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provisions of section 20 should apply in favour of the decree-holders, that the payment should appear in the hand-writing of the judgment-debtors. The decree-holders urge that this point should be taken as one arising out of a question of fact not decided in the court below. We think, however, that the decree-holders were, both in the first court and in the lower appellate court clearly put on proof that the part payment they relied on was a good part payment within the meaning of section 20. Furthermore, if the decree-holders relied on part payment as being a part-payment within the meaning of section 20, it lay on them to show that the part payment was in the hand-writing of the judgment-debtors. It is absolutely clear on reading the judgment of the court below that the part payment did not appear in the hand-writing of the judgment-debtors. If it had, the decree-holders would have certainly produced and proved it when they were seeking execution of the first decree, and there never would have been any doubt on the question whether or not the payment had been made. In the present case the decrees are extremely stale, the suit having been instituted in the year 1895 and the decree *nisi* made in the year 1896. We allow the appeal, set aside the orders of both the courts below, and dismiss the application with costs.

Appeal decreed.

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July 12.

FULL BENCH.

Before Sir George Knox, acting Chief Justice, Mr. Justice Banerji, Mr Justice Richards, Mr. Justice Griffin and Mr. Justice Alston.

EMPEROR *v.* MISRI.*

Act No. I of 1872 *(Indian Evidence Act), sections* 8, 24, 25, 26, 27—*Accused induced to point out the hiding place of stolen property—Conduct—Admissibility of evidence—Criminal Procedure Code, section* 163—*Confession.*

M was charged with the murder of a girl. In the hope of pardon being given to her, she took the police to a certain place and pointed out and produced certain ornaments which the deceased was wearing at the time of her death. *Held* that evidence was admissible to show that the accused did go to a certain place and there produce certain ornaments.

Such evidence was admissible under section 8 of the Indian Evidence Act, irrespective of whether the conduct of the accused was or was not the result of inducement offered by the police.

* Criminal Appeal No. 460 of 1909, from a conviction and sentence of W. R. G. Moir, Sessions Judge of Jaunpur, dated the 12th July 1909.

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THE facts of this case were as follows:—

A girl named Misri was murdered, and certain ornaments which she was wearing were not found on her corpse. The accused was suspected and arrested and kept in custody for over 24 hours. She then took the police to a certain place and pointed out a spot where certain ornaments were found. The Sessions Judge found that while she was in police custody an inducement was held out to her that nothing would happen to her if she gave up the ornaments. The Sessions Judge on the evidence found the accused guilty and sentenced her to death. The convict appealed. The appeal came on for hearing before RICHARDS and ALSTON, JJ., who recommended a reference of the case to a Full Bench with the following order:—

"We think that it would be desirable before deciding this appeal to refer a question of law arising in the case for the consideration of a Full Bench.

"In this case Musammat Misri has been found guilty of murder of Misri, a little girl of twelve years, and sentenced to death. Part of the evidence against the accused consists of the fact that she took the police and others to a certain place and there pointed out and produced certain ornaments which are proved to have been worn by the child immediately before its disappearance. We find as a fact that the police officer made or caused to be made a promise to the accused prior to her pointing out the ornaments, to the effect that if she produced the girl's ornaments she would be let off; and we also find that the discovery of the ornaments by the accused was caused by this promise.

"The question for the consideration of the Full Bench is whether under these circumstances evidence was admissible to show that the accused as a matter of fact did go to a certain place and there produce the ornaments in question.

"We direct that the papers and this order be laid before the Hon'ble the Acting Chief Justice with a view to the above question being considered by a Full Bench.

"The appeal will be put up for disposal soon after the decision of the Full Bench."

Mr. *G. W. Dillon*, as *amicus curiæ*, for the appellant:

The real section to be considered is section 163 of the Code of Criminal Procedure. The inducement must be an inducement which has reference to the accused person, proceeding from a person in authority, and sufficient in the opinion of the court to cause the accused to believe that by making it he would gain an advantage. There is no provision saying what is to happen if the provisions of section 163 of the Code of Criminal Procedure are violated. This depends upon the object and scope of the

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enactment. The words of the section are imperative and prohibitory.

The general rule of interpretation is thus given in Maxwell's Interpretation of Statutes, 3rd edition, at p. 527 :—" A duty imposed on a court or public officer in the exercise of a power conferred upon him is imperative. " *Re Dale* (1) and *Howard* v. *Bodington* (2) were cited. Under section 163 there was a duty cast upon a police officer not to offer an inducement, threat or promise. That duty was imposed upon him in the exercise of a power conferred, that is, the power to investigate offences.

