and the fact that the murderer may have been wearing a black overcoat; a false statement by the appellant that he had been for some days previous to the 28th February at Amiandos; the appellant had mosphilia thorns in his hand such as one would expect to find in the hands of the murderer who had stumbled over the fence at Platres. This in brief is the case against the appellant. This is not evidence of such weight as to support a conviction for murder. The trial Court itself almost certainly would have acquitted the appellant if it had not drawn that crucial inference which this Court on appeal considers wholly untenable.

For these reasons this appeal must be allowed and the conviction and sentence set aside.

[HALLINAN, C.J., AND GRIFFITH WILLIAMS, J.]

(September 25, 1952)

NIAZI AHMED, *Appellant,*

v.

THE POLICE, *Respondents.*

(*Criminal Appeal No.* 1920.)

Criminal Procedure Law, section 87—*Trial of accused in his absence—Presence of accused desirable when charge serious.*

In the opinion of the Supreme Court where a charge involves the stigma of dishonesty and would normally be punishable by imprisonment accused should be brought up on a warrant and should not be tried in his absence.

Appeal allowed.

Appeal by the accused from the judgment of the District Court, Nicosia (Case No. 8700/52).

Umit Suleyman, for the appellant.

P. N. Paschalis, Crown Counsel, for the respondents.

The facts of the case are set out in the judgment of the Court which was delivered by:

HALLINAN, C.J.: This was a case where the accused was charged with being in possession of property reasonably suspected of having been stolen or unlawfully obtained.

The evidence against him was that he had attempted to sell some pots and pans to a person who is called " kazandji " whom we understand means a copper-smith. The copper-smith gave evidence and he suspected these pots and pans were stolen but gave no ground for his suspicion. Apparently, a constable was called in and the constable in giving evidence said that he thought that they were stolen because they were in good condition ; in fact these pans are in a very battered condition. It is suggested by the Crown that the pots and pans were deliberately damaged by the appellant but there is no evidence at all of this. The Court convicted the accused in his absence having been satisfied that the goods were reasonably suspected of being stolen. The reasons the Court gave for holding this were : first, that they were not the kind of pots and pans that would be sold to a " kazandji " and, secondly, that the accused had run away.

There was no evidence before the Court as to what kind of goods are and what are not sold to a " kazandji " and the fact that the accused person runs away can be due to different reasons, sometimes consistent with guilt and sometimes consistent with innocence.

We are of the opinion that the District Judge had not sufficient evidence on which to base his finding that the property might reasonably be suspected of having been stolen.

The Crown has suggested that this Court might order a retrial but we consider that that course would only be appropriate if the Crown had established a *prima facie* case. As it has not established a *prima facie* case, there is no case for the accused to answer and we are not disposed to order a retrial. *We consider that the appeal should be allowed and that the conviction and sentence should be set aside.*

We would like to place on record the opinion of this Court that Courts of Summary Jurisdiction in exercising their power under section 87 of the Criminal Procedure Law to convict a person in his absence should not exercise that power where the charge involves the stigma of dishonesty and would be normally punishable by imprisonment rather than fine. We consider that in these circumstances Courts of Summary Jurisdiction should issue a Bench warrant and bring up the accused before determining the case.