

1871. The order was : " It is ordered that the Official Assignee be at liberty
 HIRALAL SEAL to defend this suit, without the payment of any fees of office to the offi-
 SCHILLERS. cers of this Court, pursuant to the 25th rule of the Court for the Relief of
 Insolvent Debtors at Calcutta, provided that such fees shall be a primary
 charge on, and payable out of, the assets recoverable therein."

Attorneys for the Official Assignee: Messrs Carruthers and Dignam.

Before Mr. Justice Kemp and Mr. Justice Glover.

THE QUEEN v. GOSHTO LAL DUTT.*

*Confession—Attestation of the Magistrate—Code of Criminal Procedure (Act
 XXV of 1861), s. 205.*

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Under section 205 of the Code of Criminal Procedure, it is not necessary for the Magistrate to state in the body of the examination that the statement comprised every question put to the accused, and every answer given by him, and that he had had liberty to add to or explain his answers. A attestation at the foot of the examination is sufficient, but in case of doubt oral evidence should be admitted to prove the regularity of the proceeding.

THE (Offg.) Magistrate of Hooghly stated this case, which he referred to the High Court under section 404, Criminal Procedure Code, as follows :—

" The defendant Goshto Lal Dutt was, on the 28th day of February 1871, committed for trial before the Sessions Judge of Hooghly, by the Joint Magistrate of Hooghly, on charges of forgery, &c.

" The evidence against the accused consisted of a full confession, recorded in open Court by the mohurir of the Court in the presence and hearing of the Joint Magistrate, and other corroborative evidence.

" The confession in question is written in form No. 3, Criminal, published by the High Court. The blanks in the printed form are duly filled in. The confession commences with a warning to the defendant that all which he may say will be liable to be used as evidence against him; it continues in the form of question and answer; at the foot of each page, as well as at the termination of the confession, the printed certificate required by section 205 is filled in and legibly signed and dated. The evidence of the recording mohurir was at hand, in case the Sessions Judge should entertain any doubts in regard to the points of procedure which, though enjoined in section 205, are not required to be mentioned in the certificate. The examination was attested in the manner that the law directs, viz., by the signature of the Magistrate.

" The Sessions Court, however, refused to receive this confession in evidence, on the ground that the signature of the Magistrate, as enjoined in section 205,

* Reference to the High Court, under section 404 of the Code of Criminal Procedure, by the Officiating Magistrate of Hooghly.

is not a sufficient attestation, and that a categorical statement to the effect that all the requirements of the law have been complied with is proper. Moreover, the Sessions Court held that, not only is such a statement proper, but that its absence destroys the confession, and renders it void, and not such an examination as is contemplated in section 366.

"The Sessions Court cites, in justification of this ruling, a decision of the High Court in the case of *The Queen v. Mussamat Airuni* (1).

"In consequence of the rejection of the examination, the accused person was acquitted by a majority of five out of a jury of seven; the minority being satisfied of the guilt of the accused on the other evidence brought forward.

"On the Sessions Court refusing to accept the examination as evidence, the vakeel for the prosecution was instructed to apply to the Sessions Court to take oral evidence to show that the formalities of the law had been complied with, but the Sessions Court rejected this application also."

Under these circumstances the Magistrate of Hooghly referred, for the opinion of the High Court, the following questions:—*First*, was the Judge right in not accepting the confession as it stood, on the ground that the attestation was irregular; *second*, was the Judge right in refusing to allow oral evidence to be put in to show that the proceedings had been regular.

The Magistrate referred to the following cases;—*Reg. v. Timmi* (2), *Reg. v. Kalla Lakhnaji* (3), *The Queen v. Jaja Poly* (4).

GLOVER, J.—This case was sent for by the Court, on a reference made the Officiating Magistrate of Hooghly.

I may premise that, in accordance with at least three rulings of this Court, *The Queen v. Chandra Kant Chucker'atty* (5), *The Queen v. Gora Chand Gopee* (6), and *The Queen v. Gora Chand Ghose* (7), the last being a Full Bench case, a verdict of acquittal by a jury, although given in consequence of a misdirection on the part of the Sessions Judge, cannot be interfered with under section 404, Code of Criminal Procedure.

I think it right, however, to express my opinion that the Judge did misdirect the jury in this case. He told them to "exclude from their minds any thing they had heard relating to a confession or statement made before the Magistrate, because the statement, not being admissible in evidence, had not been placed before them." Now section 205 of the Code of Criminal Procedure describes how the examination of an accused person is to be taken, and how, after being taken, it is to be attested by the signature of the Magistrate, who is to 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." There is nothing in the section that makes it necessary

(1) 7 W. R., Cr., 49.

(2) 2 Bom. H. C. Rep., 131.

(3) *Id.*, 419.

(4) 11 W. R., Cr., 39.

(5) 1 B. L. R., A. Cr., 8.

(6) 5 W. R., Cr., 45.

(7) 3 B. L. R., F. B., 1.

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to state, in the body of the examination (as supposed by the Sessions Judge), that the statement comprised every question put to the accused, and every answer given by him, that they were recorded in full, and read to him, and that he had had liberty to add to or explain his answers, &c., &c. The attestation at the foot of the examination when duly recorded in the terms of the section, is sufficient proof that the accused had the proper opportunities given to him of testing whether what was recorded had been made conformable to what he declared to be the truth; and as in this case the Magistrate's attestation is in the exact words of the law, nothing else was, as it seems to me, required. The statement of the accused, as it stood on the record, was perfectly legal evidence, and ought to have been laid before the jury.

The ruling in *The Queen v. Mussamat Niruni* (1), quoted by the Sessions Judge in support of his opinion, does not, I think, apply to this case at all. There the statement of the accused was not attested by the Magistrate's signature, and there was consequently no guarantee that the provisions of section 205, Code of Criminal Procedure, had been in any way complied with. The Judges in that case said:—"We do not think it proper to admit "as evidence against the accused an examination which appears to have been recorded with such utter disregard of the forms prescribed by law "as that of Maniruddin in the present case." I was one of the Judges in question, and retain the opinion then expressed. A strict observance of the law, in all matters relating to confessions, is in the highest degree necessary; but in the present case all the provisions of section 205 have been fully complied with.

With reference to the second point referred by the Officiating Magistrate, it seems to me that the Magistrate's attestation at the foot of the examination was sufficient *prima facie* evidence that every thing had been legally and properly done, and that neither threats nor promises had been used. If, however, the Sessions Judge had doubts on this point, he should have cleared them up by taking evidence as to the manner in which the accused's statement was recorded.

KEMP, J.—I entirely concur. There has, in my opinion, been a clear failure of justice in this case, owing to the Judge's misdirection to the jury. The provisions of section 205 have been strictly complied with in this case, and the examination of the accused ought to have been admitted in evidence at the trial under section 366. The attestation of the Magistrate, which is the proper form, was sufficient *prima facie* evidence of such examination, and the Judge if he doubted the genuineness of the Magistrate's signature, was bound to take evidence on that point. I think the Judge is wrong, and the Officiating Magistrate is perfectly right in his view of the law.