[TYSER, C.J. AND FISHER, J.]

TYSER, C.J. & FISHER, J. 1916

December 12

YUSUF HUSSEIN

v.

MUSTAFA YUSUF FARDO AND OTHERS.

REGISTRATION OF IMMOVEABLE PROPERTY—TRANSFER AND REGISTRATION AS ON SALE —REAL INTENTION OF PARTIES.

The Plaintiff advanced money to the first Defendant. Certain property belonging to the first Defendant, including a house which was the subject-matter of the action, was transferred to the Plaintiff and a qochan was issued to him as a purchaser. The parties had entered into an agreement, embodied in a written document, that, on repayment of the sum advanced, the Plaintiff should re-transfer the house to the first Defendant, and it was admitted by the Plaintiff that the transfer to him was subject to a condition that he should re-transfer on payment of the sum advanced.

The Defendants remained in occupation of the house and the Plaintiff brought an action to eject them claiming to be absolute and unconditional owner under his qochan. For the Defendants it was claimed that the condition upon which their right to have the property re-transferred was based had been fulfilled by payment of the amount advanced and interest, and they filed a counterclaim for an order to re-transfer to the first Defendant or payment of damages.

The District Court found that the condition had been fulfilled and gave judgment for the Defendants for rectification of the Register.

HELD (*affirming the judgment of the District Court*): *That the true intention having been that the registration in the name of the Plaintiff should be by way of security for repayment of money advanced, to which intention effect would have been given had an action for rectification been originally brought, the Court could give effect to the original intention of the parties and hold that the Defendants were entitled to have the registration rectified by the first Defendant being registered as owner.*

The facts sufficiently appear from the head-note.

Jenul Effendi for the Appellant.

The private agreement is of no value. He cited Arts. 26 and 30 of the Tapou Law (Ongley, p. 71), and Art. 100 of the Mejellé.

Myrianthis, for the Respondent, cited Arts. 118 and 396 of the Mejellé.

Judgment: It is admitted by both parties that their original intention was to mortgage the house. As a fact the house was registered as if on a sale. Something in the nature of mutual mistake took place, something not in accordance with the intention of the parties. It is clear that the Court on proper proceedings being instituted, could order rectification of the Register so as to make the registration accord with the intention of the persons at whose instance the registration was effected. In the present proceedings the Court can treat the registration as rectified, that is to say they can act as if that had been done which both parties admit should have been done, and can make the order for retransfer that it would make if the transaction were registered as a bey'bil vefa. The facts found by the District Court seem perfectly in accordance with the evidence, that is to say that

TYSER, C.J. & FISHER, J.

YUSUF HUSSEIN v. MUSTAFA YUSUF FARDO AND OTHERS

the Plaintiff had received all the money due in respect of the loan for the repayment of which this house was intended to be a security. The judgment must be affirmed and the appeal dismissed, with costs, and a copy of the judgment of this Court will be sent to the proper Land Registry Officer in accordance with Sec. 34 (1) of the Immoveable Property Registration and Valuation Law, 1907.

Appeal dismissed.

TYSER, C.J. & FISHER, J. 1916

December 16

[TYSER, C.J. AND FISHER, J.]

POLICE

v.

MICHAILI YORGHO KATSIAMALI.

CRIMINAL PROCEDURE—ADMISSION IN COURT BY ADVOCATE FOR ACCUSED.

The appellant was charged before a Magisterial Court with (1) *stealing a goat value* £1 *and* (2) *being in possession of a goat skin reasonably suspected of being stolen property. To these charges he pleaded not guilty and elected to be dealt with summarily. Before any evidence was called the advocate for the defence said :* " *We admit possession,* " *but that animal is our own property.*"

No evidence of possession was given and the Court convicted the appellant on the second charge.

HELD: *That the statement of the advocate could not be taken as evidence, or equivalent to evidence, of possession.*

Triantaphyllides for the Appellant.

There was no evidence upon which the Appellant could be convicted. After the Appellant had pleaded I said to the Magistrate in English: " We admit possession but that animal is ours." Even if that statement is to be taken as evidence the conviction cannot be supported.

The Assistant King's Advocate for the Prosecution.

Judgment : THE CHIEF JUSTICE: In this case the point made for the defence is that an admission of fact made by the Advocate of a person at the hearing of a criminal charge is not evidence on which he can be convicted.

For the purposes of this judgment it is sufficient to say that the Appellant was charged and convicted with being in possession of a goat's skin reasonably suspected to be stolen property. The only evidence of possession was a statement made at the trial by the Advocate for the defence, in which he said " We admit possession, but say that the " goat was ours." The term " admission " is somewhat ambiguous. It may mean an admission made by a party to any action, which may always be proved by evidence, or it may mean an agreement to dispense with evidence. That is the sense in which it is here used. The law on