CHAPTER XII.

OF CONFESSIONS.

§ 213. The only remaining topic, under the general head of admissions, is that of *confessions* of guilt in criminal prosecutions, which we now propose to consider. It has already been observed, that the rules of evidence, in regard to the voluntary admissions of the party, are the same in criminal as in civil cases. But, as this applies only to admissions brought home to the party, it is obvious that the whole subject of admissions made by agents and third persons, together with a portion of that of implied admissions, can of course have very little direct application to confessions of crime, or of guilty intention. In treating this subject, however, we shall follow the convenient course pursued by other writers, distributing this branch of evidence into two classes, namely, *first*, the *direct confessions of guilt;* and *secondly*, the *indirect confessions*, or those which, in civil cases, are usually termed implied admissions.

§ 214. But here, also, as we have before remarked in regard to admissions,[1] the evidence of verbal confessions of guilt is to be *received with great caution.* For, besides the danger of mistake, from the misapprehension of witnesses, the misuse of words, the failure of the party to express his own meaning, and the infirmity of memory, it should be recollected that the mind of the prisoner himself is oppressed by the calamity of his situation, and that he is often influenced by motives of hope or fear to make an untrue confession.[2] The

[1] Ante, § 200.

[2] 4 Hawk. P. C. 425, B. 2, ch. 46, § 36; McNally's Evid. 42, 43, 44; Vaughan *v.* Hann, 6 B. Monr. R. 341. Of this character was the remarkable

zeal, too, which so generally prevails, to detect offenders, especially in cases of aggravated guilt, and the strong disposition, in the persons engaged in pursuit of evidence, to rely on slight

case of the two Boorns, convicted in the Supreme Court of Vermont, in Bennington county, in September term, 1819, of the murder of Russell Colvin, May 10, 1812. It appeared that Colvin, who was the brother-in-law of the prisoners, was a person of a weak and not perfectly sound mind; that he was considered burdensome to the family of the prisoners, who were obliged to support him; that on the day of his disappearance, being in a distant field, where the prisoners were at work, a violent quarrel broke out between them; and that one of them struck him a severe blow on the back of the head with a club, which felled him to the ground. Some suspicions arose at that time that he was murdered; which were increased by the finding of his hat in the same field a few months afterwards. These suspicions in process of time subsided; but, in 1819, one of the neighbors having repeatedly dreamed of the murder, with great minuteness of circumstance, both in regard to his death and the concealment of his remains, the prisoners were vehemently accused, and generally believed guilty of the murder. Upon strict search, the pocket knife of Colvin, and a button of his clothes, were found in an old open cellar in the same field, and in a hollow stump not many rods from it were discovered two nails and a number of bones, believed to be those of a man. Upon this evidence, together with their deliberate confession of the fact of the murder and concealment of the body in those places, they were convicted and sentenced to die. On the same day they applied to the legislature for a commutation of the sentence of death to that of perpetual imprisonment; which, as to one of them only, was granted. The confession being now withdrawn and contradicted, and a reward offered for the discovery of the missing man, he was found in New Jersey, and returned home, in time to prevent the execution. He had fled for fear that they would kill him. The bones were those of some animal. They had been advised, by some misjudging friends, that, as they would certainly be convicted, upon the circumstances proved, their only chance for life was by commutation of punishment, and that this depended on their making a penitential confession, and thereupon obtaining a recommendation to mercy. This case, of which there is a Report in the Law Library of Harvard University, is critically examined in a learned and elaborate article in the North American Review, Vol. 10, p. 418–429. For other cases of false confessions, see Wills on Circumstantial Evidence, p. 88; Phil. & Am. on Evid. 419; 1 Phil. Evid. 397, n.; Warickshall's case, 1 Leach, Cr. Cas. 299, n. Mr. Chitty mentions a case of an innocent person making a false constructive confession, in order to fix suspicion on himself alone, that his guilty brothers might have time to escape; a stratagem

