(1868) 04 CAL CK 0003

Calcutta High Court

Case No: None

The Queen		APPELLANT
	Vs	
Nabadwip Chandra Goswami and Kushadhwaj Mandal		RESPONDENT

Date of Decision: April 8, 1868

Judgement

Sir Barnes Peacock, Kt., C.J.
Upon the questions argued before us I entertain no doubt. The first relates to the answers given to the Police Constable when he arrested the prisoner. The answer did not amount to a confession of guilt, but was a statement of facts which, if true, showed that the prisoner Was innocent; it is not a confession obtained under an inducement of hope or fear. The only objection to the statement being admissible in evidence is, that it was made in answer to a question put by the Police Officer.

2. The cases upon this subject. in England are conflicting; but the later oases seem to show that statements made by a prisoner in answer to a question put by a Police Officer, are admissible in evidence. In the case of Beg. v. Berriman (6 Cox, C.C. 388), Erle, C.J., refused to admit as evidence an answer given by a prisoner to a question put to him by a Magistrate, and a similar ruling by Wilde, C.J., is to be found in the case of Beg. v. Pettit (4 Cox, C.C. 164). But in a later case, the Queen v. Cheverton (2 F. and F. 836), Erle, C.J., admitted as evidence against the prisoner a statement which she had made in answer to questions put to her by a Police Officer. In that case it appeared that Baxter, the Police Officer, had said to the prisoner, "you bad better tell all about it, it will save trouble," and then put certain questions to the prisoner which she answered. It was held that the answers given to Baxter were inadmissible, because they had been made under the influence of something in the nature of a threat or inducement. Afterwards another Policeman put questions to the prisoner which she answered, and it was objected that those answers were inadmissible, as they had been made under the inducement held out by the former Police Officer. Erle, C.J., after consulting Wightman, J., admitted the statements made to the second Police Officer, holding, as I suppose, that the answers were not given in

consequence of the inducement held out by the first officer. That is a distinct authority that statements made by a prisoner in answer to questions put by a Police Officer are admissible, and it may be remarked that in that case the answers were held to be admissible though the prisoner had not been cautioned.

3. In the case of Beg. v. Mick (3 F. and F., 822), it was held by Mellor, J., that the confession made by a prisoner in answer to a question put to him by a Police Officer, was admissible. A similar decision will be found in Rex v. Thornton, (1 Moody, C.C. 27), in which it was held that a confession obtained without threat or promise from a boy fourteen years old, by question put to him by a Police Officer, in whose custody the boy was, on a charge of felony, and when the boy had had no food for nearly a whole day, was properly received as evidence against him. That was held by six Judges to three upon a point reserved. The majority held that the confession was rightly received, as no threat or promise had been made.

4. Mellor, J., in the case of Beg. v. Mick, to which I have referred, remarked, that many Judges would not receive the evidence, and that he highly disapproved of the course the Police Officer had taken in asking questions.

5. Having these conflicting decisions before us, I should be disposed to act upon the decision given in the case reserved, even if it were not borne out by every principle of commonsense. If an inducement is held out to a prisoner to make a confession, by telling him he will be better off, if he makes a confession, he may be induced, if he knows that circumstances are strong to lead to a presumption of guilt, to make a confession, although he is innocent. There may be reasonable grounds against the admission of such a confession, though perhaps it would be better to admit it, and to leave those who have to determine as to the guilt or innocence of the prisoner to judge of the weight which ought to be attached to it. The object of the Criminal Law is to punish the guilty for the purpose of deterring them and others from committing offences. The object of the law of Procedure, including the Law of Evidence, is or ought to be that the innocent shall be protected and the guilty punished. I cannot, therefore, at all agree with the remarks of Mellor, J., and in the expression of his disapproval of the conduct of the Police-Officer in asking questions, provided he does not hold out hope or fear as an inducement to confess.

