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.

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[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.

2. *To a zaptieh :* " They came a short time ago at mid-day. They were found down there and came with my flock."
3. *To the police, on being charged :* " These ewes I found loose in the fields, and I brought them with me."
4. *To the Court,* that he had noticed two ewes straying not far from his flock; that they were still there when he went off to search for his missing lambs two hours before sunset; and that he had not said to the zaptieh that the two ewes had come to his flock at mid-day.

The Court convicted the accused giving as " reasons for suspicion " against Georghi " the fact that by his statement to the police he admitted having been in possession and that his various statements differed in certain points from one another.

The accused appealed.

Artemes and Sozos for the Appellant.

Amirayan for the Crown.

The Court allowed the appeal.

Judgment : We think this appeal must be allowed.

Sec. 20 of the Criminal Law and Procedure Amendment Law, 1886, is a special enactment. It cannot be intended to deal with ordinary cases of larceny and receiving, where a person has had property stolen from him, and this property is afterwards found in the possession of the accused. Such a case is dealt with by the ordinary law. It is a presumption of the law of evidence that where a person is found in possession of recently stolen property, he is presumed to have stolen it, or to have received it knowing it to be stolen, unless he gives a satisfactory explanation of his possession. See Archbold, 22nd, Ed., p. 520-521.

It seems to us that it is wresting the section to apply it to an ordinary case of this kind. There seems to be an impression that if a charge is lodged under this section, a less measure of certainty is required for conviction, than if the charge had been an ordinary charge of stealing or receiving. This is however a mistaken impression. The measure of evidence is the same in either case.

The primary case with which the section must have been intended to deal (though it is not confined to such cases) is one that frequently arises in pastoral and agricultural countries, where a man is found in possession of property, the ownership of which cannot be identified (such as fruit from trees, or sheep killed and turned into meat) under such circumstances as to suggest that he has stolen it.

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In such a case the evidence would not be sufficient to convict of larceny, because in order to prove larceny you must prove the ownership of the property stolen. It was to this circumstance that the judgment of this Court was alluding in *R. v. Togli Nicola* (1908) 8 C.L.R., 4, when it was observed that there was a difference between the evidence required for a conviction on a charge of larceny, and that required for a conviction under this section.

In this case can any one suppose that if we had been trying this case on an ordinary charge of larceny, we should have felt justified in convicting the accused on this evidence. The most that can be said is that the explanations given by the accused still leave a certain suspicion on the mind. We do not think that the evidence was such as to justify a conviction on a charge of larceny, and we think therefore that it was not sufficient to justify a conviction on a charge under this section.

Appeal allowed.

TYSER, C.J. & BERTRAM J. 1909 *May* 22

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

MICHAEL SKOUPHARIDES AND OTHERS

v.

THE DISTRICT EDUCATION COMMITTEE OF NICOSIA.

EDUCATION—APPORTIONMENT OF SCHOOL FEES AMONG TAX-PAYING INHABITANTS—DUTY OF DISTRICT COMMITTEE—EDUCATION LAW, 1905—INTERPRETATION OF LAWS—PRESUMPTION AGAINST INTENTION TO OUST JURISDICTION OF COURTS.

The Education Law, 1905, does not impose upon the Education Committee of a District the duty of apportioning the "school fees" of a village among the tax-paying inhabitants of a village, where the Village Education Committee fails to do so.

SEMBLE: *It was not the intention of the law that the Boards of Education should have exclusive authority to decide all questions arising under the law and that the jurisdiction of the Courts of Justice should be ousted.*

A law will not be construed as ousting the jurisdiction of the Courts unless such an intention plainly appears.

If a Village Education Committee in purporting to apportion the school fees of a village among the tax-paying inhabitants take upon themselves to exclude certain classes of tax-paying inhabitants a Mandamus will lie to compel them to make the apportionment according to law.

This was an appeal against a decision of the District Court of Nicosia.

The action was a claim that a Mandamus should issue against the District Education Committee of Nicosia to include certain persons in the "List of School Fees for the years 1908 and 1909" as being "tax-paying inhabitants."