

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Our Sovereign Lady the Queen v. Edward Coote, from the Court of Queen's Bench for the Province of Quebec, Canada; delivered 18th March, 1873.*

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Present :

SIR JAMES W. COLVILLE.  
SIR BARNES PEACOCK.  
LORD JUSTICE MELLISH.  
SIR MONTAGUE SMITH.  
SIR ROBERT P. COLLIER.

Edward Coote (the Respondent) was convicted of arson, subject to a question of law reserved by Mr. Justice Badgley (the Judge who presided at the trial) for the consideration of the Appeal side of the Court of Queen's Bench, in pursuance of cap. 77, sec. 57 of the Consolidated Statutes of Lower Canada. The question reserved was, whether or not the Prosecutor was entitled to read as evidence against the prisoner depositions made by him under the following circumstances :—

An Act of the Quebec Legislature appointed officers named "Fire Marshalls" for Quebec and Montreal respectively, with power to inquire into the cause and origin of fires occurring in those cities, and conferred upon each of them "all the powers of any Judge of Session, Recorder, or Coroner, to summon before him and examine upon oath all persons whom he deems capable of giving information or evidence touching or concerning such fire." These officers had also power, if the evidence adduced afforded reasonable ground for believing that the fire was kindled by design, to arrest any suspected person, and to proceed to an examination of the case and

committal of the accused for trial in the same manner as a Justice of the Peace.

Upon an inquiry held in pursuance of this Statute as to the origin of a fire in a warehouse of which Coote was the occupier, he was examined on oath as a witness. No copy of his depositions accompanies the Record, but their Lordships accept the following statement of Mr. Justice Badgley as to the circumstances under which they were taken :—

“ Among the several persons examined respecting that fire was Coote himself, upon two occasions at an interval of three or four days between his two appearances, on each of which he signed his deposition taken in the usual manner of such proceedings, and which was attested by the Commissioners. Upon both occasions he acted voluntarily and without constraint ; there was no charge or accusation against him or any other person ; he was free to answer or not the questions put to him, and frequently exercised his privilege of refusing to answer such questions. Some days after the date of the latter deposition, and after the final close of the inquiry, Coote was arrested upon the charge of arson of his premises and duly committed for trial.”

At his trial the above-mentioned depositions were duly proved, and admitted in evidence after being objected to by the Counsel for the prisoner. The objection taken at the trial appears to have been that to constitute such a Court as that of the Fire Marshall was beyond the power of the Provincial Legislature, and that consequently the depositions were illegally taken. Subsequently other objections were taken in arrest of Judgment, and the question of the admissibility of the depositions was reserved. It was held by the whole Court (in their Lordships' opinion rightly) that the constitution of the Court of the Fire Marshall, with the powers given to it, was within the competency of the Provincial Legislature ; but it was further held by a majority of the Court that the depositions of the prisoner were not admissible against him, because they were taken upon oath, and because he was not cautioned that whatever he said might be given in evidence against him, after the manner in which Justices of the Peace are required to caution accused persons, by an Act of the British Parliament adopted in this respect by the Colonial Legislature. The Court held the conviction to be bad, but, inasmuch as the objection to it was not founded on the merits of the case, made an order directing a new trial.

Their Lordships are unable to concur in what

appears to be the view of one of the Judges of the Court of Queen's Bench, that the law on the subject of the reception in evidence against a prisoner of statements made by him upon oath is so unsettled that every Judge is at liberty in every case to act upon his own individual opinion.

It is true that doubts have from time to time arisen on this subject, and that conflicting dicta, and indeed decisions, may be found upon it; but, in their Lordships' opinion, all such doubts have been set at rest by a series of recent decisions, not indeed promulgating any new law, but declaring what the law has always been if properly understood.

In the case of *Rex v. Haworth*,\* a deposition on oath made by the prisoner as a witness against a person named Sheard, on a charge of forgery, was received in evidence by Mr. Justice J. Parke against the prisoner, on an indictment for forgery. In *Reg. v. Goldshede and another*,† Lord Denman admitted against the Defendants, on a charge of conspiracy, answers which they had made on oath in a suit in Chancery. In *Reg. v. Sloggett*‡ the prisoner was examined in the Court of Bankruptcy, under an adjudication against him, and answered questions tending to criminate himself without objection. At a certain stage of his examination he was told by the Commissioner to consider himself in custody. On a case reserved, it was held by the Court of Criminal Appeal that so much of his examination as was taken before his committal to custody was evidence against him. In that case, Jervis, C.J., observes, "The test is whether he *may* object to answer. If he may, and does not do so, he voluntarily submits to the examination to which he is subjected, and such examination is admissible as evidence against him." In *Reg. v. Chidley and Cummins*,§ Cockburn, C.J., admitted a deposition made by Cummins, when Chidley alone was accused of the offence for which they were afterwards both tried. The learned Editor of the 4th edition of "*Russell on Crimes*" thus reports a case of *Reg. v. Sarah Chesham*;—||

\* 4 Carring. and Payne, p. 254.