prosecutor,[1] or by his wife, the prisoner being his servant,[2] or by an officer having the prisoner in custody,[3] or by a magistrate,[4] or, indeed, by *any one having authority* over him, or over the prosecution itself,[5] or by a private person in the presence of one in authority,[6] the confession will not be deemed voluntary, and will be rejected. The authority, known to be possessed by those persons, may well be supposed both to animate the prisoner's hopes of favor, on the one hand, and on the other to inspire him with awe, and in some degree to overcome the powers of his mind. It has been argued, that a confession made upon the promises or threats of a person, erroneously believed by the prisoner to possess such authority, the person assuming to act in the capacity of an officer or magistrate, ought, upon the same principle, to be excluded.

[1] Thompson's case, 1 Leach, Cr. Cas. 325; Cass's case, Id. 328, n.; Rex *v.* Jones, Russ. & R. 152; Rex *v.* Griffin, Id. 151; Chabbock's case, 1 Mass. 144; Rex *v.* Gibbons, 1 C. & P. 97, note (a); Rex *v.* Partridge, 7 C. & P. 551; Roberts's case, 1 Dever. 259; Rex *v.* Jenkins, Rus. & Ry. 492; Regina *v.* Hearn, 1 Car. & Marsh. 109. See also Phil. & Am. on Evid. 430, 431.

[2] Rex *v.* Upchurch, 1 Mood. Cr. Cas. 465; Regina *v.* Hewett, 1 Car. & Marshm. 534; Rex *v.* Taylor, 8 C. & P. 733. In Rex *v.* Simpson, 1 Mood. Cr. Cas. 410, the inducements were held out by the mother-in-law of the prosecutor, in his house, and in the presence of his wife, who was very deaf; and the confessions thus obtained were held inadmissible. See Mr. Joy's Treatise on the Admissibility of Confessions, p. 5–10.

[3] Rex *v.* Swatkins, 4 C. & P. 548; Rex *v.* Mills, 6 C. & P. 146; Rex *v.* Sextons, 6 Petersd. Abr. 84; Rex *v.* Shepherd, 7 C. & P. 579. See also Rex *v.* Thornton, 1 Mood. Cr. Cas. 27.

[4] Rudd's case, 1 Leach, Cr. Cas. 135; Guild's case, 5 Halst. 163.

[5] Rex *v.* Parratt, 4 C. & P. 570, which was a confession by a sailor to his captain, who threatened him with prison, on a charge of stealing a watch. Rex *v.* Enoch, 5 C. & P. 539, was a confession made to a woman, in whose custody the prisoner, who was a female, had been left by the officer. The official character of the person to whom the confession is made does not affect its admissibility, provided no inducements were employed. Joy on Confessions, &c. p. 59–61; Rex *v.* Gibbons, 1 C. & P. 97, note (a); Knapp's case, 10 Pick. 477; Mosler's case, 6 Penn. Law Journ. 90.

[6] Roberts's case, 1 Dever. 259; Rex *v.* Pountney, 7 C. & P. 302; Reg. *v.* Laugher, 2 C. & K. 225.

The principle itself would seem to require such exclusion; but the point is not known to have received any judicial consideration.

§ 223. But whether a confession, *made to a person who has no authority*, upon an inducement held out by that person, is receivable, is a question upon which learned Judges are known to entertain opposite opinions.[1] In one case, it was laid down as a settled rule, that *any* person telling a prisoner that it would be better for him to confess, will *always* exclude any confession made to that person.[2] And this rule has been applied in a variety of cases, both early and more recent.[3] On the other hand, it has been held, that a promise made by an indifferent person, who interfered officiously, without any kind of authority, and promised, without the means of performance, can scarcely be deemed sufficient to produce any effect, even on the weakest mind, as an inducement to confess; and accordingly confessions made under such circumstances have been admitted in evidence.[4] The difficulty experienced in this matter seems to have arisen from the endeavor to define and settle, *as a rule of law*, the facts and circumstances which shall be deemed, *in all cases*, to have influenced the mind of the prisoner, in making the confession. In regard to persons

[1] So stated by Parke, B. in Rex *v.* Spencer, 7 C. & P. 776. See also Rex *v.* Pountney, Id. 302, per Alderson, B.; Rex *v.* Row, Russ. & R. 153, per Chambre, J.

