THE QUEEN *v.* ANISU LEBBE *et al.*

1895.
October 11.

D. C., Batticaloa (Criminal), 2,056.

Criminal procedure—Questions and answers under s. 16 of Ordinance No. 1 of 1888—Criminal Procedure Code, s. 473.

Questions put to an accused by a Police Magistrate at a non-summary inquiry, and answers elicited from him under section 16 of Ordinance No. 1 of 1888, cannot, without proper proof, be read in evidence at the trial. If it is sought to put such questions and answers in evidence, they must be proved by some person who was present at the inquiry and heard them.

The irregular reception of such questions and answers in evidence is fatal to a conviction, it being impossible to say what effect this improperly recorded evidence may have had on the Judge's mind.

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The object of the provision in section 16 of Ordinance No. 1 of 1888 is to call the attention of the accused to the various points which have been proved against him, so that he may have an opportunity of explaining them, and that they may not remain unexplained in consequence of forgetfulness on the part of the accused, or ignorance of their bearing and effect.

THE facts of the case sufficiently appear in the judgment.

Pereira, for accused, appellant. At the close of the case for the prosecution, the statement of the accused in the Police Court and certain questions and answers recorded by the Police Magistrate under section 16 of Ordinance No. 1 of 1888, were received in evidence. The reception in this way of the questions and answers was irregular. There is no provision in our Criminal Procedure authorizing it. Under section 15 of the Ordinance the Police Magistrate may record certain statements and confessions by the accused, and in that very section there is provision that such statements and confessions purporting to have been duly recorded and signed shall be admissible in evidence without further proof; but section 16, which deals with questions and answers, has no provision as to their admissibility in evidence at the trial without further proof. The reception of these questions and answers in this case prejudiced the accused. The questions embody some incriminating statements said to have been made by the accused at some time before the Police Magistrate, but those statements themselves had not been put in evidence at the trial. That being so, the accused was under no liability to explain them at the trial, and questions regarding them could not be put, the object of the provision in section 16 of the Ordinance being to enable the accused to explain any circumstances appearing in the evidence against him.

Dias, C. C., contra.

11th October, 1895. BONSER, C.J.—

In this case four men were tried on a charge of robbing a temple, and were convicted. Certain questions put to the first and second accused by the Police Magistrate in the preliminary inquiry under section 16 of Ordinance No. 1 of 1888, and the answers thereto, were put in evidence by the prosecution, by simply producing the record which purported to be signed and certified by the Magistrate in the manner provided by section 136 of the Criminal Procedure Code. No one was called to prove that these questions were put and these statements were made, and it was assumed that they were admissible in evidence by virtue of section

473 of the Criminal Procedure Code, as explained and amended by section 15 of Ordinance No. 1 of 1888. The Ordinance No. 1 of 1888 first introduced the procedure of questioning the prisoner with a view to enabling him to answer points in the evidence for the prosecution which told against him. It is a very useful provision for an innocent man. A man may forget the various points which have been proved against him. The object is that the Magistrate or Judge, as the case may be, should call his attention to the points so that he may have an opportunity of explaining them, and may not omit to explain them through forgetfulness of what has been stated, or from ignorance of their bearing and influence.

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Section 16 of Ordinance No. 1 of 1888 provides that every question and answer is to be recorded, signed, and certified in the same manner as the examination referred to in sections 368, 369, and 370—nothing more. Now, section 473 of the Code had provided that (1) statements or confessions of an accused taken and recorded, as provided by sections 136 and 368, that is, statements and confessions made out of Court; (2) that statements or confessions made before the Police Court as provided for by sections 171 and 368; (3) that the statement or statement and examination of an accused under section 352 of the Code; and (4) that the deposition of a witness taken and recorded under the provisions of the Code—might, under certain circumstances, be given in evidence in any subsequent judicial proceeding or in any later stage of the same judicial proceeding. It would appear that the intention was to provide that they might be given in evidence without further proof, but that was not so provided. That omission was rectified by section 15 of Ordinance No. 1 of 1888, which provides that all statements and confessions which purport to have been duly recorded and signed in manner provided by section 136, were to be admissible in evidence without any further proof. But neither section 473 of the Criminal Procedure Code, nor section 15 of Ordinance No. 1 of 1888, makes any provision as regards these questions under section 16 of Ordinance No. 1 of 1888, or as regards the answers to these questions. Therefore, if they are to be put in evidence, they must be put in evidence under the general law. They must be proved by some person who was present and heard them. That being so, these questions and answers were wrongly received in evidence by the District Judge. The accused are entitled to insist on the formalities of the law being strictly complied with, and that nothing should be put in evidence against them except it be legally proved. It is impossible for us to say what effect this

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improperly recorded evidence may have had on the District Judge's mind. We cannot eliminate it and say that there was sufficient proof without it, and therefore the only course open to us is to quash the conviction, and order the case to be remitted to the District Court for trial with assessors.

There is another point which arose upon this appeal. It appears that one of the accused had made a statement at an early stage of the preliminary inquiry in which he incriminated himself. The Police Magistrate, when examining him under section 16 of Ordinance No. 1 of 1888, very properly brought this previous statement to the attention of the accused and asked him if he had any explanation to offer as to that statement, but he said that he was not in his proper senses at the time, and that it might have been a slip of the tongue. At the trial before the District Judge that question embodying the statement of the accused was put in evidence, but there was no independent evidence that that statement was ever made. I think that that was not fair to the accused. Before that question was put in evidence, the statement of the accused should have been proved against him, which might very easily have been done, as it apparently had been recorded in the proper way.