

The case was heard by MACLAREN, MAGEE, and HODGINS, JJ.A., and LATCHFORD and KELLY, JJ.

M. J. O'Reilly, K.C., for the accused.

J. R. Cartwright, K.C., for the Crown.

MACLAREN, J.A., read a judgment in which he said that the decisions on the point as to whether the answers of a prisoner to questions put to him by a policeman or other person in authority could be received as evidence, where he was not warned or cautioned that his answers would be given in evidence against him, had not been uniform or consistent either in England or in this country. There was nothing in the law of either country which required that a prisoner in such a case must be warned or cautioned, as is directed by sec. 684 (2) of the Criminal Code, at the close of the preliminary examination before a magistrate in the case of indictable offences.

Reference to *Ibrahim v. The King*, [1914] A.C. 599, 609; *Rex v. Voisin* (1918), 34 Times L.R. 263; *Rex v. Colpus* (1917), 12 Cr. App. R. 193; *Rex v. Ryan* (1905), 9 O.L.R. 137; *Rex v. Steffoff* (1909), 20 O.L.R. 103.

The trial Judge certified in the stated case that the accused "voluntarily made the statements given in the evidence by the detectives." It is also stated that "no promises were made or threats used by the detectives," and that "he was not then under arrest," when he made the admissions or confession.

The first and second questions should be answered in the affirmative. It was unnecessary to answer the third question, as the above authorities shewed that, even if the accused was under arrest at the time, the first and second questions should be answered in the affirmative.

If he was not under arrest, then *a fortiori* the same answers should be given.

MAGEE and HODGINS, JJ.A., agreed with MACLAREN, J.A.

LATCHFORD, J., for reasons stated in writing, agreed that the first question should be answered in the affirmative, and thought it was unnecessary to answer either the second question or the third.

KELLY, J., was of opinion that, the statements of the accused having been voluntary, their admission in evidence was not improper.

*Conviction affirmed.*