[2] Rex *v.* Dunn, 4 C. & P. 543, per Bosanquet, J.; Rex *v.* Slaughter, 8 C. & P. 734.

[3] See accordingly, Rex *v.* Kingston, 4 C. & P. 387; Rex *v.* Clewes, Id. 231; Rex *v.* Walkley, 6 C. & P. 175; Guild's case, 5 Halst. 163; Knapp's case, 9 Pick. 496, 500–510; Rex *v.* Thomas, 6 C. & P. 533.

[4] Rex *v.* Hardwick, 6 Petersd. Abr. 84, per Wood, B.; Rex *v.* Taylor, 8 C. & P. 734. See accordingly, Rex *v.* Gibbons, 1 C. & P. 97; Rex *v.* Tyler, Id. 129; Rex *v.* Lingate, 6 Petersd. Abr. 84; 2 Lewin's Cr. Cas. 125, note. In Rex *v.* Wild, 1 Mood. Cr. Cas. 452, the prisoner, a boy under fourteen, was required to kneel, and was solemnly adjured to tell the truth. The conviction, upon his confession thus made, was held right, but the mode of obtaining the confession was very much disapproved. Rex *v.* Row, Russ. & Ry. 153.

grounds of suspicion, which are exaggerated into sufficient proof, together with the character of the persons necessarily called as witnesses, in cases of secret and atrocious crime, all tend to impair the value of this kind of evidence, and sometimes lead to its rejection, where, in civil actions, it would have been received.[1] The weighty observation of Mr. Justice Foster is also to be kept in mind, that "this evidence is not, in the ordinary course of things, to be disproved by that sort of negative evidence, by which the proof of plain facts may be, and often is, confronted."

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which was completely successful; after which he proved an *alibi*, in the most satisfactory manner. 1 Chitty's Crim. Law, p. 85; 1 Dickins. Just. 629, note. See also Joy on Confessions, &c. p. 100 – 109. The civilians placed little reliance on naked confessions of guilt, not corroborated by other testimony. Carpzovius, after citing the opinion of Severus to that effect, and enumerating the various kinds of misery which tempt its wretched victims to this mode of suicide, adds — "quorum omnium ex his fontibus contra se emissa pronunciatio, non tam delicti confessione firmati quam vox *doloris*, vel *insanientis* oratio est." B. Carpzov. Pract. Rerum. Criminal. Pars III. Quæst. 114, p. 160. The just value of these instances of false confessions of crime has been happily stated by one of the most accomplished of modern jurists, and is best expressed in his own language. "Whilst such anomalous cases ought to render Courts and Juries, at all times, extremely watchful of every fact attendant on confessions of guilt, the cases should never be invoked, or so urged by the accused's counsel, as to invalidate indiscriminately all confessions put to the Jury, thus repudiating those salutary distinctions which the Court, in the judicious exercise of its duty, shall be enabled to make. Such an use of these anomalies, which should be regarded as mere exceptions, and which should speak only in the voice of warning, is no less unprofessional than impolitic; and should be regarded as offensive to the intelligence both of the Court and Jury." — "Confessions and circumstantial evidence are entitled to a known and fixed standing in the law; and while it behooves students and lawyers to examine, and carefully weigh their just force, and, as far as practicable, to define their proper limits; the advocate should never be induced by professional zeal, or a less worthy motive, to argue against their existence, be they respectively invoked, either in favor of, or against, the accused." Hoffman's Course of Legal Study, Vol. 1, p. 367, 368. See also The (London) Law Magazine, Vol. 4, p. 317, New Series.