6. Some oases have gone to the extent of saying that a statement is not admissible, if it is obtained by telling the prisoner he bad better tell the truth. For my own part I cannot see any objection to telling every man that he had better confess, when you do not know whether he is innocent or guilty. Though it has been held in some cases that confessions obtained by asking questions are not admissible, and although law is said to be the perfection of reason, it has been distinctly ruled in England, and I believe without a dissentient voice, that confessions obtained by artifice or deception, are admissible. Therefore, where a confession was obtained by a person who took an oath that he would never mention what the prisoner told him, the statement made, when disclosed, was held to be admissible. So where it

appeared that one of the prisoners had made a statement to a Constable whilst he was drunk, and it was imputed to the Constable that he had given him liquor to cause him to do so, the statement was held to be admissible evidence against the prisoner, the statement not having been made under the inducement of hope or fear. See the cases collected in Roscoe on Evidence in Criminal cases, 47.

7. It is high time, I think, that we should decide according to principles which are founded on reason and good sense. I, therefore, hold that what the prisoner said in answer to questions put to him by the Police Officer, was admissible, no threat or deception having been used, or any false hope held out.

8. The other question remaining is, whether statements made in answer to questions put by a Justice of the Peace or Magistrate are admissible against the prisoner. I do not wish to put this question upon any technical ground. Section 202 of the Criminal Procedure Code (Act XXV of 1861) says, that "it shall be "in the discretion of the Magistrate, from time to time, at any stage of the enquiry" to examine the accused person, and to put such questions to him as he may "consider necessary. It shall be in the option of the accused person to answer such "questions." It does not appear whether Mr. Ryland was acting as a Deputy Magistrate or in his character as a Justice of the Peace, when the charge was first brought before him. I have no doubt that answers given by a prisoner to questions put by a Magistrate u/s 202, are admissible in evidence, although the Magistrate may omit to inform the prisoner what the law is, and that he is not bound to answer the questions. I apprehend that any statement which is made by the prisoner in answer to such a question is admissible against him, not only in regard to cases within the jurisdiction of the Magistrate or bearing upon the case before the Magistrate, but it would be admissible against the prisoner with regard to other offences of which he might be charged in another Court. For instance, if a prisoner were apprehended at Howrah upon a charge of murder at Howrah, and if the Policeman should say, "when the prisoner saw me coming up dressed '"' as a Police Officer, he immediately ran away." Suppose the Magistrate should ask the prisoner, "why did you run away when you saw a Police Officer?" and he were to answer," I had stolen some money from A. B., in Calcutta. I had "just crossed the ferry, and when I saw the Officer coming up, I thought he was "going to take me into custody for stealing the money, and therefore I ran away." That statement being made in answer to a lawful question put to him by the Magistrate, would, I have no doubt, be evidence against the prisoner, if he were acquitted of murder, and indicted at the Sessions in Calcutta for stealing the money.

9. I have no doubt, therefore, that what the prisoner said to the Magistrate-would, in this case, be admissible against him, even if the questions put by the Magistrate were put whilst he was acting in his character as a Magistrate. But as I said before, I do not wish to put this case upon technical grounds, and. I will assume, therefore, that Mr. Ryland was acting throughout as a Justice of the Peace for Bengal with

reference to an offence committed in Calcutta.

10. There is not much difference as regards the commonsense point of view between statements made in answer to questions put by Mr. Ryland, as a Justice of the Peace, and statements made in answer to questions put by the Police. Officer, assuming it to be true that the statements were made. There would, however, be this difference, that when the questions were put by a Magistrate, the prisoner might have believed that the Magistrate had the same power to compel him to answer the questions, as he would have had with regard to a witness; and that, therefore, it may be urged, the Magistrate ought to have explained the law to the prisoner, and told him that, although he asked the questions, the prisoner was not bound by law to answer them.

