TYSER, C.J. & BERTRAM J.

PAPA VASILI SOLOMOU v. A. K. BOVILL AS PRINCIPAL FOREST OFFICER

upon the Plaintiff's lands and there committed the trespass complained of. Equally, there is nothing to prevent him bringing an action against the Government, if he obtains the requisite permission. If he framed his claim in the right way I should be very surprised to hear that the requisite permission was refused to him. The proper method of framing the claim in such cases has already been carefully explained by a judgment of this Court in the case of *Haji Ahmed Effendi v. Rees Davies, as King's Advocate* (1906) 7 C.L.R., 29, and there is no need to repeat it here.

Even if this action had been brought against A. K. Bovill personally, the claim as framed would not lie, for the second branch of the claim asks the Court to order the Defendant to do an official act, namely, to place a certain forest cairn in a particular place. The Court clearly cannot do this. See *Mozera v. The Director of the Land Registry Office* (1884) 1 C.L.R., 16.

The head note in that case is expressed in very wide terms, and it must be read in connection with the facts there under consideration. It says—"HELD: that the action being an action against a "Government official acting in his official capacity would not lie." The action in that case was a claim that a Government officer should be ordered to do an official act. The only cases in which the Court can make such an order are cases of Mandamus. If however a subject alleges that his rights have been violated by an official, and sues that official personally for damages, I am not aware, that, except in very special circumstances, it is any defence to the action that the Defendant was acting in an official capacity.

Appeal dismissed.

TYSER, C.J. & BERTRAM J.

1909

May 4

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

IN RE AN ADVOCATE.

ADVOCATE—STRIKING OFF ROLL—PRINCIPLES OBSERVED BY COURT.

In exercising its jurisdiction to strike an advocate off the roll of the Court the principle by which the Supreme Court is guided is that it will not allow to remain on the roll of the Court a man who has been guilty of such conduct as to make it impossible for members of an honourable profession to associate with him in the ordinary transactions of their business.

It is not necessary to the exercise of the jurisdiction of the Court that the offence committed by the advocate should be a criminal offence, nor that it should be an offence committed by the advocate in his professional capacity.

Any misconduct which would constitute a bar to the enrolment of the advocate is sufficient to justify the Court in striking him off the roll of the Court.

In exercising its jurisdiction to strike an advocate off the rolls in this case, the Court cited and followed the following English authorities.

In re Blake, 30 L.J. Q.B., 32. Per *Cockburn, C.J.*: "I am of "opinion that Blake is amenable to the summary jurisdiction of this "Court, although the misconduct of which he has been guilty did "not arise in a matter strictly between attorney and client, but out of "a simple loan transaction. I proceed on the general ground that "where an attorney is shewn to have been guilty of gross fraud, "although the fraud is neither such as to render him liable to an "indictment, nor was committed by him while the relation of attorney "and client was subsisting between him and the person defrauded, "or in his character as an attorney, this Court will not allow suitors "to be exposed to gross fraud and dishonesty at the hands of one of "its officers."

In re Hill (1868) L.R., 3, Q.B., 543. Per *Blackburn, J.*: "In "the present case I adhere to what I think is the effect of *re Blake*, "that although the misconduct is not directly or incidentally connected "with his character of attorney, still we must consider what effect "that has upon the question of a proper person to be an officer of the "Court."

Per *Cockburn, C.J.*: "If these facts had been brought to our "knowledge upon the application for this gentleman's admission we "might have refused to admit him; and I think that the fact of his "having been admitted does not alter his position; having been "admitted, we must deal with him as if he were now applying for "admission; and as in the case of a person applying for admission "as an attorney, we should have considered all the circumstances, "and either have refused to admit, or have suspended the admission "for a certain time, so where a person has once been admitted, we "are bound, although he was not acting in the precise character of "an attorney, to take notice of his misconduct."

In re Weare (1893) 2 Q.B., 439. Per *Lord Esher, M.R.*: "The "Divisional Court, having heard the case, has come to the conclusion "that this Solicitor has been convicted of a criminal offence of such "a disgraceful character that he ought to be struck off the rolls. "The Court is not bound to strike him off the rolls unless it considers "that the criminal offence of which he has been convicted is of such "a personally disgraceful character that he ought not to remain a "member of that strictly honourable profession. Now what is the "offence? the offence is being a party to the use of the house belonging "to him as a brothel. Is it, or is it not personally disgraceful? Try

TYSER, C.J. & BERTRAM J.

IN RE AN ADVOCATE

"it in this way. Ought any respectable Socilitor to be called upon "to enter into that intimate intercourse with him which is necessary "between two Solicitors even though they are acting for opposite "parties. In my opinion no other Solicitors ought to be called upon "to enter into such relations with a person who has so conducted "himself."

Advocate struck off the rolls.

TYSER, C.J. & BERTRAM J. 1909 *May* 19

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

REX

v.

GEORGHI IANNAKO KALLA AND ANOTHER

CRIMINAL LAW—POSSESSION OF PROPERTY REASONABLY SUSPECTED OF BEING STOLEN—CRIMINAL LAW AND PROCEDURE AMENDMENT LAW, 1886, SEC. 20.*

The primary object of Sec. 20 of the Criminal Law and Procedure Amendment Law, 1886, Sec. 20 (which provides for the punishment of persons found in possession of property reasonably suspected of being stolen) was to deal with persons found in possession of property, suspected of being stolen, but of which the ownership cannot be proved.

Where a person is charged under the section with being in possession of property of which the ownership is proved, the onus of proof and the measure of proof necessary for conviction are governed by the same principles as those observed in a prosecution for larceny.

This was an appeal from a conviction by the District Court of Limassol.

The charge was a charge under Sec. 20 of the Criminal Law and Procedure Law, 1886—that the defendant was in possession of two ewes, reasonably suspected of being stolen.

The evidence was that on January 6th the prosecutor missed 26 ewes from his flock. Marks of slaughter were discovered in the vicinity. The next day, a zaptieh, searching with the prosecutor, found two of these ewes in a flock of which the accused had charge. The flock was returning to its mandra in charge of two boys. The accused was not there, having gone to search for two of his lambs that had strayed. Later he arrived, and being asked if the two ewes were his, said at once that they were not.

He made the following statements in regard to them.

1. *To the prosecutor :* "They came to my flock a short time ago."

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* This section is taken with modifications from an English Statute 2 and 3 Vict. C. 71, Sec. 24. The English enactment is however limited to persons found by a constable in a street or public place. See *Hadley v. Perks* (1866) L.R., 1, Q.B., 444.