[1] Foster's Disc. p. 243. See also Lench *v.* Lench, 10 Ves. 518; Smith *v.* Burnham, 3 Sumn. 438.

§ 215. Subject to these cautions in receiving and weighing them, it is generally agreed, that *deliberate confessions of guilt* are among the most effectual proofs in the law.[1] Their value depends on the supposition, that they are deliberate and voluntary, and on the presumption that a rational being will not make admissions prejudicial to his interest and safety, unless when urged by the promptings of truth and conscience. Such confessions, so made by a prisoner, to any person, at any moment of time, and at any place, subsequent to the perpetration of the crime, and previous to his examination before the magistrate, are at Common Law received in evidence, as among proofs of guilt.[2] Confessions, too, like admissions, may be inferred from the conduct of the prisoner, and from his silent acquiescence in the statements of others, respecting himself, and made in his presence; provided they were not made under circumstances which prevented him from replying to them.[3] The degree of credit due to them is to be estimated by the Jury, under the circumstances of each case. Confessions made before the examining magistrate, or during imprisonment, are affected by additional considerations.

§ 216. Confessions are divided into two classes, namely, *judicial* and *extrajudicial*. *Judicial confessions* are those which are made before the magistrate, or in Court, in the due course of legal proceedings; and it is essential that they be made of the free will of the party, and with full and perfect knowledge of the nature and consequences of the confession.

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[1] Dig. lib. 42, tit. 2, De Confess.; Van Leeuwen's Comm. B. 5, ch. 21, § 1; 2 Poth. on Obl. (by Evans) App. Numb. xvi. § 13; 1 Gilb. Evid. by Lofft, 216; 4 Hawk. P. C. 425, B. 2, ch. 46, § 35; Mortimer *v.* Mortimer, 2 Hagg. Con. R. 315; Harris *v.* Harris, 2 Hagg. Eccl. R. 409.

[2] Lambe's case, 2 Leach, Cr. Cas. 625, 629, per Grose, J.; Warickshall's case, 1 Leach, Cr. Cas. 298; McNally's Evid. 42, 47.

[3] Ante, § 197; Rex *v.* Bartlett, 7 C. & P. 832; Rex *v.* Smithie, 5 C. & P. 332; Rex *v.* Appleby, 3 Stark. R. 33; Joy on Confessions, &c. 77 – 80; Jones *v.* Morrell, 1 Car. & Kir. 266.

Of this kind are the preliminary examinations, taken in writing by the magistrate, pursuant to statutes; and the plea of guilty, made in open Court, to an indictment. Either of these is sufficient to found a conviction, even if to be followed by a sentence of death, they being deliberately made, under the deepest solemnities, with the advice of counsel, and the protecting caution and oversight of the Judge. Such was the rule of the Roman Law; — *Confessos in jure, pro judicatis haberi placet;* — and it may be deemed a rule of universal jurisprudence.[1] *Extrajudicial confessions* are those which are made by the party elsewhere than before a magistrate, or in Court; this term embracing not only explicit and *express* confessions of crime, but all those admissions of the accused, from which guilt may be *implied.* All confessions of this kind are receivable in evidence, being proved like other facts, to be weighed by the Jury.

§ 217. Whether *extrajudicial confessions*, *uncorroborated* by any other proof of the *corpus delicti*, are of themselves sufficient to found a conviction of the prisoner, has been gravely doubted. In the Roman Law, such naked confessions amounted only to a *semiplena probatio*, upon which alone no judgment could be founded; and at most the party could only in proper cases be put to the torture. But if voluntarily made, in the presence of the injured party, or, if reiterated at different times in his absence, and persisted in, they were received as plenary proof.[2] In each of the English cases usually cited in favor of the sufficiency of this evidence, there was some corroborating circumstance.[3] In the United States, the pris-

[1] Cod. Lib. 7, tit. 59; 1 Poth. on Obl. Pt. iv. ch. 3, § 1, num. 798; Van Leeuwen's Comm. B. 5, ch. 21, § 2; Mascard. De Probat. Vol. 1, Concl. 344; Ante, § 179.