The provisions of section 163 are therefore to be interpreted as imperative. Section 24 of the Evidence Act is a general section; but section 163 of the Code of Criminal Procedure occurs in a chapter which lays down how police officers are to make investigations. Under the former section the test is whether the confessions are voluntary or otherwise, under the latter all confessions to police officers are unworthy of credit. Reference was made to sections 191 and 233 of the Code, and to *Emperor* v. *Chedi* (3). If the provisions of these sections were directory only, the irregularity could have been cured; but see *Subrahmania Aiyar* v. *King-Emperor* (4). Here the words which occur in section 163 were in those sections interpreted as imperative. The general rule is that words are to be interpreted in the same way throughout an Act. The words of section 163 should therefore be interpreted as imperative.

Section 27 of the Evidence Act is not a proviso to section 24; compare section 150 of Act No. XXV of 1861. It is a substantive section; *Queen* v. *Dhuram Dutt*, (5) and *In re Bishoo Manjee* (6). In effect it has on the Statute Book of 1861.

Mr. *W. Wallach* (Government Advocate), for the Crown. Section 163 is to be found in the chapter headed as "Information to the police. Other powers to investigate." The direction given in section 163 is an advice to a public officer. Originally the provisions of section 163 were enacted in Act XXV of 1861 as section 146. In 1872 when the Evidence Act was introduced, sections regarding evidence were taken out of

(1) (1881) 6 Q. B. D., 376.
(2) (1877) 2 P. D., 203.
(3) Weekly Notes, 1905, p. 258.
(4) (1901) I. L. R., 25 Mad., 61.
(5) (1867) 8 W. R. Cr. R., 13.
(6) (1868) 9 W. R. Cr. R., 16.

the Code of Criminal Procedure. That is an indication of the intention of the Legislature that we should look to the Evidence Act for the decision of what is or is not admissible in evidence. If section 163 is to be treated as dealing with matters of evidence, why were sections 148 to 150 of Act XXV of 1861 transferred from the Code of Criminal Procedure to the Evidence Act and not embodied in the new Code of Criminal Procedure?

Section 27 of the Evidence Act is a proviso to preceding sections, including section 24, and makes certain facts evidence which otherwise would not have been evidence, irrespective of the question whether an inducement was used or not. It is noticeable that up to 1872 there was no complete Evidence Act. There were only fragmentary provisions relating to evidence up to then. In the year 1872 the Evidence Act was passed, as well as a new Code of Criminal Procedure. Both were to come into effect on the 1st of September 1872. Rules relating to evidence which formerly had found a place in the Code of Criminal Procedure were transferred to the Evidence Act. This shows that the intention of the Legislature is that we must turn to the Evidence Act to find whether evidence of the discovery of the stolen property is to be excluded when the provisions of section 163 of the Code of Criminal Procedure are disregarded.

It is also noticeable that there are a few special provisions in the Code of Criminal Procedure dealing with special rules of evidence, such as medical evidence. This is Chapter XLI and is headed "Special Rules of Evidence." There is no provision in this chapter excluding the evidence. Section 163 does not, when strictly construed, limit a police officer's powers except for the purpose of obtaining statements from the accused. The non-admissibility of statements when obtained in defiance to provisions of section 163 is dealt with in the Evidence Act; *Queen* v. *Babu Lal* (1).

Section 163 must be read with section 24 of the Evidence Act. The word "it" in section 24 must be read as confession. Section 163, of the Code of Criminal Procedure is a corollary to section 24, of the Evidence Act. Sections 161, 162, 164 compared and discussed. Section 27 of the Evidence Act is wide enough. It

(1) (1884) I. L. R., 6 All., 509, 545.

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refers to information given to police officers. The fact that the accused went to the dunghill and disclosed the jewels is admissible, whatever may have been the inducement offered.

The fact that section 163 deals with statements is clear from the position of section 163 in the Act, and from the second paragraph of the section, which deals definitely with statements only. Section 162 and section 164, between which section 163 occurs, clearly deal with statements and confessions.

