

1930  
Jan. 17.  
SPOURGITIS  
v.  
IDREOS.

of sundry alleged irregularities of which the Court below rightly found he had no right to complain and because he was asked for money. This in itself did not amount to a refusal to bring up the tent: if appellant had not rescinded respondent 2 might have borrowed the money from someone else, as he did later.

Appellant did not give respondent 2 the time or chance to bring up the tent: he rescinded the contract without offering the transport expenses for the poles and posts which he knew were at Amiandos and for the bringing of the tent from Larnaca. In these circumstances there was not in my view any breach of the condition to use the tent at Nicosia at the time appellant repudiated the contract.

*Appeal dismissed.*

1930.  
Feb. 5.

IN THE ASSIZE COURT OF LIMASSOL-PAPHOS.

[BELCHER, C.J., THOMAS, J., GREENE, P.D.C., HALID  
AND STAVRINIDES, D.JJ.]

REX

v.

NOUFRIOS CHRISTODOULOU AND  
THEODOSI YORGHIOU.

*Criminal Law—Evidence—Preliminary enquiry—Witness contradicting own statements—Power to give deposition in evidence—Law 12 of 1929, Section 6 (1).*

On a trial at Assizes for wilfully damaging property (C.C.C., Section 312) a witness called by the Crown denied all knowledge of the matter. The Crown thereupon tendered the deposition containing the evidence of the witness before the committing Magistrate, which would show that on examination-in-chief he made a material statement of fact (implicating accused 1) but that on cross-examination and again on re-examination he denied the truth of what he had said on examination-in-chief.

*Held*, by the majority of the Court (the Chief Justice and Stavrinides, D.J., dissenting), that the deposition was not admissible.

Trial at Limassol Assizes. (The case is reported on the point of evidence only.)

Law 12 of 1929, Section 6 (1), is as follows:—

“Where upon the trial on information of a person accused of any offence, any witness shall make any material statement of fact in direct contradiction to a statement of fact contained in his deposition taken before a Magisterial Court, or upon commission in accordance

with the provisions of Clause 125 of the Cyprus Courts of Justice Order, 1927, in or in the course of the preliminary inquiry into the charge against the accused person, the deposition may be put in evidence ; and if it appears to the Court, having regard to all the circumstances of the case, that the statement therein contained is true (notwithstanding that the witness has so contradicted it as aforesaid), it shall be lawful for the Court, in considering whether the accused person has or has not committed the offence charged against him in the information or any offence for which he may be lawfully convicted by the Court on his trial, to treat the statement of fact contained in the deposition as the true evidence of witness and to act upon it accordingly.

1930.  
Feb. 5.  
—  
REX  
v.  
CHRISTODOU-  
LOU.

Provided that the Court shall not treat the statement of fact contained in the deposition of a witness as his evidence unless it appears to the Court that the fact deposed to by the witness is corroborated by other evidence in the case."

*Pavrides*, Crown Counsel, for the Crown.

*Michaelides* for accused.

Separate judgments were delivered as under :—

JUDGMENT :—

STAVRINIDES, D.J. : The deposition ought to be admitted, as he now makes a statement in direct contradiction of something he said quite definitely on examination-in-chief below, on a material point.

BELCHER, C.J. : The wording of the section is clear and in my view makes the deposition admissible. All that is necessary is that there should be a contradiction between something material he says here and something he said below, and that condition is fulfilled. That two statements both made below were contradictory *inter se* cannot take the case out of the section, nor the fact that no one can say which of them was true. We ought to be in no worse position than the Court below : one statement must be a lie, but we should have them both before us. Which we are to believe is for us to say : there may be circumstances rendering one more probable.

HALID, D.J. : I think it should be excluded. You must take the deposition as a whole : it is what is said last that governs the matter. His evidence below, so looked at, is to the effect that he knows nothing of the affair and that is just what he says now and there is no contradiction.

GREENE, P.D.C. : I agree with Halid, J.

1930.  
Feb. 5.  
REN  
v.  
CHRISTODOU-  
LOU.

THOMAS, J.: And I. We cannot look at the deposition unless it is shown to us that on some material point the witness's evidence below was contradictory of what he says now. Either you must take what he said last and stuck to, and in that case he says the same now and there is no contradiction, or you must take everything he said and one piece of it cancels the other and there is nothing left to be either affirmed or contradicted here.

*Evidence not admitted.*

1930.  
Jan. 16.  
Feb. 24.

[BELCHER, C.J., SERTSIOS AND FUAD, JJ.]  
THEMISTOKLES N. DERVIS

v.

CHRISTOFI P. TSERIOTI AND OTHERS (No. 1).

*Fraudulent transfer—Creditor's application to set aside—Time-limit—Removal of limit by amending law—Effect on time-barred rights—Retrospective operation of Procedural Law—Qualification—Law 7 of 1886, Section 3—Law 10 of 1927, Sections 3, 4.*

Appellant, a creditor whose right under Law 7 of 1886, Section 3, to apply to set aside a dealing by his debtor had expired by lapse of time, in terms of the section, one year after the date of the dealing and before Law 10 of 1927 which removed the time-limit in such cases came into force, applied after the last-mentioned law came into force to set the dealing aside.

*Held*, that the law had no such retrospective operation as would revive the plaintiff's expired right.

Appeal from order of District Court, Nicosia—Kyrenia, dismissing plaintiff's application (in action No. 728/24).

Law 7 of 1886, Section 3, was as follows:—

“(1) Any gift, sale, pledge, mortgage or other transfer or disposal of any movable or immovable property deemed to be fraudulent under the provisions of Section 2 of this Law may be set aside by an order of the Court, to be obtained on the application of any judgment creditor made in the action or other proceeding wherein the right to recover the debt has been established, and to the Court before which such action or other proceeding has been heard or is pending.

(2) No gift, sale, mortgage or other transfer of any property shall be set aside under the provisions of this Law, except it shall have been made within the period of one year next before the commencement of the action or proceeding in which the application to set it aside is made.”