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EMPRESS ON THE PROSECUTION OF JOGENDRONATH BOSE v. THOMPSON.

September, came to no finding at all, and recorded no order of acquittal or conviction. Having regard to the language of s. 119, I understand the trial of the case to have commenced on the occasion of the first appearance of the accused,—that is, the date fixed for the hearing, and it was not brought to its legitimate conclusion because of the absence of the complainant—a circumstance which is specially contemplated and provided for in s. 124. When, therefore, these sections (124 and 126) are looked at in conjunction with s. 113, which prescribes that a person who has once been tried for an offence and convicted or acquitted of such offence, shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, the conclusion seems to be, that unless the antecedent trial has resulted in a conviction or acquittal, there is nothing in the law which prevents a person being tried again for the same offence. Consequently, an order of dismissal is not a bar to the revival of fresh proceedings.

On the merits I agree in thinking that there is no ground in law for disturbing the decision of the Magistrate. There is evidence which goes to show that the accused Thompson did not act "in good faith,"—that is, with due care and attention,—in retaining and keeping the telegraph message, which on the face of it was addressed to a rival firm.

Rule discharged.

ORIGINAL CRIMINAL.

Before Mr. Justice Prinsep.

THE EMPRESS *v.* DABEE PERSHAD.

1881
Jan 29.

Admission made to Police Officer before Arrest—Evidence Act (I of 1872), ss. 25, 26.

An admission made by an accused person to a Police officer before arrest is admissible in evidence.

IN the course of the trial in this case, the *Standing Counsel* (Mr. *Phillips*) asked a witness on behalf of the Crown, Police Inspector Kristo Chunder Banuerji, to state what the accused

had stated to him on an occasion when the witness had already said that the accused was not under arrest.

Mr. *Sale*, for the accused, objected, on the ground that the accused at the time was under arrest. Ultimately, Mr. Sale being permitted to cross-examine the witness on this point, the Court decided that the accused was not at the time under arrest.

The *Standing Counsel* then repeated his previous question to the witness.

Mr. *Sale* again objected. It is immaterial whether the accused was under arrest or not—*In the matter of Hiran Miya* (1). No statement or admission of any kind made by an accused to a Police officer can be given in evidence. The prohibition contained in s. 25 of the Evidence Act applies to cases where the accused is under arrest or not, while s. 26 deals with cases where the accused is in custody. Section 25 says,—"No confession" (not no confession by an accused person) "to a Police officer shall be proved against an accused person." The section is wide in its terms, and draws no distinction between admissions and confessions; see *In the matter of Hiran Miya*(1). Section 25 must be construed in the widest and most literal sense; see *The Queen* v. *Hurribole Chunder Ghose* (2). Nor is it restricted in any way by s. 26. The word "confession" is not defined in the Evidence Act, while the word "admission" is defined. Hence it may be inferred that no distinction was intended to be drawn between them, and that the words were intended to be synonymous for purposes of the Act. See s. 121 of the Criminal Procedure Code (Act X of 1872) passed almost simultaneously with the Evidence Act. There confession embraces confession, admission, and confession of guilt; see also *The Empress* v. *Rama Birapa* (3) and *Reg.* v. *Jora Hasji* (4). The decision by Phear, J., in *The Queen* v. *Macdonald* (5) was not prefaced by argument at the bar, and the report itself is a most meagre one.

(1) 1 C. L. R., 21.
(2) I. L. R., 1 Calc., 207.
(3) I. L. R., 3 Bomb., 12.
(4) 11 Bom. H. C. Rep., 242.
(5) 10 B. L. R. (App.), 2.

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The *Standing Counsel* (Mr. *Phillips*) was not called upon.

PRINSEP, J.—The question may be put. I agree in the opinion expressed by Phear, J., in *The Queen* v. *Macdonald* (1) that the Evidence Act draws a distinction between an admission and a confession of guilt. The other cases quoted are not altogether on the point.

Before Mr. Justice Prinsep.

THE EMPRESS *v.* DABEE PERSHAD.

1881
Jan. 31.

Evidence of Witness taken upon Commission, when admissible in Criminal Trial—High Courts' Criminal Procedure Act (X of 1875), *s.* 76—*Presidency Magistrates' Act (IV of* 1877), *s.* 158—*Evidence Act (I of* 1872) s. 33.

The evidence of a witness taken upon commission is not admissible in a criminal trial held before the High Court, unless it can be shown that such evidence was so taken upon an order made by that Court under s. 76 of Act X of 1875, or unless it is admissible under s. 33 of the Evidence Act.

In the course of the trial in this case, Mr. *Phillips* (The *Standing Counsel*) tendered, and proposed to read, the evidence of one Wayed Mabal Begum, taken upon commission issued by the Committing Magistrate under s. 158 of the Presidency Magistrates' Act (IV of 1877).

Mr. *Sale* for the prisoner objected. Before evidence taken on commission can be read in this Court in a criminal trial, it must be shown that the taking of such evidence was upon an order issued to that effect by the High Court under s. 76 of Act X of 1875. Here the order was made by the Committing Magistrate, and not by the High Court. The reason which induced the Magistrate to issue that commission may have ceased to operate in the time between the commitment and the trial of the accused in the High Court. Further, if the evidence attempted now to be put in is admissible, it would practically have the effect of subordinating the discretion given to the High Court under s. 76 of Act X of 1875 to the decision of the Magistrate on the same matter; in short, that the opinion of the Magistrate would be binding on this Court. Section 75

(1) 10 B. L. R. (App.), 2.