FISHER, C.J. & STUART, P.J. 1921

November 11

[FISHER, C.J. AND STUART, P.J.]

REX

v.

RUSTEM SEID ALY.

STATEMENT OF ACCUSED—QUESTIONING AN ACCUSED PERSON BY POLICE—OBJECT OF OBTAINING EVIDENCE—LAW I. OF 1886, SECS. 26 AND 21(2).

Accused was convicted before a District Court of being in possession of part of a he-goat reasonably suspected of being stolen property contrary to Law 1 of 1886, Sec. 20.

A statement was taken from the accused by a Police Officer, Corporal Mehmed Haji Ibrahim.

The facts appear sufficiently from the judgment of the Court.

From this conviction by the District Court the accused appeals.

For Appellant (accused) *Krineos.*

For the Crown the *Assistant King's Advocate.*

Judgment: The Court sets aside the conviction on the ground that the statement made to Corporal Mehmed Haji Ibrahim should not have been admitted in evidence. It does not appear whether the Corporal was a person authorised to take statements under Sec. 26 of the Criminal Law and Procedure Amendment Law, 1886, or not. The heading of the statement suggests that he is. The heading is as follows:—

" Statement of accused Rustem Seid Aly Koshini of Mandria, " 29th March, 1921."

" On 29th March, 1921, at Mandria village, you have been found in " possession of a skinned he-goat's meat, liver, head and skin, which " are reasonably suspected of being stolen property. I will make " inquiries from you and will put to you some questions and I do not " compel you to answer any questions which will incriminate you, but " I will produce your statement to the Court in evidence, if necessary, " even if it is against you."

He makes the same charge against the accused of which he was ultimately convicted.

If he was purporting to act under the authority given him by Sec. 26, it is clear that he was not endeavouring to find out who had committed the crime, but endeavouring to get evidence out of the person whom he is satisfied is the person who has committed the crime (and who is already in custody on that charge), which will lead to his conviction.

This is not what he is authorised to do by Sec. 26. That section enables an authorised person to " examine orally any person supposed " to be acquainted, etc.," which person is not obliged to answer any

questions " the answers to which would have a tendency to expose him " to a criminal charge."

This man had actually been charged with being in possession of meat, etc., reasonably suspected of being stolen property.

Sec. 21 (2) also shows that it is contemplated at the time the statement is taken that the person examined may be called later as a witness. This could not be so in this case. Therefore if the statement was taken under Sec. 26 it is not admissible. If it was not so taken it seems clear that the accused was subjected to a long inquisitorial examination which went far beyond anything which a Police Officer has power to invite or cause an accused person to submit himself to with a view to the result being subsequently put in evidence against the person examined.

[FISHER, C.J. AND STUART, P.J.]

ELENE VARELIA
v.
HARALAMBO NICOLA ZANDI.

Appeal by Plaintiff from judgment of District Court dismissing the action.

The facts are as follows:—

Plaintiff's daughter and son-in-law owed money on a bond to present Defendant. They were sued by him and Plaintiff intervened. Plaintiff was not a guarantor of the bond. Plaintiff voluntarily undertook to register certain properties into Defendant's name in consideration of his withdrawing the action against the daughter and son-in-law of Plaintiff. Plaintiff failed to carry out the registration and Defendant sued her and obtained judgment against her. She eventually paid Defendant. Plaintiff now sues Defendant to obtain from him the bond given to Defendant by her daughter and son-in-law.

Theodotou for Appellant.

Stavrinakis for Respondent.

HELD: Plaintiff has no legal right to have possession of the bond as she did not sign the bond, and she might have protected herself by other means, *e.g.*, she might have got a new bond from her daughter and son-in-law.

Appeal dismissed with costs.