opium—which was nearly empty, with a little opium clinging to the bottom. They also found in the same place another horn container nearly full. The defendant was then asked where he got it from, and he said, "Singapore man bring it from steamer," or "From Singapore a man bring it from steamer." The Magistrate sitting at Fremantle was, I think, entitled to take notice of the fact that ships trade from Singapore to Fremantle. That was the only evidence of importation. On appeal to McMillan, J., he thought that the evidence was inadmissible, relying upon a supposed decision of Earl, J., in the case of R. *v.* Berriman (6 Cox, C.C. 388). I think that the learned Judge was misled by the head-note in that case. It did not decide that evidence of admissions made by a prisoner to a constable in answer to questions is inadmissible, although it contained a strong expression of opinion from that learned Judge as to the impropriety of asking such questions. There is no decision that I am aware of that such evidence is inadmissible. I should like to take the opportunity of saying on this Bench what I once said on the Bench of the Supreme Court of Queensland—that is to say, that I entirely accept the statement of the law made by Sir Alfred Stephen, C.J., in the case of R. *v.* Rogerson (9 S.C.R. (N.S.W.), 234 at p. 235), decided in New South Wales in 1870, where the same point was taken. Sir Alfred Stephen said, "The first and second points are not arguable. There is nothing in law to prevent a constable from putting questions to a prisoner, and whatever the prisoner says in answer may be given in evidence against him, unless the constable has held out some threat or promise or made some false representation to the prisoner before questioning him. The prudence or propriety of putting such questions is another matter. Some very eminent Judges have censured the practice as an attempt to extract from the prisoner admissions which may ensure his conviction. Other Judges equally eminent have expressed opinions quite the other way. For my own part, looking to the true ends of justice—the conviction of the guilty, and the protection of society—I cannot see in the practice anything inconsistent with the duty of a constable or unfair to the prisoner. 'Where were you at such a time?' 'Where did you get these articles?' 'How do you account for the blood on your clothes?' Such questions as these may, in my opinion, be properly put; and it is possible that the prisoner's answers may remove the suspicions on which he was arrested and lead to his speedy liberation. I do not say that such questioning may not be carried out to an improper length, but in law it does not affect the admissibility of the prisoner's answers, provided nothing has been done to entrap or mislead him." Faucett, J., concurred in these remarks. In my opinion that was then, and is still, an accurate statement of the law. The recent decision of the Court of Criminal Appeal in England in the case of R. *v.* Best ([1909] 1 K.B. 692) is to the same effect. A judgment to the contrary effect had been given by A. L. Smith, J., in the case of R. *v.* Gavin (15 Cox, C.C. 656), but the Court of Criminal Appeal held that it was not good law. I think, therefore, that the ground upon which McMillan, J., allowed the appeal was a mistaken one, and afforded no ground for quashing the conviction.

Barton, J., in concurring, said,—We have to decide whether the statement that the accused made in this case was admissible, and, if we find it is, whether the evidence was such as to warrant the Magistrate in convicting. We are not to try the case again. If the evidence was such that it would justify a jury in convicting—that is to say, if the verdict of a jury convicting would not have been against the evidence—then it is clear that the Magistrate would be justified in his conclusion. First, then, as to the statement: I have looked carefully at all the evidence more than once, during the progress of the case, with a view of finding whether this statement was made voluntarily or not. If it were shown that it was induced by any threat of consequence, or promise of advantage, then it would be inadmissible. Apart from that it must be deemed to be voluntary. The Crown has not to prove a negative—that is, to prove that the statement of the accused person is not induced by threat or promise. If the circumstances surrounding a confession or statement give no room for any suggestion that it has been obtained by any threat or inducement, then the presumption is that it is free and voluntary. If a doubt is raised, then it is incumbent on the prosecution to remove that doubt. There is nothing in the evidence to suggest a doubt as to this statement being entirely voluntary on the part of the respondent. There is a certain degree of apprehension, perhaps, in the mind of a person whose proceedings come to be investigated by a searcher on his premises, but any apprehension of that kind is a fear common to all classes of society, and is not such a fear as is contemplated in the rule of law which renders incriminating statements by prisoners inadmissible where they are made under the influence of fear.

Higgins, J., also concurred and said,—I am of the same opinion, and I shall merely quote another case in support of the view of my learned brothers as to the admissibility of the evidence. I refer to the case of Rogers *v.* Hawken (62 J.P., 279). In that case an officer of the Royal Society for the Prevention of Cruelty to Animals prosecuted a man for cruelly ill-treating animals. The officer said, "I saw the defendant. I was in uniform. I said to him, 'Is it true your carman told the police you sent the animal out and knew it was lame?' to which the respondent replied, 'Yes, I sent Yost out with it.' I said nothing whatever to the defendant as to the likelihood of proceedings." I cite the case particularly because it contains comments on R. *v.* Male and Cooper (17 Cox, C.C. 689), to which Mr. Solomon referred. Lord Russell, C.J., in his judgment said (62 J.P. 279, at p. 280), "This is of itself a very simple point, and I think the evidence ought to have been admitted by the Justices, but I must refer to the case of R. *v.* Male and Cooper (17 Cox, C.C. 689), and to the judgment of Cave, J., in that case. I must not be understood to say that the observations of the learned Judge in that case were not perfectly just and applicable to the circumstance of that case, but if they are to be taken as laying down the general proposition of law that a statement made to a policeman by a defendant who has not been previously cautioned, provided that statement has not been induced by fear of reward or punishment, is legally inadmissible, I must differ from the conclusions of the learned Judge." Speaking of the case before him, Lord Russell said (62 J.P. 279, at p. 280), "There is no question of any inducement of confession by any threat or promise of reward in this case. I think, therefore, the evidence is admissible, but if it goes no further than it does, I think the Justices would be slow to convict upon it." Matthew, J., said (62 J.P. 279), "There is no trace here of any inducement of a confession by threat or promise of reward, and no evidence of any attempt on the part of the appellant to manufacture evidence. Nothing is more common than for a constable to say, "Can you account for yourself last night?" I must concur in the judgment.

EXTRACT FROM NEW ZEALAND GAZETTE.

(From *Gazette*, 1914, page 3625.)

Inspector of Weights and Measures for the County of Bruce, &c., appointed.

Department of Internal Affairs,
Wellington, 15th September, 1914.

HIS Excellency the Governor has been pleased to appoint

Constable HENRY MARTIN

to be an Inspector of Weights and Measures under the Weights and Measures Act, 1908, for the Counties of Bruce and Clutha, and for the Boroughs of Milton, Balclutha, and Kaitangata, *vice* Constable J. Fox.

H. D. BELL,
Minister of Internal Affairs.