

This his custody of
the accused, if he



This section also aims at remedying the same mischief as is contemplated in the preceding section. S. 25 makes inadmissible a confession made by an accused to the police. This section (S. 26) goes a step further to provide that a confession made by a person while in a police custody to a third person (i. e.

, other than a police-officer) is also not admissible, unless it is made in the immediate presence of a Magistrate. The presence of a Magistrate is, by a legal fiction, regarded as equivalent to removal of police influence, and the statement is, therefore, not rendered inadmissible. Custody: The mere temporary absence of a police-man from the room in which the confession is recorded does not terminate his custody of the accused, if he has taken effective steps to prevent his escape, whether by locking the door of the room or by waiting outside, or by leaving him in the custody of another person. Where a village policeman, who had arrested the accused, left him in charge of certain villagers, and went to see the scene of occurrence, and during that interval, the accused confessed his guilt to those villagers, it was held that, notwithstanding the temporary absence of the policemen, the accused being still under the police custody, the extra judicial confession made before the villagers was not admissible in evidence. The word custody does not mean formal custody, but includes such state of affairs in which the accused can be said to have come into the hands of a police-officer or can be said to have been under some sort of surveillance or restriction. In the Immediate Presence of a Magistrate: The confession made by a person in the custody of a police-officer cannot be admitted in evidence unless it is in the immediate presence of a Magistrate. The procedure for recording the

confession is prescribed by the Criminal Procedure Code, which lays down certain conditions for the recording of the confession during investigation. The power to record confessions has been given only to certain classes of Magistrates.