(ASSIZE COURT OF LIMASSOL.)

[TYSER, C.J., BERTRAM, J., STUART, P.D.C., ATTA BEY AND OIKONOMIDES, J.J.]

REX

v.

AGESILAOS SOCRATI.

CRIMINAL PROCEDURE—CROSS-EXAMINATION OF WITNESS ON DEPOSITION.

When a witness in a criminal trial is cross-examined upon his deposition, if it is desired to contradict him by the deposition, the deposition must be put in evidence.

The cross-examining party is bound by the answer of the witness, unless the deposition is put in to contradict him, and it is not admissible to state that the document does so contradict him, unless it is so put in.

The prisoner was charged with shooting one Emir Ali Mehmet, near Pissouri with intent to kill.

Bucknill, K.A., for the Crown.

Zeno for the Defence.

Counsel for the Defence cross-examined the complainant with reference to certain discrepancies between his evidence and his deposition.

Judgment. THE CHIEF JUTSICE: It is important that the procedure with regard to the use of the depositions in cross-examination should be put upon a regular footing.

The matter is now regulated in England by Statute (28 and 29 Vict., c. 18., Sec. 5) which enacts as follows:—

"A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the proceeding, without such writing being shown to him: but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of contradicting him: Provided always that it shall always be competent for the Judge at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purpose of the trial as he may think fit."

Under this enactment, it is observed in Archbold (22nd Edition, p. 377), that although a witness may be cross-examined as to what he said before the Magistrate and the deposition may be put into his hand for that purpose, without reading it as part of the evidence of the cross-examining party, yet the latter is bound by the answer of the witness, unless the deposition is put in to contradict him, and it is not admissible to state that the deposition does so contradict him unless it is so put in.

We are of opinion that same rule of evidence should be observed in this country.

ASSIZE COURT OF LIMASSOL

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It is not necessary of course that in such cases the whole of the deposition should be read. The Court may direct such parts to be read as it considers material.

The witness's deposition was accordingly put in to contradict him, and as being illiterate, he could not identify his mark, it was proved by the Registrar.

Prisoner convicted.

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March 10

(ASSIZE COURT OF FAMAGUSTA.)

[TYSER, C.J., BERTRAM, J., MACASKIE, P.D.C., MAKRIDES AND VASSIF EFFENDI, J.J.]

REX

v.

KALLI HAJI STERKO AND ANOTHER.

CRIMINAL PROCEDURE—EVIDENCE—DYING DECLARATION—SENSE OF IMPENDING DEATH.

In order to render a dying declaration admissible in evidence there must be positive evidence that the deceased made it under a sense of impending death.

It is not sufficient that the deceased's consciousness of impending death may be inferred from the nature of the injury from which he was suffering, and from giving him credit for ordinary intelligence as to its natural results.

A declaration was tendered in evidence as having been made by a man a short time after his throat had been frightfully cut, and about an hour before his death. There was no other evidence to show that the declaration was made under a sense of impending death.

HELD: That the declaration was not admissible.

The prisoners were charged with having murdered a man called Zeno at Davlos, several years before the trial of the case, by cutting his throat while he was sleeping in bed.

The Crown called a priest, who had had a conversation with the deceased shortly after the crime and about an hour before his death and sought to give in evidence a statement made to this priest.

The priest was not the first person whom the injured man saw after the crime, nor did it appear that the statement was made to him in his capacity as priest, or that there were any special circumstances which made it natural that he should make a statement to him with reference to the crime.

The deceased was at that time bleeding from the wound in his throat, from which he died.

Amirayan for the Crown.

Michaelides for the Defence.

The Court rejected the evidence, on the authority of *R.* v. *Bedlingfield*, 14 Cox, 341. (See Archbold, 22nd Edition, p. 295), in which Cockburn, C.J., rejected the declaration of a woman made almost immediately after her throat had been frightfully cut, and a few minutes before her death, there being nothing beyond the nature of the wound to show that she was under the sense of impending death.

Prisoners acquitted.