[2] N. Everhard. Concil. xix. 8, lxxii. 5, cxxxi. 1, clxiv. 1, 2, 3, clxxxvi. 2, 3, 11; Mascard. De Probat. Vol. 1, Concl. 347, 349; Van Leeuwen's Comm. B. 5, ch. 21, § 4, 5; B. Carpzov. Practic. Rerum Criminal. Pars II. Quæst. 60, n. 8.

[3] Wheeling's case, 1 Leach, Cr. Cas. 349, n., seems to be an exception; but it is too briefly reported to be relied on. It is in these words: — "But

oner's confession, when the *corpus delicti* is not otherwise proved, has been held insufficient for his conviction; and this opinion certainly best accords with the humanity of the criminal code, and with the great degree of caution applied in receiving and weighing the evidence of confessions in other cases; and it seems countenanced by approved writers on this branch of the law.[1]

§ 218. In the proof of confessions, as in the case of admissions in civil cases, *the whole of what the prisoner said* on the subject, at the time of making the confession, should be taken together. This rule is the dictate of reason, as well as

in the case of *John Wheeling*, tried before Lord Kenyon, at the Summer Assizes at Salisbury, 1789, it was determined, that a prisoner may be convicted on his own confession, when proved by legal testimony, though it is totally uncorroborated by any other evidence." But in Eldridge's case, Russ. & Ry. 440, who was indicted for larceny of a horse, the beast was found in his possession, and he had sold it for £12, after asking £35, which last was its fair value. In the case of Falkner and Bond, Ib. 481, the person robbed was *called upon his recognizance*, and it was proved, that one of the prisoner's had endeavored to send a message to him to keep him from appearing. In White's case, Ib. 508, there was strong circumstantial evidence, both of the larceny of the oats from the prosecutor's stable, and of the prisoner's guilt; part of which evidence was also given in Tippet's case, Ib. 509, who was indicted for the same larceny; and there was the additional proof, that he was an under ostler in the same stable. And in all these cases, except that of Falkner and Bond, the confessions were solemnly made before the examining magistrate, and taken down in due form of law. In the case of Falkner and Bond, the confessions were repeated, once to the officer who apprehended them, and afterwards, on hearing the depositions read over, which contained the charge. In Stone's case, Dyer, 215, pl. 50, which is a very brief note, it does not appear that the *corpus delicti* was not otherwise proved; on the contrary, the natural inference from the report is, that it was. In Francia's case, 6 State Tr. 58, there was much corroborative evidence; but the prisoner was acquitted; and the opinion of the Judges went only to the sufficiency of a confession solemnly made, upon the arraignment of the party for high treason, and this only upon the particular language of the statutes of Ed. 6. See Foster, Disc. p. 240, 241, 242.

[1] Guild's case, 5 Halst. 163, 185; Long's case, 1 Hayw. 524, (455); 4 Hawk. P. C. 425, B. 2 ch. 46, § 36.