11. In Rex v. Wilson (1 HR, 597), it was held by Richard, C. B., that the examination of a prisoner before a Magistrate who examined him as a witness, though he held out no threat or inducement, could not be used as evidence against the prisoner. The Judge says," no matter whether a prisoner be sworn or not, an examination of itself imposes an obligation to speak the truth." Suppose the prisoner in this case was ignorant of the law, and believed that when the Magistrate asked him these questions, without telling him that he was not bound to answer, he was under a legal obligation to speak the truth, when the law allowed him to be silent. The Magistrate did not deceive him, nor did he use artifice, and if artifice or deception would be'' no legal answer to the reception of the statements against the prisoner, why should the statements be rejected because the Magistrate omitted to tell the prisoner what the law was? There was no torture used, no threat or punishment, and if the prisoner answered under a belief that he was bound to speak the truth, it appears to me that there was no injustice in receiving against him the answers he gave under that belief. We are not to infer that the prisoner said what was not true, because he erroneously believed himself to be under an obligation to speak the truth. Even if what the prisoner had stated amounted to a confession of guilt, it would be very different from a confession made under an inducement of hope or fear; because, as I have already remarked, a confession made under an inducement held out to make a confession, may be made falsely by a prisoner under a belief that he will benefit by it.

12. In Rex v. Ellis, (1 R&M 432), Littledale, J., held that an examination of a prisoner charged with felony, taken without threat or promise, by questions put by a Magistrate, was admissible. He there says, referring to Starkie on Evidence (Appendix, Part IV, 52), where the case of Rex v. Wilson, to which I have referred, is also noticed, Mr. Justice Holroyd received an examination to which "there was this objection," and he added," I think his decision is the correct one, and that the evidence is on principle admissible."

13. For these reasons I think that the statements made by the prisoner in answer to the questions put by Mr. Ryland were admissible as evidence against the prisoner.

14. The decision of Mr. Justice Phear was made during a trial and without full argument on the whole question, and it does not appear that any of the authorities to which I have referred had been brought to his notice. It was in the nature of a nisi prius decision, by which Courts sitting in Banc do not usually consider themselves bound.

15. I wish to add a few words on one point which escaped me. It was said that on the second occasion when the Magistrate informed the prisoner that he was not bound to answer the questions, he informed him that, if he objected to answer, that fact would be noted. It was contended in argument that that amounted to a kind of threat; but I think the Magistrate was quite right when not do so, and I submit that this Court cannot do so now. [Peacock, C.J.-- Suppose a Justice of the Peace commits a European, are we bound to have it proved that he was a Justice of the Peace?] Yes, if he does not describe himself so. Here there is not a description particular and distinct enough to show that he was a Justice of the Peace. He was acting only as a Magistrate of Serampore under the Criminal Procedure Code, and had no jurisdiction. This objection ought to have been allowed in arrest of judgment. The charge or indictment now takes the place of the finding of the Grand Jury, and it ought to show every thing as distinctly as that would have done, but, here no jurisdiction appears.

16. The 29th Section of the Charter, 1865, does not authorize the Court to direct the preliminary investigation to take place at Serampore. Beading the Charter from Clauses 22 to 26, it will be seen that such preliminary investigation is not authorized. These clauses have reference to the jurisdiction of the High Court. Clauses 27 and 28 refer to the jurisdiction of Courts not established by Royal Charter. The first part of Clause 29 is still dealing with the same Courts, as in Clauses 27 and 28, and only authorizes a transfer of oases from one Court to another of an "equal," that is a similar, jurisdiction, and the test of whether the jurisdiction is equal or not should be not the difference in power of awarding punishments, but the difference in manner of trial, in manner of taking evidence, and in the rules of the Court. Taking this to be the meaning of Clause 29, I contend that the Court had no jurisdiction, the learned Judge ought to have arrested the judgment and discharged the prisoner.

17. Mr. Eglinton, for the Crown, was not called upon.

Sir Barnes Peacock, Kt., C.J.

