be rectified; and, in considering that question, we should consider also the 2nd point submitted to us by the Division Court, viz: "If the document be not admissible, whether oral evidence is admissible to prove that a confession was made by Bái Ratan, and the terms of that confession?"

The 91st section of the Indian Evidence Act (I. of 1872) enacts that: "When the terms of a contract, or grant, or of any other disposition of property, have been reduced to the form of a document, and *in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof* of the terms of such contract, grant, or other disposition of property, or *of such matter*, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained."

Then follow some exceptions and explanations not bearing upon the present case.

With a full recollection of Sec. 65, cl. (*e*) and of Sec. 74 of the same Act, we must say that this does not appear to us to be a case in which secondary evidence of the contents of the original confession would be of any avail. The primary evidence is itself forthcoming, and has been produced, and secondary evidence of its contents, whether such secondary evidence is a copy or oral evidence of its contents, would, if full and accurate, disclose the defect in the original record, namely, the absence of the signature of the accused, and the case would, accordingly, remain precisely in the same condition as it now is.

The provision in Sec. 91 of the Evidence Act that "in all cases in which any matter is required by law to be reduced to the form of a document," no evidence shall be given in proof of such matter except the document itself, must, accordingly, be regarded as an objection fatal to the adoption of the course, very justly sanctioned, before the passing of the Evidence Act of 1872, in the cases in Vol. II. Bombay High Court Reports, pp. 395 to 399, already mentioned (*i.e.*, remanding the case in order that oral evidence of the writer, or some other person or persons, present when the confession was made, may be taken as to what the accused thensaid, and as to the circumstances under which he said it), unless the final clause in Sec. 346 of the Criminal Procedure Code is applicable to confessions taken under Sec. 122 of that Code. If it be so, it would, as well because it is a special, as because it is a later enactment, override Sec. 91 of the Evidence Act, and evidence might be taken by the Session Court that the prisoner (accused) "duly made" a confession to the same effect as that recorded. By "duly made" is probably meant made in such a manner as not to be rendered inadmissible by Secs. 24, 25, or 26 of the Evidence Act, or Secs. 119, 120, and 121 of the new Criminal Procedure Code. [The same remark would apply to those

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words in the ultimate clause in Sec. 45 in that Code.] It has already been remarked that there is nothing in Sec. 122 of that Code which *per se* would have the effect of rendering the final clause of Sec. 346 applicable to confessions recorded under Sec. 122. The lastmentioned section simply prescribes that confessions shall be "taken" in the manner prescribed in Secs. 345 and 346, but is silent as to the mode, if any, in which irregularities may be cured. The question, then, is whether the language in the final clause of Sec. 346 is, of itself, sufficient to include confessions under Sec. 122. We are of opinion that it is not. The examination spoken of in the final clause of Sec. 346 is an "examination taken in the course of a preliminary inquiry." It should be noted that the term used is not "inquiry" simply. Were it so, the description of that term given in the Glossary (Sec. 4) might be resorted to, though we are not now prepared to say positively that we could regard the recording by a Magistrate (without power to commit for trial or to try) of a confession under Sec. 122 as an inquiry within Sec. 4. By the term "preliminary inquiry," which is the phrase employed in the final clause of Sec. 346, we understand such inquiries as are the subject of Chapters XIV. and XV. of the new Code. The phrase "preliminary inquiry" actually occurs in Secs. 115, 346, 357 and 471, and in the margin to Sec. 189 only; but the context shows that, in the majority of cases in which "inquiry" is mentioned, it means inquiry by the committing Magistrate. The examination of the accused, taken in the course of preliminary inquiry mentioned in Sec. 346, is the examination taken during such inquiry by the Magistrate under Sec. 193, and rendered admissible in evidence by Sec. 248. The distinction between examination and confession is plainly drawn in the two last clauses of Sec. 45.

It is worthy of notice that the power to take evidence, *aliunde*, of the examination of the accused, when the record of it is irregular, is, by Sec. 346, intrusted to the Court of Session only. So that in the case of such a record, as that in

the present case, of the confession of the accused being forwarded to a Magistrate having jurisdiction to commit or try, he could not remedy the irregularity by taking evidence, *aliunde*, of the confession.

For these reasons, we think that the first and second questions, submitted to us by the Division Court, must be answered in the negative.

It having been admitted by the Government Pleader that, without the confession, there is not sufficient evidence to sustain the conviction, and that too being, as we are informed, the opinion of the Division Court, Sec. 167 of the Evidence Act is not applicable here, and, for the same reason, it being impossible to maintain that the accused has not been prejudiced in her defence by the improper admission of the confession at the trial, Sec. 283 of the new Criminal Procedure Code is also inapplicable. Hence our answers to the first and second questions must be fatal to the conviction, and it becomes unnecessary for us to answer the third and fourth questions.

This case has been well argued on both sides, and we are especially indebted to Mr. Ghanashám Nilkant, who has generously volunteered his valuable services on behalf of the accused. She would otherwise have been *inops consilii*.

The case is remitted for final disposal to the Division Court.

25th September 1873. On this day the Division Bench (MELVILL and NANABHAI HARIDASS, JJ.) directed the accused Bái Ratan to be acquitted and discharged.

Accused acquitted.

NOTE BY THE EDITOR :—The above Full Bench ruling was followed in *Reg.* v. *Apa bin Kesu* decided by MELVILL and PINHEY, JJ., on the 25th September 1873.