of humanity. The prisoner is supposed to have stated a proposition respecting his own connexion with the crime; but it is not reasonable to assume that the entire proposition, with all its limitations, was contained in one sentence, or in any particular number of sentences; excluding all other parts of the conversation. As in other cases, the meaning and intent of the parties is collected from the whole writing taken together, and all the instruments, executed at one time by the parties, and relating to the same matter, are equally resorted to for that purpose; so here, if one part of a conversation is relied on, as proof of a confession of the crime, the prisoner has a right to lay before the Court the whole of what was said in that conversation; not being confined to so much only as is explanatory of the part already proved against him, but being permitted to give evidence of all that was said upon that occasion, relative to the subject-matter in issue.[1] For, as has been already observed respecting admissions,[2] unless the whole is received and considered, the true meaning and import of the part which is good evidence against him cannot be ascertained. But if, after the whole statement of the prisoner is given in evidence, the prosecutor can contradict any part of it, he is at liberty to do so; and then the whole testimony is left to the Jury for their consideration, precisely as in other cases, where one part of the evidence is contradictory to another.[3] For it is not to be supposed that all the parts of a confession are entitled to equal credit. The Jury may believe that part which charges the prisoner, and reject that which is in his favor, if they see sufficient grounds for so doing.[4] If what he said in his own favor is not contradicted by evidence offered by the prosecutor, nor improbable in itself, it will naturally be believed by the Jury; but they are not bound to give weight to it on that account, but are at liberty to judge of it like other evidence, by all the circumstances of the case. And if the confession implicates other persons by name, yet it must be proved as it was made, not omitting the names; but the Judge will instruct the Jury, that it is not evidence against any but the prisoner who made it.[1]

[1] Per Ld. C. J. Abbott, in The Queen's case, 2 B. & B. 297, 298; 4 Hawk. P. C. 426, B. 2, ch. 46, § 42; Rex *v.* Jones, 2 C. & P. 629; Rex *v.* Higgins, 2 C. & P. 603; Rex *v.* Hearne, 4 C. & P. 215; Rex *v.* Clewes, Ib. 221; Rex *v.* Steptoe, Ib. 397.

[2] Ante, § 201, and cases there cited.

[3] Rex *v.* Jones, 2 C. & P. 629.

[4] Rex *v.* Higgins, 3 C. & P. 603; Rex *v.* Steptoe, 4 C. & P. 397; Rex *v.* Clewes, 4 C. & P. 221; Respublica *v.* McCarty, 2 Dall. 86, 88.

§ 219. Before any confession can be received in evidence in a criminal case, it must be shown that it was *voluntary*. The course of practice is to inquire of the witness, whether the prisoner had been told that it would be better for him to confess, or worse for him if he did not confess, or whether language to that effect had been addressed to him.[2] "A free and voluntary confession," said Eyre, C. B.,[3] "is deserving of the highest credit, because it is presumed to flow from the strongest sense of guilt, and therefore it is admitted as proof of the crime to which it refers; but a confession, forced from the mind by the flattery of hope, or by the torture of fear,

[1] Rex *v.* Hearne, 4 C. & P. 215; Rex *v.* Clewes, Ib. 221, per Littledale, J., who said he had considered this point very much, and was of opinion that the names ought not to be left out. It may be added, that the credit to be given to the confession may depend much on the probability that the persons named were likely to engage in such a transaction. See also Rex *v.* Fletcher, Ib. 250. The point was decided in the same way, in Rex *v.* Walkley, 6 C. & P. 175, by Gurney, B., who said it had been much considered by the Judges. Mr. Justice Parke thought otherwise; Barstow's case, Lewin's Cr. Cas. 110.

[2] 1 Phil. on Evid. 401; 2 East, P. C. 659. The rule excludes not only direct confessions, but any other declaration tending to implicate the prisoner in the crime charged, even though, in terms, it is an accusation of another, or a refusal to confess. Rex *v.* Tyler, 1 C. & P. 129; Rex *v.* Enoch, 5 C. & P. 539. See further, as to the object of the rule, Rex *v.* Court, 7 C. & P. 486, per Littledale, J.; The People *v.* Ward, 15 Wend. 231.

[3] In Warickshall's case, 1 Leach, Cr. Cas. 299; McNally's Evid. 47; Knapp's case, 10 Pick. 489, 490; Chabbock's case, 1 Mass. 144.