18. The prisoner in this case is charged with having committed an offence in Calcutta. The caption of the charge stated that he had been committed to trial before the High Court, by W.H. Ryland, Esq., Deputy Magistrate and Justice of the Peace of and for the district of Serampore. At the close of the case for the prosecution, it was objected on behalf of the prisoner, Nabadwip: 1st.--That no proper evidence had been given of any proceeding having been had by the High Court, duly directing the preliminary investigation to be made by the Magistrate at

Serampore; and 2ndly, that, no proper evidence had been given of a direction to transfer the trial of the prisoner to this Court, and that, accordingly, the learned Judge who tried the case should have directed the prisoner to be acquitted. The prisoner had pleaded not guilty, and the question which arises upon this portion of the case is, whether the plea of not guilty of the offence stated in the charge raised any question of fact as to the authority of the officer who preferred that charge.

19. There is no doubt that this Court had jurisdiction to try the prisoner for the offence committed, if a charge had been made against him by a person authorized to make that charge, (read Sections 3, 4, and 6 of Act XIII of 1865)[2] and when this Court being a Court of superior jurisdiction put the prisoner on his trial upon that charge, it must, in ray opinion, be assumed, until the contrary was shown, that the charge has been preferred by an officer competent to prefer it; and even if the charge had no caption at all, in my opinion when he was put upon trial by this Court, it must be assumed that this Court had jurisdiction to try him. The rule as to jurisdiction is that nothing shall be intended to be out of the jurisdiction of a Superior Court, but that which specially appears to be so; and, on the contrary, nothing shall be intended to be within the jurisdiction of an Inferior Court, but that which is so expressly alleged, Peacock v. Bell and Kendal (1 Williams Saunders, 74 b.)

20. Section 3 of Act XIII of 1865 does not require the officer making the charge to set forth his jurisdiction, but it merely requires the charge to state for what offence the person is so committed or held to bail; and I am of opinion that the charge would be presumed to be sufficient if the caption had merely stated that a charge had been duly preferred against him; and if that would have been sufficient, it would also have been sufficient if the Court had stated that the charge had been preferred against him, because when a Superior Court put him on his trial upon a charge preferred against him, it would be presumed that it had been duly preferred. I by no means intend to say that the prisoner would have no remedy if the charge had not been duly preferred, but I am of opinion that when the prisoner pleaded to the charge that he was not guilty of the offence stated therein, he raised no question as to whether the charge was duly preferred or not. It is stated in the caption that Mr. Ryland was a Deputy Magistrate and Justice of the Peace for Serampore, but I think that makes no difference with regard to the question now under consideration, which is merely whether proof ought to have been given as to whether Mr. Ryland had authority to send up the charge. If he had no authority to send up the charge, there were two courses open to the prisoner. He might have applied to the Court to quash the charge, bringing to the notice of the Court the facts upon which he contended that the officer had no jurisdiction to prefer it; or he might have pleaded to the jurisdiction of the Court, showing that Mr. Ryland had no jurisdiction to prefer it, or if it appeared on the face of the charge and the caption that Mr. Ryland had no jurisdiction to prefer it, he might possibly have demurred. It has been held that objections to the jurisdiction may be taken by demurrer, if the objections appear upon the face of the indictment and caption, and that the want of jurisdiction may

also be pleaded specially, if the defect does not appear on the face of the indictment. But it has been held that from the nature of the plea of want of jurisdiction, it must evidently be pleaded before the general issue, because by pleading " Not Guilty," the defendant admits the power of the Court to try him and refers his case to their decision. See Chitty's Criminal Law, 438, and cases there cited. The prisoner, therefore, pleading Not Guilty in this case admitted the jurisdiction of the Court and of the jury to try him for the offence, and it was no part of the issue which the jury were sworn to try upon the plea of Not Guilty, whether Mr. Ryland bad jurisdiction or not.

21. I am, therefore, clearly of opinion that the ruling of the learned Judge was right in holding that, upon the issue which the jury had then to try, it was unnecessary to give any evidence with regard to Mr. Ryland's jurisdiction.

22. The next point is whether the learned Judge was right in refusing to arrest the judgment. We are not called upon to arrest the judgment, but to say whether the learned Judge was right or not in refusing to arrest it.

