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affirmative, and for the defendant, so far as any claim of the plaintiff upon the present defendant is concerned. The bond, of course, may have been kept alive, for all the Court in this case knows, as against Damji Chagpur. On the fifth and ninth in the negative, and for the defendant. No finding on issues 6, 7 and 8.

The suit must be dismissed, and with costs.

Attorneys for the plaintiff.—Messrs. *Hearn, Cleveland and Little.*

Attorneys for the defendant.—Messrs. *Tyabji and Sayani.*

4 B. 15=4 Ind. Jur. 412.

APPELLATE CRIMINAL.

Before Sir Michael Roberts Westropp, Kt., Chief Justice.

IMPERATRIX v. SIRSAPA.* [5th August, 1879.]

Statement before a Magistrate—Confessions—Refusal to sign—The Indian Penal Code, s. 180—The Code of Criminal Procedure (X of 1872), ss. 122 and 346.

An accused person who refuses to sign a statement made at his trial in answer to questions put by the Court, commits no offence punishable under s. 180 of the Indian Penal Code.

[F., 4 Cr.L.J. 205=3 L.B.R. 199; R., 16 Ind. Cas. 521=8 P.R. 1912 (Cr.)=245 P.L.R. 1912=37 P.W.R. 1912 (Cr.)=13 Cr.L.J. 718.]

THIS was a reference under s. 296 of the Code of Criminal Procedure by J. Elphinstone, Magistrate of the District of Dharwar.

The Second Class Subordinate Magistrate of Hubli fined the accused Rs. 200 for refusing to sign his statement made in answer to the Magistrate while the accused was being tried by him for an offence. Though it is optional with an accused person, under s. 343 of the Code of Criminal Procedure, to [16] answer or refuse to answer any questions put to him, the District Magistrate felt a doubt as to whether, when the accused did actually make a statement, it was obligatory on him to sign it. He accordingly referred the case for the orders of the High Court.

There was no appearance either on behalf of the accused person or the Crown in the High Court.

The case was considered by Mr. Justice Kimball and Mr. Justice F. D. Melvill, who having differed in opinion, it was referred to the Honourable the Chief Justice. Their Lordships delivered judgments as follows:—

F. D. MELVILL, J.—The question here is, whether a prisoner, when being examined by a Court, can by refusing to sign his statement be considered as having committed an offence punishable under s. 180 of the Indian Penal Code.

Section 346 of the Criminal Procedure Code lays down that the accused person shall (after the statement has been read over to him and made conformable to what he declares to be the truth) sign such statement. Now, it may be that this is equivalent to a mere direction that the Magistrate or Court shall take his signature to it. But, even taking this view of it, it seems to me that s. 180 of the Indian Penal Code still applies in the case of a refusal on the part of the accused to sign when called upon. The section is "whoever refuses to sign any statement

* Reference No. 96 of 1879.

made by him when required to sign that statement by a public servant legally competent to require that he shall sign that statement; shall be punished, &c., &c." In the present case the Court was legally competent to require that the prisoner should sign the statement, and it has required him to sign the statement, and he has refused to do so. All the elements of the offence are, it seems to me, present, and I do not see, therefore, how we can say that the conviction was illegal.

If we take the words "the accused person shall sign, &c.," in s. 346 of the Criminal Procedure Code not merely as directory that the Court shall take the signature of the accused, but as obligatory on the accused, the case becomes still stronger against him.

[17] I do not think that it can fairly be argued that because it is optional with the accused to answer questions, it is, therefore, optional with him to sign the statement made. The law declares that he need not answer questions unless he likes; but it seems to be intended that if he chooses to answer questions he shall be bound by his answers when they have been recorded in the prescribed way, and that he shall not be allowed to draw back from them by a refusal to conform to the procedure which the law has laid down.

The only question, therefore, which has to be considered now is, in my opinion, the sentence, and for that it is necessary to look at the vernacular proceedings.

KEMBALL, J.—I am unable to concur in thinking that an accused person who refuses to sign his examination, has, under s. 346 of the Criminal Procedure Code, rendered himself liable to be punished for contempt under s. 180 of the Indian Penal Code. The point must, therefore, be referred to a third Judge under 271-B of the Criminal Procedure Code (X of 1872), and we agree to refer it to the Chief Justice.

The question seems to turn on the meaning to be given to the words in s. 346 of the Criminal Procedure Code—"The accused person shall sign or attest by his mark such record." Reading s. 346 with the preceding sections coming under the head "of the examination of accused persons" these words appear to me to contain nothing more than a direction to the Magistrate or Sessions Judge as to the manner of recording such examinations, and in no way to cast any obligation upon the accused. If this be so, it cannot, I think, be said that the Magistrate or Sessions Judge is legally competent to require the accused to sign his statement within the meaning of s. 180 of the Indian Penal Code.

The point is one of considerable importance, and it is strange that the question has not, as far as we can learn from the records, come up to this Court before.

Their Lordships having differed in opinion, the case was referred to the Chief Justice.

JUDGMENT.

[18] WESTROPP, C.J.—It is, I think, at the least, very doubtful whether s. 180 of the Penal Code is applicable to confessions made under s. 122 of the Criminal Procedure Code, or to statements by accused persons made in reply to questions by the Court under ss. 342 to 346 (both inclusive) of the same Code. It seems to me of the essence of such confessions and statements that they should be voluntarily made, and they cannot be considered as complete until signed by the accused person. That is the view which was unanimously adopted in our Full Bench decision

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Regina v. Bai Ratan (1), a case in which the provision of the Criminal Procedure Code were fully considered by the full Bench before the decision was arrived at. We have there (at p. 177) said: "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 answer, so that we see no greater reason for requiring his signature to it in one case than in the other. The reason 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 to him a *locus penitentiae*—an ultimate opportunity, before the final completion of the record, 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." And, again (at p. 178), we said: "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 evidence inadmissible in evidence against her."

[19] The view which the Full Bench there took of the object of the Legislature in providing that the signature or mark of the accused person should be attached to the record, seems to me to be wholly inconsistent with the use of any compulsion, by fine or otherwise, for the purpose of obtaining such signature or mark.

Bai Ratan's case has been frequently followed here and in (amongst other cases) *Reg. v. Apa bin Kesu* (2) and *Reg. v. Shivya* (3), which latter case is noticed, but not apparently assented to, in *Empress v. Ramanjeyya* (4), a Madras case, where, however, it does not appear, so far as we can judge from the report, that the Court referred to or considered the reasoning in the Full Bench decision in Bai Ratan's case.

My strong impression is, that s. 180 of the Penal Code is not applicable to the signatures or marks made to such confessions and statements as those treated of in ss. 122 and 346 of the Criminal Procedure Code.

I think, therefore, that the conviction ought to be quashed, and the fine, if paid, returned.

Order accordingly.

(1) 10 B.H.C.R. 166.
(3) 1 B. 219.

(2) 10 B.H.C.R. 181.
(4) 2 M. 5.