[STRONGE, C.J., AND SERTSIOS, J.]

1935.
May 25.

REX

v.

NICOLAS PAVLI AND ANOTHER.

(*Criminal Application No.* 42/35.)

Evidence — Statement made by suspected Person to Police Officer enquiring into Commission of an Offence under Section 3 of Law 12 *of* 1929 — *Obligation to answer Questions — Inadmissibility of Statement against such Person when tried for the Offence.*

One of the appellants was taken, virtually in custody, to a police station and there questioned at length and his answers taken down. His statement was tended and received in evidence by the Assize Court.

Held, that as the statement was given under compulsion, it was not admissible in evidence.

Note: This case is reported solely on the above point. Leave to appeal was refused by the Supreme Court as, notwithstanding the misreception of the statement, there had been no miscarriage of justice.

The Chief Justice in delivering the judgment of the Court refusing the application said: One of the grounds upon which applicant No. 2 bases his present application is that at the trial the Court erroneously admitted in evidence a statement made by the applicant to Sergeant Platrides, a person duly authorized under Law 12 of 1929, section 3, to hold enquiries into the commission of offences. That section provides in substance that the person so duly authorized may require any person who, he has reason to suppose, is aware of any circumstances relating to the offence being inquired into, to attend at a reasonable time for examination in relation to the offence. The person so examined is bound to answer all questions (other than incriminating questions) put to him, and refusal to attend or refusal to answer any question is a misdemeanour punishable with one year's imprisonment or a fine of £50.

In the present case it is, I think, proper to point out that the requirements of sub-section (1) of the section were not complied with for, instead of requiring accused No. 2 to attend at a reasonable time and place for examination, he was in point of fact taken by the police virtually in custody to the Tsadha Police Station and there later on the same day Sergeant Platrides questioned him and took down his answers in writing in the form of a continuous statement covering four typewritten pages.

In England I understand the law with reference to questions put by the police to a suspected person not yet in custody to be that if, having regard to all the circumstances of the case, the Court is satisfied that the answers to such questions were given freely and voluntarily, without the suspected person being under any inducement or obligation to answer, they are admissible. *R.* v. *Miller,* 1895, 18 Cox C.C., 54.

In England, furthermore, a suspected person is under no legal obligation to answer questions put by the police. Whether he shall vouchsafe any reply or not depends wholly on his own volition. If, then, he elects to reply, his answers (in the absence, of course, of any duress threats or inducement connected with the result of the prosecution) are voluntary and are, therefore, as in *R.* v. *Miller, supra,* admissible.

The reason underlying this principle of rejecting statements which are not free and voluntary is, of course, that it would be unsafe to receive any statement the truth of which by reason of compulsion, fear or other influence having been exercised cannot be implicitly relied upon.

Here in Cyprus, the position of a suspected person in regard to questions by and statements to the police stands on a different footing, for by section 3 of Law 12 of 1929, it is, as I have pointed out, made compulsory for a person examined by the police to answer all questions other than those the answers to which might incriminate him. In these circumstances it is quite clear that, since a person questioned is bound to answer under compulsion of law, the fundamental principle upon which the admissibility of his answers depends is non-existent.

In our view consequently and for the reasons given the statement made by accused No. 2 in answer to the questions of Sergeant Platrides were inadmissible and should not have been received in evidence.

Our decision on this point does not, however, affect the result of this appeal because, in our view, no substantial miscarriage of justice has occurred in consequence of the admission of the evidence objected to. The Assize Court, in our opinion, even without this evidence had ample material before it and must certainly have arrived at the same conclusion.