23. It has been contended upon the construction of Section 29[3] of the Letters Patent, that the High Court would have no power to direct the transfer of any criminal case or appeal from any Court in the Mofussil to the High Court itself; and it is also further contended, upon the force of that argument, that the High Court has no power to direct the preliminary investigation or trial of any criminal case, in which the offence has been committed in Calcutta, to any Officer or Court who would be competent to investigate or try it, if the offence had been committed in the Mofussil within the jurisdiction of that officer. It appears to me, however, giving the best construction I can to Section 29, that the High Court has power, if in its discretion it thinks right to exercise it, to transfer the trial of any criminal offence committed in Calcutta to a Mofussil Court, which is otherwise competent to try it, or to direct the trial by the High Court of an offence committed in the Mofussil. The trial can only be transferred to a Court or Officer otherwise "competent to investigate it." "Competent to investigate it " does not, as it appears to me, include competency as regards local jurisdiction; but only competency with regard to the offender, the nature of the offence, and the punishment. For instance, the Court could not transfer to the Judge of the 24-Pergunnahs the trial of an offence committed by a European British subject in Calcutta, because the Sessions Judge of the 24-Pergunnahs could not have tried the offender even if the offence had been committed in his own jurisdiction. So the Court could not transfer to a Magistrate in the Mofussil the trial of any offence, which, by the terms of the Criminal Procedure Code, could be tried only by a Sessions Judge, because the Magistrate would not be a Court competent to try the offence, if committed within his jurisdiction.

24. If we hold that the Court can transfer the investigation of a case committed in Calcutta to a Mofussil Magistrate otherwise competent to make the preliminary investigation, I do not see how we can stop short and say that the Court could not

direct the trial of that case before an Officer or Court in the Mofussil otherwise competent to try it. The words "to investigate or try it" are coupled in this section in such a manner that I think, if the Court has power to transfer the investigation, it has also power to transfer the trial. It might be very inconvenient in many cases if the Court had not this power. Suppose two men were indicted for forging and uttering a forged Note, and the evidence tended to show that the forgery was committed on the side of the Circular Road within the district of the 24-Pergunnahs, and that the uttering took place in Calcutta at the Bank of Bengal, it would be very inconvenient that the prisoners should be tried first at Alipore for the forgery, where they might be acquitted on the ground that the Note was a genuine one and that they should afterwards be tried in Calcutta and convicted of uttering a forged Note on the ground that it was a forgery. It would be much more convenient that the Court should remove the trial for forgery into this Court, and to have the questions as to the forgery and uttering tried by the same Court. It might be convenient under certain circumstances that, if an offence should be committed in Calcutta, and the prisoner should escape and be caught in some district in the Mofussil, to allow the Magistrate of the district in which the offender was caught to make the preliminary investigation. The words of the section, therefore, being sufficiently large, and the convenience greatly in favour of the construction, which I am about to put upon this section, I have no doubt that the High Court would have had power, if they thought fit to exercise it, to have directed the preliminary investigation in this case by Mr. Ryland, the Deputy Magistrate of Serampore. I cannot say that the Court did so in the present instance, for the letters have been rejected, and we have no evidence of the fact. I can only say Mr. Ryland might have had that jurisdiction. The question then is, is this indictment bad in arrest of judgment, because it does not appear that the High Court did authorize Mr. Ryland to make the preliminary investigation?

