

to carry on the business formerly carried in his son's name. The defendant was the principal creditor of J. G. Leary & Co., and although Schofield was put in charge of the business with the consent of father and son and apparently for the defendant's protection, there was no evidence warranting the holding that the business was in fact transferred to the defendant as his business, and the account with the plaintiffs was continued in the name of J. G. Leary & Co., the defendant not having been asked by the plaintiff whether he was the proprietor or not.

Fullerton, for plaintiff. Elliott and McNeil, for defendants.

Full Court.]

REX v. CHONEY.

[Feb. 17.

*Criminal law—Confession obtained by trick—Conversation with person who represents himself as having been sent by prisoner's counsel, admissibility of—Evidence of detectives who overhear such conversation—Evidence.*

The prisoner was in jail awaiting his trial for murder. While there another prisoner, L., who spoke his language, was employed several times by prisoner's counsel as interpreter at conferences between them. Afterwards a constable arranged an interview between L. and the prisoner in a cell outside of which two detectives were concealed in such a manner that they could overhear the conversation. The trial judge found, as a fact, that L. falsely stated to the prisoner that his counsel had requested him to get all the facts from the prisoner to enable counsel to properly conduct the defence. The prisoner then made certain statements to L. in the Ruthenian language. These were overheard by the detectives who also understood that language. The trial judge refused to admit evidence of such statements. On a reserved case stated for the opinion of the Court,

*Held*, that the prisoner's conversation with L., whom he reasonably supposed to be his counsel's agent, was privileged; and, as the whole matter was the carrying out of one fraudulent design, the conversation should be treated as if it was with all the three witnesses, and so the evidence of the two detectives should also be excluded.

It having been admitted by counsel for the Crown that, under the facts as found by the trial judge, the conversation with L. was privileged, the interview should be treated as one with several persons who had fraudulently adopted the character of