

was where X. was upon trial for burglary, the prosecutor offered X.'s confession in evidence and it was objected to on the ground that threats were used in obtaining it. The prosecutor called the officer, who denied the charge. The defence then offered five witnesses, but the court refused to hear them and admitted the confession.

Whenever the defence objects to the admissibility of the confession, it is the duty of the court to determine the question from the evidence of the case before the confession can be admitted. Thus, on defence's objection that the confession was not voluntary, the Court refused defendant leave to make such preliminary examination until after the examination in chief had been concluded and the confession given to the jury. The verdict of the jury was reversed on the ground that such a ruling was error.

It is sometimes said that even when a confession is admitted the jury may still reject it if it appears not voluntary, but, according to the principles of the law, that view is based on a mistaken idea, for the jury have nothing to do with the preliminary question of a confession's admissibility, and if it is admitted they may reject it, not because it was involuntary, but because they do not believe it.

In determining the question of the voluntariness of a confession, the humane doctrine demands that the judge should take into consideration the age, condition, situation and character of the prisoner and the various surrounding circumstances, because, for example, language sufficient to overcome the mind of one may have no effect upon the mind of another. The courts are rather loose on the question of admitting confessions, and very frequently allow a confession to go to the jury with instructions to disregard it, they believe it involuntary. As I before remarked, this is based on a misapprehension of the law and, in my judgment, very prejudicial to the defendant, although the prevailing doctrine is, that even if a confession is admitted, it can be stricken from the record by the court, if, after its admission, he finds that it was not voluntary. But how