As on the first of these issues neither the parties nor the Courts appear to have noticed the necessity for determining whether the actual site (as distinguished from the recess in which it is situated) was part of a public street, we think it fair to allow fresh evidence to be given.

The findings of the District Court should be returned within four months.

Case remanded.

APPELLATE CRIMINAL.

Before Mr. Justice Strachey and Mr. Justice Fulton.

QUEEN-EMPRESS *v.* NAGLA KALA.*

Evidence Act (I of 1872), Sec. 26—Confession—Confession made to a Magistrate of a Native State—Admissible—Evidence.

The words "police officer" and "Magistrate" in section 26 of the Indian Evidence Act (I of 1872) include the police officers and Magistrates of Native States as well as those of British India.

A confession made by a prisoner, while in police custody, to a First Class Magistrate of the Native State of Muli in Káthiáwár, and duly recorded by such Magistrate in the manner prescribed by the Code of Criminal Procedure (Act X of 1882), is admissible in evidence.

Queen-Empress v. *Sundar Singh*(1) followed.

APPEAL from the conviction and sentence recorded by Gilmour McCorkell, Sessions Judge of Ahmedabad.

The accused was tried for murder.

The evidence for the Crown consisted (*inter alia*) of a confession made by the accused while in police custody.

The confession was made to a First Class Magistrate of the Native State of Muli in Káthiáwár. It was recorded by the Magistrate in the manner prescribed by the Code of Criminal Procedure (Act X of 1882) and signed by the accused in the presence of the Magistrate.

At the trial the Magistrate was called as a witness for the Crown; and he deposed that he had taken down the prisoner's statement with his own hand in the prisoner's own words.

* Criminal Appeal, No. 50 of 1896.

(1) I. L. R., 12 All., 595.

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The statement was read and recorded as evidence against the accused.

The jury found the prisoner guilty of murder by a majority of 3 to 2.

The Sessions Judge concurring with the majority of the jury convicted the accused of murder and sentenced him to transportation for life.

Against this conviction and sentence the accused appealed to the High Court.

There was no appearance either for the Crown or for the accused.

PER CURIAM:—The papers in this case were called for to consider the admissibility, in evidence, of a confession by the prisoner recorded by a First Class Magistrate of the Muli State in Káthiáwár. The accused while making the confession was in the custody of a police sepoy, who was present in the room. The confession was regularly recorded in the manner usual under the Criminal Procedure Code in British districts: it was signed by the mark of the accused in the presence of the Magistrate, who also signed it and added the usual certificates. At the trial the Magistrate was examined as a witness and deposed that he was a First Class Magistrate in the Muli State, and that he had taken down the accused's statement with his own hand in the accused's own words. The statement was then read as evidence.

The only question that arises is whether section 26 of the Evidence Act renders the confession inadmissible. Section 26 is as follows: "No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person. Explanation:—In this section Magistrate does not include the heads of a village discharging magisterial functions in the Presidency of Fort St. George or in Burmah or elsewhere, unless such headman is a Magistrate exercising the powers of Magistrate under the Code of Criminal Procedure, 1882." There was no appearance for either the prisoner or the Crown, but in another case in which judgment will be delivered to-day we have had the advantage of hearing on this very point the arguments of

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Mr. Branson for the prisoners and the Government Pleader for the prosecution, and had our attention called to the cases reported in Weir's Reports, page 800, and *Queen-Empress* v. *Sundar Singh* [1].

We have then to consider whether the words "police officers" and "Magistrate" as used in this section are applicable only to British officials, or whether they apply also to the officials of Native States. In our opinion the words include the police officers and Magistrates of Native States as well as those of British India. In regard to the police, it would be unreasonable to hold that a confession made to a Native State policeman should be more admissible than one made to a British policeman. We agree with the opinion of Garth, C. J., in the *Queen* v. *Hurribole Chunder Ghose* [2], that in the Evidence Act the term police officer should be read "not in any strict technical sense, but according to its more comprehensive and popular meaning," and can see no justification for declaring that the officials ordinarily described as police officers in Native States, and performing in such States the functions of police, are not police officers within the meaning of sections 25, 26 and 27 of the Evidence Act.

Turning, then, to the word Magistrate in section 26 we think that it must equally include Magistrates in Native States. The statement in the General Clauses Act (I of 1868) that Magistrates shall include all persons exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure suggests that there may be Magistrates not belonging to the class included. In the *Empress* v. *Ramanjiyya* [3] the Madras High Court held that the word "Magistrate" in section 26 included village Munsifs. This was thought objectionable, and by Act III of 1891 the section was amended so as to exclude village headmen; but when making this amendment the Legislature must have been acquainted with the decision of the Allahabad High Court in the *Queen-Empress* v. *Sundar Singh* [1] (1890), and if it had desired to limit the meaning of the term Magistrate in section 26 to Magistrates under the Code of Criminal Procedure, nothing would have been easier than to say so. Such a limitation, however, which would exclude the use, in British Indian Courts, of a confession made

(1) I. L. R., 12 All., 595. (2) I. L. R., 1 Cal., 207.
(3) I. L. R., 2 Mad., 5.

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by a person while in police custody to a Magistrate in England or in a Foreign country, does not appear to have been intended.

In these circumstances we think we may safely follow the decision of the Allahabad High Court above referred to in so far as it admits in evidence a confession made in the presence of a Magistrate of a Native State. That decision, it is true, deals with the question of the admissibility of the record of the proceedings of a Magistrate of a Native State under section 80 of the Evidence Act, but as it is based on the construction of the word "Magistrate" in that section as including a Magistrate in a Native State it is an authority for a similar construction of the word in section 26; for it would, we think, be unreasonable to hold that the Legislature used the same word in different senses in the same Act. We, therefore, reject the appeal, which raises no other point open to argument under section 418 of the Criminal Procedure Code.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Hosking.

1896.
June 8.

MOTIRAM BALKRISHNA RAJMANE (ORIGINAL PLAINTIFF), APPELLANT, *v.* YESU AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Civil Procedure Code (Act XIV of 1882), *Sec.* 375—*Compromise—Court cannot refuse to record a compromise except where unlawful.*

The terms of section 375 of the Civil Procedure Code (Act XIV of 1882) are imperative, and a Court cannot refuse to record a lawful agreement of compromise, and to pass a decree in accordance therewith, merely because in its view it is too favourable to one of the parties.

SECOND appeal from the decision of Ráo Bahádur N. G. Phadke, First Class Subordinate Judge of Sholápur with appellate powers, confirming the decree of Ráo Sáheb G. B. Laghate, Subordinate Judge of Karmála.

The plaintiff sued to recover possession of certain land.

The defendant claimed that the property was his, alleging that the plaintiff had purchased the property *benámi* for him (the defendant).

* Second Appeal, No. 34 of 1895.