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July 7, 9,  
and 12.

THE QUEEN v. NASSAR et al.

D. C., Colombo (Criminal), 1,380/47,200.

*Evidence—Confession by accused not made voluntarily, but caused by a threat by a person in authority—Ceylon Evidence Act, ss. 24 and 132.*

In the course of an inquiry by the Superintendent of a Convict Establishment into certain frauds alleged to have been committed in the establishment, defendant, the Deputy Jailer, was sent for and questioned. After he had answered many questions he was asked to explain one statement which seemed to be inconsistent with another. He said he could not explain it, and then stated: "I decline to make any further statement or to give any further evidence." The Superintendent then asked him whether he knew the consequence of this refusal; and he said, "I know I shall be interdicted from further work." Next morning accused was brought before the Superintendent formally charged under Ordinance No. 16 of 1877\* "with gross insubordination in refusing to give evidence in an inquiry into certain frauds alleged to have been committed in the prison hospital in his charge." He pleaded guilty, and stated in defence, "I regret very much my conduct yesterday, and am now prepared to give all the information I can." On this he was found guilty of gross insubordination, but no sentence was passed. Accused then proceeded to make a statement, which contained a confession of

his guilt of criminal misappropriation of money entrusted to him. Proceedings were subsequently had against the accused in the Police Court, and he was committed for trial before the District Court. At the trial the above statement was read in evidence—*Held*, that the statement was improperly received in evidence, and the Supreme Court refused to read it.

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THE facts of the case appear in the judgment.

*Dornhorst*, for appellant.

*Pieries, Acting C.C.*, for respondent.

*Cur. adv. vult.*

12th July, 1897. LAWRIE, A.C.J.—

I affirm the conviction and sentence passed on the first accused. I do so rejecting the confession made by him to Major Firminger on the 23rd March, 1897. The question whether that confession was admissible in evidence at this trial before the District Court is one by no means free from doubt. It is a safer precedent to reject it than to accept it. The confession was made in these circumstances. Major Firminger, Superintendent of the Convict Establishment, on 22nd March received from Dr. Huybertsz, the doctor in charge of the Convict Hospital, a letter requesting an inquiry whether condensed milk had or had not been received on the 9th March at the Convict Hospital. On the same day Major Firminger held an inquiry, and (as was natural) the first man he sent for was Nassar (the present accused), the Deputy Jailer of the Convict Hospital. He was questioned, not on oath, and after answering many questions he was asked to explain one statement which seemed inconsistent with another. He said he could not explain it, and then he said, "I decline to make any further statement or to give any further evidence." The Superintendent then asked him if he knew the consequence of this refusal, and he said, "I know that I shall be interdicted from further work." Next morning, the 23rd, he was brought before the Superintendent, formally charged under Ordinance 16 of 1877 "with gross insubordination in refusing to give evidence in an inquiry into certain frauds alleged to have been committed in the hospital in his charge." He pleaded guilty, and stated in defence, "I regret very much my conduct yesterday, and now am prepared to give all the information I can." On this he was found guilty of gross insubordination, but no sentence was passed. The accused then proceeded to make the statement, which contained a confession of the accused's guilt of criminal misappropriation of money entrusted to him. Then the Superintendent charged him with breach of the Prisons Ordinance, No. 16 of 1877, in having on

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the 9th March, 1897, being guilty of embezzling two sums of money, viz., Rs. 17·50 and Rs. 18·50, given to him to purchase condensed milk. The accused pleaded guilty, and stated in defence, "I put "in my statement." The Superintendent found him guilty, but no sentence was passed. At the trial in the District Court the statement was read in evidence. If the statement be regarded as the confession by an accused person, as indeed Nassar then was, in fact he was then suspected and virtually accused by his superior officer, then the confession was caused by a threat by a person in authority; it was made by him to avoid the temporal evil of being punished for gross insubordination, and is inadmissible under section 24. But if the statement be regarded, not as the confession of an accused, but as the answer of a witness compelled to answer questions of a criminating character, then the Ordinance (section 132) enacts that these answers cannot be proved against him in any criminal proceeding. If, on the other hand, it be regarded as the confession of a man then unaccused, it cannot be proved as a confession because it was not made voluntarily; it was made under pressure by a superior officer after he had declined to say more—that is a sufficient reason for rejecting it. It is by no means clear to me that either the 24th or 132nd section of the Evidence Ordinance exactly applies, but the common law, that no confession can be proved unless it has been absolutely voluntarily made, must guide me, and under that guidance I hold that the confession was improperly received in evidence, and I refuse to read it.

[His Lordship then proceeded to deal with the evidence in the case.]