

ASSIZE  
COURT  
OF  
NICOSIA,  
1923  
June 4

(ASSIZE COURT OF NICOSIA).

[FISHER, C.J., STUART, J. HOWARD, P.D.C. AND SERTZIOS, J.D.C.]

REX

v.

MUSTAFA HAJI HASSAN.

CRIMINAL PROCEDURE—COMMITTAL FOR TRIAL BY DISTRICT COURT.

*A District Court has no power to commit a case for trial to an Assize Court merely because in an information filed before it a charge is included which is outside its jurisdiction.*

The facts sufficiently appear from the judgment.

*N. Paschalis* for the Accused.

*The Assistant King's Advocate* for the Crown.

*Judgment* : In this case the Defendant's advocate raised a preliminary point before plea that this Court has no jurisdiction to try the case.

The Defendant was charged before a Magisterial Court with an offence under Art. 90 of the Ottoman Penal Code, an offence punishable with imprisonment up to three years (*see* Criminal Law and Procedure Amendment Law, 1886, Sec. 5) and on that charge he was committed for trial to the District Court of Nicosia. When the case came on in that Court an information was filed on behalf of the King's Advocate in which was contained, in addition to a charge of the above mentioned offence, a charge under Art. 82 of the Ottoman Penal Code and Sec. 2 of the Criminal Law Amendment (No. 2) Law, 1920, an offence punishable with imprisonment up to 15 years, and on the face of it outside the jurisdiction conferred on District Courts by Clause 49 of the Cyprus Courts of Justice Order, 1882.

It is contended that the inclusion of such a charge in an information before a District Court enables, and indeed obliges, the Court on the mere view of it to send on the subject matter of the whole information to the Assize Court, a Court having, under Clause 50 of the Cyprus Courts of Justice Order, 1882, jurisdiction "to try all charges of offences committed in Cyprus." That manifestly means all charges properly before it, and the case of *Regina v. Yallouri*, C.L.R., III., 41 is an interesting illustration of this. But in this case the District Court on the application of the Assistant King's Advocate without taking any plea or hearing any evidence declined jurisdiction and committed the case for trial to this Court.

There is no power given to a District Court to do this. A charge in an information which is on the face of it beyond the jurisdiction of the Court in which the information is filed should be struck out. The power conferred by Clause 151 of the Cyprus Courts of Justice Order, 1882, acted upon in *Rez v. Kokkinofsa*, C.L.R., VIII., 6, is the only power which a District Court has to send a case on to an Assize Court, and this case is clearly not within it.

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The only question therefore is whether what has happened in this case is a mere irregularity which can be dealt with by safeguarding the Defendant from any difficulty or inconvenience he may have been put to owing to the proper procedure not having been followed.

In our view this is not a mere irregularity. It is an assumption of jurisdiction. It is not a mistaken or irregular way of exercising an existing jurisdiction, but it is the doing of something which is not within the jurisdiction of the Court at all. In our opinion, therefore, the Defendant having been brought here by a process unknown to and unsanctioned by the Cyprus Courts of Justice Orders cannot be called upon to plead before this Court and must be discharged.