

BONNER v. SINNAPPEN.

. P. C., *Hatton*, 26,039.

1898.
August 1.

Evidence—Inadmissibility of confession made by a servant—Inducement offered by another servant having authority—Evidence Act, s. 24.

A confession of guilt made by a servant to another servant having authority over him as head servant, upon the inducement that if the former would tell the latter what he had done with the articles which he was suspected to have stolen no harm would come to him, is not admissible in evidence under section 24 of the Evidence Act.

THE facts of the case are fully stated in the following judgment.

There was no appearance of counsel for either side.

1st August, 1898. BONSER, C.J.—

In this case the appellant is a boy of about sixteen years of age. He was in the service of Mr. A. C. Bonner, of Kirkoswald estate,

1898.
 August 1.
 BONSER, C.J.

and had entered his service on the 15th May last. On Sunday, the 10th July, the head appu made a communication to Mrs. Bonner, in consequence of which she searched the almirah and found that a quantity of jewellery was missing. When that jewellery was taken she was unable to say. The last time she saw it was about the middle of June last. The almirah was locked, and the lock does not appear to have been tampered with. The appellant was charged with having stolen the property, but he persistently denied the charge. He attempted to run away, but was caught. The head servant says that he heard from one of the kitchen coolies that on the previous day, Saturday, when Mr. and Mrs. Bonner were absent from the house, he had seen the appellant in the room standing by the almirah, which was opened, apparently rummaging the contents of a drawer. He does not appear to have told any of the other servants about this, but subsequently told the appu. He says his suspicions were aroused by the appellant being in possession of a few hoppers, which he thought was a piece of extravagance on his part not warranted by his means. The appu says he charged the boy with stealing the things; he denied the charge, until at last he swore on a prayer book that if the boy would tell him what he had done with the things no harm would come to him. He says that the boy then made a confession admitting his guilt. The Magistrate says he believes that evidence of admission of guilt. It seems to me that evidence was inadmissible. The witness was in a position of authority. He was the head servant, and the inducement was such an inducement as is referred to in section 24 of the Evidence Act, and is therefore inadmissible in evidence. Apart from that confession there is merely the evidence of the kitchen cooly, who says that he saw the boy standing near the open almirah. The boy denies that, and the kitchen cooly does not appear to have told anybody about this very suspicious circumstance. A number of servants in the house had access to this room in the course of their duty, amongst them the kitchen cooly, and they were all liable to be suspected of stealing the things, and it would not be unnatural for any one of them to seek to exculpate himself by throwing suspicion on another.

In my opinion, although there is a strong case of suspicion against the appellant, yet when the evidence of the admission is excluded there is not sufficient evidence to fix him with this theft. It is by no means improbable that the boy did steal these things, but the evidence is insufficient.