The order of the Court was delivered by

KNOX, ACTING C. J.—The question which has been referred for the consideration of the Full Bench is, whether, under the circumstances which will be presently pointed out, evidence was admissible to show that an accused as a matter of fact *did* go to a certain place and there produce certain ornaments. The circumstances referred to are briefly these. One Musammat Misri has been found guilty by the Court of Session of the murder of a girl for the sake of her ornaments and sentenced to death. Part of the evidence against her consisted of the fact that she took the police and others to a certain place, and there pointed out and produced certain ornaments, which are proved to have been ornaments worn by the child immediately before its disappearance. The learned Judges of this Court, on considering the case submitted to them, found as a fact that the police officer made, or caused to be made, a promise to the accused, prior to her pointing out the ornaments, to the effect that if she produced the girl's ornaments she would be let off. They also found that the discovery of the ornaments by the accused was caused by this promise. It will be seen that what we have to consider is not the admissibility of statements, if any, made by the accused person, but merely, whether evidence as to the conduct and acts of the accused, resulting from, or at any rate committed before the inducement from the police officer can be said to have been fully removed, is or is not admissible.

Mr. *Dillon*, who undertook, at the request of the Court, to argue the case on behalf of the accused person, relied upon section 163 of the Code of Criminal Procedure. He pointed out, that this section was not merely directory, but imperative and prohibitive. While there was nothing in the Criminal Procedure Code to show

what will be the result of any disobedience of the law, he contended that, by the general rules of interpretation of Statutes, it should be held that such illegality resulted in nullification of all that followed, or could be said to follow, directly from it. The Indian Evidence Act, which was brought upon the Indian Statute book at the same time as the Code of Criminal Procedure of 1872, and was to come into force on the same date, was an Act, as its preamble shows, for the consolidation, definition and amendment of the law of evidence. We are of opinion that it is to the Indian Evidence Act, and not to the Code of Criminal Procedure, that we have to look as to whether the evidence in point is or is not admissible, the more so as there are to be found in the Criminal Procedure Code certain sections, in chapter XLI entitled "Special Rules of Evidence." If the Legislature had thought it necessary in criminal cases to depart from the general rules laid down in Act No. I of 1872, it is more than probable that any such exceptions would be found in the chapter in question. There are no exceptions to be found there on this particular point.

The law as to confessions is stated in sections 24 to 30 of the Indian Evidence Act of 1872. The Act justly views all confessions with something of suspicion. In section 24 it lays down that the confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the Court to give the accused person grounds, which would appear to him reasonable, for supposing that by making such confession he would gain any advantage, or avoid any evil of a temporal nature, in reference to the proceedings against him. Then follow sections which state that no confession made to a police officer is to be proved, as against the person accused of any offence, and that no confession made by any person whilst he is in the custody of a police officer, unless made in the immediate presence of a Magistrate, shall be proved against him. Last of all comes section 27, which provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so

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much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved. The object of this section was to provide for the admission of evidence which, but for the existence of this section, could not, in consequence of the preceding sections, be admitted in evidence. By it information, even if it amounted to a confession and was made to a police officer under any circumstances, could be proved as against the accused, or rather so much of it could be proved as related distinctly to the fact thereby discovered. The section does not profess to and does not deal with evidence as to the conduct or acts of the accused, which is admissible under section 8 or any of the preceding sections of the Indian Evidence Act and is subject to no limitation so long as it is relevant.

The learned counsel who appeared for the accused wished us to limit the force of section 27 and to read it as qualifying only section 26 and not sections 24 and 25. We see no ground for such limitation, and we hold that that section is a qualifying section to the three sections which immediately precede.

Our answer to the reference then is that, under the circumstances set out by the referring Judges, evidence was admissible to show that the accused as a matter of fact did go to a certain place and there produce the ornaments in question.

The case was then laid before RICHARDS and ALSTON, JJ. Their Lordships after dealing with the evidence passed the following order:

Of course in weighing evidence of this kind obtained under an inducement consideration must always be given to the fact that the evidence was in all probability secured by the promise held out. There may be cases where the circumstances are such, that the fact that the discovery was induced by a promise would raise a doubt as to the genuineness of the discovery and render the evidence almost worthless. In the present case, however, we think there can be no doubt that the discovery was perfectly genuine. . . . . We dismiss the appeal, confirm the conviction and sentence and direct that the latter be carried into execution according to law."

[*Cf.* also Taylor on Evidence, 9th edn. § 903.—ED.]

Appeal dismissed.