fiża ma kienux jissemmew fl-art. 470, inuma fl-art. 475 jew wara;

Ara wkoll proċedura segwita fil-ġuri "Rex vs. Bush". 28 ta' Ġunju 1945;

Għalhekk il-Qorti tiddirimi l-inċident billi tordna illi x-xhieda tad-difiża jinstemgħu f'dan l-istadju, qabel ir-replika.

27th. March, 1953.

Judges:
H.H. Dr. L. A. Camilleri, LL.D., *Chief Justice:*
The Hon. Mr. Justice A. J. Montanaro Gauci, LL.D.;
The Hon. Mr. Justice T. Gouder, LL.D.

His Majesty the King *versus* **Richard Vivian Dudley Beaumont**

Evidence — Written Statement — Exhibit — Sec. 641 Chapter 12 — Sec. 582 Chapter 15 — Sec. 11 Evidence Act 1851.

It is a well settled, and almost elementary, rule of law, that a witness must not read out his evidence from a written statement. The rule is that evidence must be "viva voce"; and a witness is only allowed to refresh his memory by referring to a writing under the conditions laid down in the law.

Consequently, the evidence taken before the Enquiring Magistrate consisting in the reading out of a written report made by the witness, is null and void; and is not admissible as evidence.

A document issued by the London Criminal Records Office is admissible as evidence if it is signed by the responsible officer of that Office, or if it is furnished with the seal or stamp of the Office, without the necessity of any proof of the signature, or seal or stamp, or of the official character of the person signing it. If it is not so signed, or stamped or sealed, it is not admissible as evidence.

The Court; — Upon seeing the decree of the 10th March, 1953, whereby this Court, consisting of one of Her Majesty's Judges, remitted the record of the proceedings in the above-mentioned case to this same Court consisting of three Judges, for the determination of the issue mentioned in the decree, in terms of law;

Upon hearing the argments;

Considers;

The first plea was set up by the accused, who has submitted that the evidence and statement, read out by Frederick Sydney Cotton before the Court of Magistrates sitting as a Court of Criminal Enquiry, is not admissible, as it was not taken in terms of law;

The accused is correct in his contention. It is, of course, a well settled and almost elementary rule of law that a witness must not read out his evidence from a written statement. This incorrect procedure would run counter to the rule that evidence must be "viva voce" (sec. 642 Chap. 12). A witness is only allowed to refresh his memory by referring to a writing under the conditions laid down in sec. 582 Cap. 15, referred to in sec. 641 Chap. 12;

In the present case, the evidence of Cotton before the Inquiring Magistrate at page 56 consisted in the reading out of the written report made by Cotton at page 11 to 17 of the record, and in a few explanatory remarks anent these two reports. This procedure is undoubtedly null and void;

The Magistrate also received as evidence at page 5 an exhibit purporting to be an extract from the Criminal Records Office of Scotland Yard. This Court, consisting of one Judge, in its afore-said decree, has also raised for determination by this Collegiate Court the issue as to the admissibility of the aforesaid exhibit. In point of fact, that document is not signed by the responsible officer of the London Criminal Records Office. Had it been so signed, or had it been furnished with the seal or stamp of office, then it would have been admissible in evidence without the necessity of any proof of the signature, or seal, or stamp, or of the official character of the person signing it, in terms of sec. 11 of the Imperial Statute "The Evidence Act, 1851", applicable, in so far as sections 7 and 11 are concerned, also to Malta (vide p. 299, Vol. VI Revised Edition, Laws of Malta). But there is no such signature, or stamp, or seal. Apart from the signature of the Inquiring Magistrate and his clerk, there is the signature of Inspector Vassallo of the Malta Police Force, who, of course, is not in any

way entitled to authenticate the exhibit in question, not being the responsible official of the London Criminal Records Office. The exhibit is, therefore, a mere piece of paper;

For the fore-going reasons;

This Court disposes of the two issues as follows;

Allows the first plea set up by the accused, declares the statement at page 56 inadmissible as evidence, in so far as it purports to confirm the statement at pages 11 to 17, and orders that the written statement at pages 11 to 17 inclusively be taken out of the record;

With regard to the second issue, raised "ex officio", declares the exhibit at page 5 inadmissible as evidence, and orders similarly that it be taken out of the record.