

APPENDIX

Before Mr. Justice Phear.

THE QUEEN *v.* HICKS.

1872
December 7.

Evidence Act I (of 1872) s. 24—Confession under threat made for purpose other than to extort Confession.

THE prisoner Hicks was tried for wounding one Lynch with intent to murder him, and wounding him with intent to do grievous bodily harm. The crime was committed on the high seas on a ship called the *Peruvian Congress*, on which the prisoner was a seaman.

The *Standing Counsel* (Mr. Kennedy) having proved that the master of the *Peruvian Congress* had sailed from Calcutta, and could not be found, tendered, under ss. 33 and 80 of the Evidence Act (I of 1872), his deposition before the committing Magistrate. The deposition contained the following statement of an admission alleged to have been made to the deponent by the prisoner when in custody :—

“ I said to the prisoner ‘ is this the knife you stabbed him with ? ’ He said ‘ Yes, Sir.’ I said, ‘ this beats anything I ever saw ! ’ He said, ‘ well, I intended to kill him, as I know d—d well that I shall be hanged for it.’ ”

The alleged admission was made under the following circumstances as stated in the master’s deposition :—

“ At this time,” *i. e.*, immediately after the commission of the crime, “ I was making preparations to resist any mutiny. I went up on the poop, where I had sent the carpenter, the boatswain’s mate, the painter, and the carpenter’s mate with muskets. I took with me my rifle. The men were all in the fore-castle at this time. I called them to come out, saying, that I would fire upon them if they did not do so. They all came aft on the starboard side. I saw the prisoner with them. I said to him ‘ do you surrender yourself as a prisoner ? ’ He said, ‘ Yes, Sir.’ I had him placed in irons.”

The *Standing Counsel* asked that the portion of the deposition containing the alleged admission by the prisoner might be read; but

PHEAR, J., refused to allow this, as the admission was stated to have been made immediately after the prisoner with others had been threatened by the witness, to whom the statement was made, with a loaded rifle. It was immaterial that the threat was not for the purpose of extorting the confession, but in order to suppress an attempt at mutiny.