25. It is unnecessary for the Court to determine whether they can take judicial notice that Mr. Ryland was a Justice of the Peace for Bengal, or whether the Court would be bound to ignore that fact, even if they issued the commission appointing him, and the Chief Justice had signed it. If it should so happen that the High Court did issue a commission, and the Chief Justice signed it, it would be a great failure of justice, that this judgment should be arrested and the prisoner sent to a Justice of the Peace of Calcutta, for the purpose of having a new preliminary investigation; and this failure of justice would be the more apparent and glaring, if the commission should happen to be proved. In such a case the prisoners must be committed for trial, and the time of this Court, and of a new jury, would have to be occupied in re-trying him, and the witnesses be again brought from their homes and from their business, in order to reprove the guilt of the prisoner, because this Court would not, or could not, by law, take judicial notice of the fact whether Mr. Ryland was or was not a Justice of the Peace for Bengal, though they had appointed him themselves. If it became necessary to decide the point, I should hold that this Court could take judicial notice of the fact whether Mr. Ryland was or was not a Justice of the Peace

for Bengal, if from the records of this Court it should appear that a commission had issued, as it has in fact issued. In fact, I hold that commission in my hand under my own signature, and it would be monstrous to hold that I cannot take judicial notice of its existence; but it is not necessary to determine the question, for I have already held that, as a Magistrate of Serampore, he might have had power conferred upon him to make the preliminary investigation, and if so, he would be a Magistrate having power to prefer the charge.

26. I am of opinion that it would be no ground for arrest of judgment, if a prisoner were put upon his trial by this Court upon a charge preferred by a Mofussil Magistrate subordinate to this Court, who might have had the power of making the preliminary investigation conferred upon him, although the caption of the charge should not show on the face of it that that jurisdiction had been conferred. In the case of Knowlden v. The Queen (33 L.J.M.C., 219), a case arose in reference to the vexatious indictments Act. 23 and 24 Vict., c. 17, s. 1, of that Act, enacts, that no bill of indictment for conspiracy, among other officers, shall be presented to or found by any Grand Jury unless such indictment be preferred by the direction, or with the consent in writing, of a Judge or of the attorney or solicitor. It was held that it was not necessary that the indictment should aver, or that it should be proved before the petty jury that the conditions imposed by that Statute had been performed. The judgment of Blackburn, J., puts the case in a very clear light. It appears to me that this case is a very important one with reference to the point as to whether it was necessary for the charge to state whether Mr. Ryland was empowered by this Court to make the preliminary investigation. But even if this case is not a sufficient authority, I apprehend that the only proper course would have been to move the Court to quash the indictment, if Mr. Ryland had no jurisdiction; or to plead the want of jurisdiction, if the prisoner wished to have the fact tried, by a jury, or if the objection had appeared on the face of the record to have raised it by demurrer. It is said in Chitty''s Criminal Law that the omission in the caption of an indictment of the words "then and there" in the statement of the swearing of the jury, was formerly held fatal; because without them it did not appear that the oath was taken in the country where the offence is alleged to have been committed; but the law is now otherwise; and it will be no ground for arresting the judgment, after special verdict removed by certiorari, that the Judge who tried the prisoner is not stated to have been of the quorum; that no issue appears on the record; or that the authority of the Justices of Goal delivery is not stated." The cases are referred to in Chitty''s Criminal Law, Vol. I., pages 661 and 662. Further, as this is a Court of Superior jurisdiction, the want of jurisdiction is not to be presumed. Act XIII of 1865 does not require the Officer making the charge to state the jurisdiction under which he is acting, and by Section 6 of that Act it is enacted that "upon "charges recorded as aforesaid, that is by the Clerk of the Crown, persons committed to custody or held to bail shall be deemed to have been brought" before the High Court in due course of law."

27. Looking at all these grounds, it appears to me that if the indictment ought to set forth in the caption the facts which constituted the jurisdiction of the officer who made the charge, the omission of stating that, which ought to be presumed, and which might hare been raised by the prisoner by pleading to the want of jurisdiction, or by motion to quash the charge, would be a mere formal defect, which, under the provisions of Section 41 of Act XVIII of 1862 ought to be taken by demurrer, and not by motion in arrest of judgment after the prisoner has pleaded to the charge, and thereby admitted the jurisdiction of the Court to try him.