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."[1] The material inquiry, therefore, is, whether the confession has been obtained by the influence of hope or fear, applied by a third person to the prisoner's mind. The evidence to this point, being in its nature preliminary, is addressed to the Judge, who admits the proof of the confession to the Jury, or rejects it, as he may or may not find it to have been drawn from the prisoner by the application of those motives.[2] This matter resting wholly in the discretion of the Judge, upon all the circumstances of the case, it is difficult to lay down particular rules, *a priori*, for the government of that discretion. The rule of law, applicable to all cases, only demands that the confession shall have been made voluntarily, without the appliances of hope or fear, by any other person; and whether it was so made or not, is for him to determine, upon consideration of the age, situation, and character of the prisoner, and the circumstances under which it was made.[3] Language addressed by others, and sufficient to overcome the mind of one, may have no effect upon that of another; a consideration which may serve to reconcile some contradictory decisions, where the principal facts appear similar in the reports, but the lesser circumstances, though often very material in such preliminary inquiries, are omitted. But it cannot be denied, that this rule

[1] In Scotland this distinction, between voluntary confessions and those which have been extorted by fear or elicited by promises, is not recognised; but all confessions, obtained in either mode, are admissible at the discretion of the Judge. In strong cases of undue influence, the course is to reject them; otherwise, the credibility of the evidence is left to the Jury. See Alison's Criminal Law of Scotland, p. 581, 582.

[2] Boyd *v.* The State, 2 Humphreys, R. 37; Regina *v.* Martin, 1 Armstr. Macartn. & Ogle, R. 197.

[3] McNally's Evid. 43; Nute's case, 6 Petersdorf's Abr. 82; Knapp's case, 10 Pick. 496; United States *v.* Nott, 1 McLean, 499; Cowen & Hill's note to 1 Phil. Evid. 111; Ante, § 49; Guild's case, 5 Halst. 163, 180; Drew's case, 8 C. & P. 140; Rex *v.* Thomas, 7 C. & P. 345; Rex *v.* Court, Ib. 486.

has been sometimes extended quite too far, and been applied to cases, where there could be no reason to suppose that the inducement had any influence upon the mind of the prisoner.

§ 220. The rule under consideration has been illustrated in a variety of cases. Thus, where the prosecutor said to the prisoner, "Unless you give me a more satisfactory account, I will take you before a magistrate," evidence of the confession thereupon made was rejected.[1] It was also rejected, where the language used by the prosecutor was, "If you will tell me where my goods are, I will be favorable to you;"[2]—where the constable, who arrested the prisoner, said, "It is of no use for you to deny it, for there are the man and boy, who will swear they saw you do it;"[3]—where the prosecutor said, "He only wanted his money, and if the prisoner gave him that, he might go to the devil, if he pleased;"[4]—and where he said he should be obliged to the prisoner, if he would tell all he knew about it, adding, "If you will not, of course we can do nothing," meaning nothing for the prisoner.[5] So, where the prisoner's superior officer in the police, said to him, "Now be cautious in the answers you give me to the

[1] Thompson's case, 1 Leach's Cr. Cas. 325.

[2] Cass's case, 1 Leach's Cr. Cas. 328, note; Boyd *v.* The State, 2 Humphreys, R. 37.

[3] Rex *v.* Mills, 6 C. & P. 146.

[4] Rex *v.* Jones, Russ. & Ry. 152. See also Griffin's case, Id. 151.

[5] Rex *v.* Partridge, 7 C. & P. 551. See also Guild's case, 5 Halst. 163. It is extremely difficult to reconcile these and similar cases with the spirit of the rule, as expounded by Chief Baron Eyre, whose language is quoted in the preceding section. The difference is between confessions made voluntarily, and those "*forced* from the mind by the flattery of hope, or by the torture of fear." If the party has made his own calculation of the advantages to be derived from confessing, and thereupon has confessed the crime, there is no reason to say that it is not a voluntary confession. It seems that, in order to exclude a confession, the motive of hope or fear must be directly applied by a third person, and must be sufficient, in the judgment of the Court, so far to overcome the mind of the prisoner, as to render the confession unworthy of credit.

