,000 agreed to be paid by the estate of Hansráj Mánkuvarbái, &c.", I do not consider it affects the at Jumnábái chose to make such payment and ipt in that form, cannot operate, it is evident, to tate of the defendant. Jumnábái did not represent e estate of her deceased husband.

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will be found as follows:—

t and second in affirmative and for the defendant. On he negative, and for the defendant. On the fourth in e, and for the defendant, so far as any claim of the the present defendant is concerned. The bond, of ave been kept alive, for all the Court in this case nst Dámji Chágpur. On the fifth and ninth in the or the defendant. No finding on issues 6, 7 and 8. st be dismissed, and with costs.

r the plaintiff.—Messrs. *Hearn, Cleveland and Little*:

or the defendant.—Messrs. *Tyabji and Sayani.*

APPELLATE CRIMINAL.

Before Sir M. R. Westropp, Kt., Chief Justice.

IMPERATRIX *v.* SIRSA'PA'.*

1877 *August 5.*

Magistrate—Confessions—Refusal to sign—The Indian Penal -The Code of Criminal Procedure (*X of* 1872), *Secs.* 122 *and* 346.

son who refuses to sign a statement made at his trial in answer y the Court, commits no offence punishable under section 180 of Code.

reference under section 296 of the Code of Crimi- o by J. Elphinstone, Magistrate of the District of

d Class Subordinate Magistrate of Hubli fined the 200 for refusing to sign his statement made in e Magistrate while the accused was being tried an offence. Though it is optional with an accused section 343 of the Code of Criminal Procedure, to

* Reference No. 98 of 1879.

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answer or refuse to answer any questions put to hi
Magistrate felt a doubt as to whether, when th
actually make a statement, it was obligatory on
He accordingly referred the case for the orders of th

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

The case was considered by Mr. Justice Kemball ar
F. D. Melvill, who having differed in opinion, it wa
the Honourable the Chief Justice. Their Lordsh
judgments as follows :—

F. D. MELVILL, J.—The question here is, whether a
being examined by a Court, can by refusing to sigı
be considered as having committed an offence pu
section 180 of the Indian Penal Code.

Section 346 of the Criminal Procedure Code l
the accused person shall (after the statement has
to him and made conformable to what he decla
truth) sign such statement. Now, it may be that thi
to a mere direction that the Magistrate or Court
signature to it. But, even taking this view of it, i
that section 180 of the Indian Penal Code still
case of a refusal on the part of the accused to sig
upon. The section is "whoever refuses to sign a
made by him when required to sign that stateme
servant legally competent to require that he s
statement, shall be punished, &c. &c." In the pre
Court was legally competent to require that the pri
sign the statement, and it has required him to sign tl
and he has refused to do so. All the elements of the
it seems to me, present, and I do not see, therefore,
say that the conviction was illegal.

If we take the words "the accused person shall
section 346 of the Criminal Procedure Code not merely
that the Court shall take the signature of the acc
obligatory on the accused, the case becomes still str
him.

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ink that it can fairly be argued that because it is the accused to answer questions, it is, therefore, him to sign the statement made. The law declares not answer questions unless he likes; but it seems ed that if he chooses to answer questions he shall his answers when they have been recorded in the y, and that he shall not be allowed to draw back a refusal to conform to the procedure which the wn.

estion, therefore, which has to be considered now, on, the sentence, and for that it is necessary to look proceedings.

I am unable to concur in thinking that an accused ses to sign his examination, has, under section 346 Procedure Code, rendered himself liable to be ontempt under section 180 of the Indian Penal nt must, therefore, be referred to a third Judge the Criminal Procedure Code (X of 1872), and we to the Chief Justice.

seems to turn on the meaning to be given to the on 346 of the Criminal Procedure Code—"The shall sign or attest by his mark such record." 346 with the preceding sections coming under the examination of accused persons" these words contain nothing more than a direction to the sions Judge as to the manner of recording such in no way to cast any obligation upon the be so, it cannot, I think, be said that the ession Judge is legally competent to require the his statement within the meaning of section 180 enal Code.

one of considerable importance, and it is strange on has not, as far as we can learn from the records, Court before.

ips having differed in opinion, the case was referred astice.

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WESTROPP, C.J.—It is, I think, at the least,
whether section 180 of the Penal Code is applicable
made under section 122 of the Criminal Procedu
statements by accused persons made in reply to qu
Court under sections 342 to 346 (both inclusive) of t
It seems to me of the essence of such confessio
ments that they should be voluntarily made, and t
considered as complete until signed by the accused
is the view which was unanimously adopted in
decision *Regina* v. *Bái Ratan*,[1] a case in which
of the Criminal Procedure Code were fully conside
Bench before the decision was arrived at. W
page 177) said: "Whether the examination is
the Magistrate or Sessions Judge himself, or by sc
for him, and in his presence and hearing, the re
be shown or read to the accused person, who ha
an equal opportunity of explaining or adding to
that we see no greater reason for requiring his s
one case than in the other. The reason requi
nature was probably the same in both cases, nam
a new and strong test whether the confession was
free from controlling influences, and to afford
penitentiæ—an ultimate opportunity, before the fin
the record, of indicating that the confession was n
was made under improper influence, if such were th
an additional opportunity of denying the accura
that confession." And, again, (at page 178) w
from this that, in our opinion, the confessio
case was defective for want of the signature of t
error of the Second Class Magistrate, in omittin
sign, was, having regard to the probable intentio
lature in requiring the signature of the accused, of s
may have seriously prejudiced her, and, therefor
rendered the thus imperfect record of the evidence
evidence against her."

(1) 10 Bom. H. C. Rep. 166.

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Full Bench there took of the object of the g that the signature or mark of the accused ned to the record, seems to me to be wholly ise of any compulsion, by fine or otherwise, aining such signature or mark.

has been frequently followed here and in *Reg*. v. *Apá bin Kesu*[1] and *Reg*. v. *Shivya*,[2] noticed, but not apparently assented to, in *ya*,[3] a Madras case, where, however, it does we can judge from the report, that the Court ered the reasoning in the Full Bench decision

ession is, that section 180 of the Penal Code is the signatures or marks made to such confesnts as those treated of in sections 122 and 346 rocedure Code.

re, that the conviction ought to be quashed, and returned.

Order accordingly.

C. Rep. 181. (2) I. L. R. 1 Bom. 219.
(3) I. L.R. 2 Mad. 5.

APPELLATE CIVIL.

Vestropp, Kt., Chief Justice, Mr. Justice M. Melvill and Mr. Justice F. D. Melvill.

LAINTIFF) v. R'ANU AND ANOTHER (DEFENDANTS).*

t—Bond—Act XVIII of 1869, *Sec.* 14, *Sch.* 2, *Art.* 11.

t consisted of two parts, the first containing a promise to sum of Rs. 12-8-0, and the second a further promise to give

eement the instrument required a stamp of eight annas ct XVIII of 1869 and sch. 2, art. 11; but that as a simple operly stamped with a stamp of two annas, and that, if the l his claim for grain, he could recove upon it the principa nterest.

reference under section 49 of the Indian Stamp

* Civil Reference, No. 9 of 1879.