28. If the objection had been taken in this case that Mr. Ryland''s jurisdiction did not appear on the face of the record, for want of the Court authorizing him as a Magistrate to hold the preliminary investigation, the Court might have made an enquiry into the fact; and if they had found that he had had that authority conferred upon him, or that he was a Justice of the Peace for the whole of Bengal, and, therefore, might have investigated the charge without such authority, the Court might have ordered the caption of the indictment to be altered, and every thing would have been right. If the facts did not exist which conferred jurisdiction upon Mr. Ryland, and the prisoner had wished to have those facts tried by a jury, he might have pleaded to the jurisdiction. But it appears to me that the omission to show all the facts which constituted jurisdiction, or the allegation that Mr. Ryland was a Justice of the Peace for Serampore, instead of a Justice of the Peace for Bengal, is no ground for arresting the judgment.

29. It appears to me, therefore, that the present is one of those technical objections which tend to defeat justice, and to which the Court ought not to yield, unless it is compelled to do so by law. I am of opinion that the learned Judge was right in proceeding to pass sentence, and not yielding to the objection and arresting the judgment, which, unless we believe that the jury was wrong in the verdict they pronounced, could only have led to a verdict of guilty upon which the prisoners must have been ultimately sentenced after a fresh preliminary investigation, and the waste of the time of the Court, the jury, and of the witnesses, who would all have been required to go through the farce of a new trial for the sake of a mere technical objection, the sole tendency of which is to defeat and not to promote the due administration of justice. If the learned Judge had yielded to the objection, he would merely have held out false hopes to the prisoners, which, if the verdict of the jury who tried them is correct--and I see no reason to doubt it--could never have been realized, and which must have ultimately turned out to be a mere delusion.

30. It appears to me that there is no force in the objections, and that the judgment must stand. The prisoners will be remanded to jail to undergo the sentence which has been passed upon them.

Norman, J.

31. Concurred.

Markby, J.

32. I agree substantially with the Chief Justice. I think all that is put in issue by the plea of not guilty on this charge, is what follows the word "charge," just as on an indictment presented by a Grand Jury, all that is put in issue is what follows the word "present." I think it would lead to the greatest inconvenience, if on every trial the correctness of the procedure by which the prisoner was brought before the Court was considered as challenged.

33. I, therefore, think I was right at the trial in refusing to leave to the jury any question as to whether the Magistrate at Serampore had been duly authorized to hold the preliminary inquiry. With regard to the motion in arrest of judgment, I concur in the construction which has been put upon Section 29 of the Charter by the Chief Justice.

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[1]Act XXV of 1861, a. 143.--"No confession or admission of guilt mode to a Police Officer shall be used as evidence against a person accused of any offence."

[2]Act XIII of 1865, s. 8.--Any Justice of the Peace or Magistrate who shall commit to custody or hold to bail any person for trial before the High Court, for an offence committed, or which, according to law, may be dealt with as if it had been committed, within the local limits of its ordinary original civil jurisdiction, shall, together with all examinations, informations, bailments and recognizances, now required to be delivered to such Court before the trial, deliver to the Clerk of the Crown a written instrument of charge signed by him, stating for what offence such person is so committed or held to bail.

Act XIII of 1865, s. 4.--The Clerk of the Crown shall peruse and consider the charge, and may, if he consider it necessary or expedient so to do, amend, alter, or add to the same the charge and such amendments, alterations, or additions, if any, shall be recorded in the High Court, and the person charged shall be entitled to have a copy of such charge with such amendments, alterations, or additions (if any) gratis.

Act XIII of 1865, s. 6.--Upon charges recorded as aforesaid, persons committed to custody or held to bail shall be deemed to have been brought before the High Court in duo course of law, and (subject to the provisions contained in the 8th Section of the Act) shall be arraigned at the suit of the Crown, and the verdict shall be recorded thereupon.

[3]Section 29 of the Letters Patent, 1865.--The High Court shall have power to direct the transfer of any criminal case or appeal from any Court to any ether Court of equal and superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any Officer or Court otherwise competent to investigate or try it, though each case belongs in ordinary course to the jurisdiction of some other Officer or Court.