questions I am going to put to you about this watch;" the confession was held inadmissible.[1] There is more difficulty in ascertaining what is such a *threat*, as will exclude a confession; though the principle is equally clear, that a confession induced by threats is not voluntary, and therefore cannot be received.[2]

§ 221. But though promises or threats have been used, yet if it appears, to the satisfaction of the Judge, that their *influence was totally done away* before the confession was made, the evidence will be received. Thus, where a magistrate, who was also a clergyman, told the prisoner, that if he was not the man who struck the fatal blow, and would disclose all he knew respecting the murder, he would use all his endeavors and influence to prevent any ill consequences from falling on him; and he accordingly wrote to the Secretary of State, and received an answer, that mercy could not be extended to the prisoner; which answer he communicated to the prisoner, who afterwards made a confession to the coroner; it was held, that the confession was clearly voluntary, and as such it was admitted.[3] So, where the prisoner had been induced, by promises of favor, to make a confession, which was for that cause excluded, but about five months afterwards, and after having been solemnly warned by two magistrates that he

[1] Regina *v.* Fleming, 1 Armstr. Macartn. & Ogle, R. 330. But where the examining magistrate said to the prisoner, "Be sure you say nothing but the truth, or it will be taken against you, and may be given in evidence against you at your trial," the statement, thereupon made, was held admissible. Reg. *v.* Holmes, 1 C. & K. 248.

[2] Thornton's case, 1 Mood. Cr. Cas. 27; Long's case, 6 C. & P. 179; Roscoe's Crim. Evid. 34; Dillon's case, 4 Dall. 116. Where the prisoner's superior, in the post-office, said to the prisoner's wife, while her husband was in custody for opening and detaining a letter, "Do not be frightened; I hope nothing will happen to your husband, beyond the loss of his situation;" the prisoner's subsequent confession was rejected, it appearing that the wife might have communicated this to the prisoner. Regina *v.* Harding, 1 Armstr. Macartn. & Ogle, R. 340.

[3] Rex *v.* Clewes, 4 C. & P. 221.

must expect death and prepare to meet it, he again made a full confession, this latter confession was admitted in evidence.[1] In this case, upon much consideration, the rule was stated to be, that, although an original confession may have been obtained by improper means, yet subsequent confessions of the same or of like facts may be admitted, if the Court believes, from the length of time intervening, or from proper warning of the consequences of confession, or from other circumstances, that the delusive hopes or fears, under the influence of which the original confession was obtained, were entirely dispelled.[2] In the absence of any such circumstances, the influence of the motives proved to have been offered, will be presumed to continue, and to have produced the confession, unless the contrary is shown by clear evidence; and the confession will therefore be rejected.[3] Accordingly, where an inducement has been held out by an officer, or a prosecutor, but the prisoner is subsequently warned by the magistrate, that what he may say will be evidence against himself, or that a confession will be of no benefit to him, or he is simply cautioned by the magistrate not to say any thing against himself, his confession, afterwards made, will be received as a voluntary confession.[4]

§ 222. In regard to *the person, by whom the inducements were offered*, it is very clear, that if they were offered by the

[1] Guild's case, 5 Halst. 163, 168.

[2] Guild's case, 5 Halst. 180.

[3] Roberts's case, 1 Devereux, R. 259, 264; Meynell's case, 2 Lewin's Cr. Cas. 122; Sherrington's case, Ib. 123; Rex *v.* Cooper, 5 C. & P. 535.

[4] Rex *v.* Howes, 6 C. & P. 404; Rex *v.* Richards, 5 C. & P. 318; Nute's case, 2 Russ. on Crimes, 648; Joy on the Admissibility of Confessions, p. 27, 28, 69–75; Rex *v.* Bryan, Jebb's Cr. Cas. 157. If the inducement was held out by a person of superior authority, and the confession was afterwards made to one of inferior authority, as a turnkey, it seems inadmissible, unless the prisoner was first cautioned by the latter. Rex *v.* Cooper, 5 C. & P. 535.