† 1 Car. and Kirwan, p. 657.

‡ Dearsley and Bell's Crown Cases.

§ 8 Cox's Crown Cases, 365.

|| "*Russell on Crimes*," 4th ed., vol. iii, p. 418.

“Where the prisoner was indicted for administering poison with intent to murder her husband, the Coroner stated that he had held an inquest on his body, which was adjourned, and that the prisoner was present as a witness on the second occasion; no charge had at that time been made against her; she made a statement on oath, which the Coroner took down in writing. Lord Campbell, C.J., after consulting Parke, B., admitted the statement, and the prisoner was convicted and executed.”

The case of *Reg. v. Garbett*\* accords with the foregoing. There the prisoner objected to answer certain questions on the ground that his answers might criminate him. His objections, which were based on reasonable grounds, were overruled, and he was compelled to answer. It was held by a majority of the Judges on a Crown case reserved that the particular answers so given were inadmissible against him, but it does not appear to have been suggested that the rest of his deposition was not admissible.

The case of *Reg. v. Scott*† seems to go somewhat further. It was then held by the Court of Criminal Appeal (Coleridge, J., dissenting) that although, under the Bankruptcy Act then in force (12 and 13 Vict., c. 106), the bankrupt was bound to answer certain questions, notwithstanding that they might tend to criminate him, nevertheless such answers were admissible against him, the compulsion under which he acted being one of law, and not the improper exercise of judicial authority.

From these cases, to which others might be added, it results, in their Lordships' opinion, that the depositions on oath of a witness legally taken are evidence against him should he be subsequently tried on a criminal charge, except so much of them as consists of answers to questions to which he has objected as tending to criminate him, but which he has been improperly compelled to answer. The exception depends upon the principle “*nemo tenetur seipsum accusare*,” but does not apply to answers given without objection, which are to be deemed voluntary.

The Chief Justice indeed suggests that Coote may have been ignorant of the law enabling him to decline to answer criminating questions, and that if he had been acquainted with it he might have withheld some of the answers which he gave. As a matter of fact, it would appear that Coote was acquainted

\* Denison's Crown Cases, p. 236.

† Dearsley and Bell's Crown Cases, p. 47.

with so much of the law ; but be this as it may, it is obvious that to institute an inquiry in each case as to the extent of the prisoner's knowledge of law, and to speculate whether, if he had known more, he would or would not have refused to answer certain questions, would be to involve a plain rule in endless confusion. Their Lordships see no reason to introduce, with reference to this subject, an exception to the rule recognized as essential to the administration of the Criminal Law, "*Ignorantia juris non excusat.*" With respect to the objection that Coote when a witness should have been cautioned in the manner in which it is directed by statute that persons accused before magistrates are to be cautioned (a question said by Mr. Justice Badgley not to have been reserved, but which is treated as reserved by the Court), it is enough to say that the caution is by the terms of the statutes applicable to accused persons only, and has no application whatever to witnesses. If, indeed, the Fire Marshall had exercised the power which he possessed of arresting Coote on a criminal charge (but which he did not exercise), then it would have been proper to caution him before any further statement from him had been received.

A question has been raised on the part of the Crown whether or not the Court had the power of ordering a new trial, inasmuch as c. 77, s. 63, of the Consolidated Statutes of Canada, giving the Court power to direct a new trial, has been repealed by the subsequent Statute 32 and 33 Vict., c. 29, s. 80, which does not itself in terms confer any such power, but in the view which their Lordships take of the case it becomes unnecessary to determine this question.

For the reasons above given their Lordships will humbly advise Her Majesty that the order made by the Court of Queen's Bench be reversed,—that the conviction be affirmed,—and that the said Court of Queen's Bench be directed to cause the proper sentence to be passed thereon.

