

must be free and voluntary. If it proceeds from remorse and a desire to make reparation for the crime, it is admissible. If it flows from hope or fear, excited by a person in authority, it is inadmissible. On this point the authorities are unanimous. As Mr. Taylor says in his Law of Evidence (8th.ed. Part 2, ch. 15 s 872) "Before any confession can be received in evidence in a criminal case, it must be shewn to have been voluntarily made; for, to adopt the somewhat inflated language of Eyre, C.B., 'a confession forced from the mind by the flattery of hope, or by ~~wire~~ the torture of fear, comes in so questionable a shape, when it is to be considered as the evidence of guilt, that no credit ought to be given to it, and, therefore, it is rejected;' Warickshall's Case (1 Leach C.C.R. 263, 4th. ed) The material question consequently is whether the confession has been obtained by the influence of hope or fear; and the evidence to this point being in its nature preliminary, is addressed to the judge, who will require the prosecutor to shew affirmatively, to his satisfaction, that the statement was not made under the influence of an improper inducement, and who, in the event if any doubt subsisting on this head, will reject the confession".

The case cited in support of this proposition is Reg. v Warringham (2 Den C.C.447,n. The report is from the MS. note taken by Parke B., at the trial at the Surrey Spring Assizes in 1851) where Parke B., says to the counsel for the prosecution "You are bound to satisfy me that the confession which you seek to use against the prisoner was not obtained from him by improper means. I am not satisfied of that; for it is impossible to collect from the answers of this witness whether such was the case or not." Parke B., adds "I reject the evidence of admission, not being satisfied that it was voluntary." In Reg. v Baldry (2 Den.C.C.430, at p.442) it is said by Pollock C.B., that the true ground of the exclusion is not that there is any presumption of law that a confession not free and voluntary is false, but that "it would not be safe to receive a statement made under any influence or fear". He also explains that the objection to telling the prisoner that it

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