

[NETTLETON, C.J. AND DICKINSON, P.J.]

POLICE

v.

ALEXANDROS PANAYI KELARI.

ORDER IN COUNCIL, 1917, CLAUSE 6—"MATERIAL PARTICULAR"—MARRIED OR SINGLE—ORDER IN COUNCIL, 1917, CLAUSE 1 (1).

NETTLETON,
C.J.
&
DICKINSON,
P.J.
1926
March 30

This is a case stated by a Magisterial Court dated 2nd January, 1926.

The accused admittedly made a false statement in an application for the grant of a Certificate of British Nationality by the Government of Cyprus dated 25th August, 1925, by replying to question No. 13 in the Form of Application supplied to him that he was unmarried when, as a fact, he had, and knew he had, a wife living in Nicosia.

HELD: *That the statement of accused that he was not married, when, as a fact, he was married, in answer to the question in the Form of Application supplied to and filled in by him, for the grant of a Certificate of Nationality is a statement false in a material particular within the meaning of clause 6 of the Order in Council, 1917.*

For Police the *Assistant Attorney-General*.

For Accused *Clerides*.

Clerides argued that only two facts are necessary (*vide* clause 1 (1) of the Order in Council dated the 28th day of November, 1917), to be proved by an applicant to entitle him to a grant of a certificate of British nationality, *viz*, that applicant was ordinarily resident in Cyprus on November 5, 1914, and that he was an Ottoman subject; that all other matters are irrelevant and immaterial and, in particular, that whether an applicant is married or not is not a material particular within the meaning of section 6 of the Order in Council. He further argued that in demanding a reply to that question No. 13 in the form of the application the Governor has exceeded the powers granted him by the Order in Council.

Assistant Attorney-General replies:—

Judgment By clause 1 (1) it is necessary for an applicant to prove he has two qualifications, *viz*.:—

- (a) Residence in Cyprus on November 5, 1914, and
- (b) that he was an Ottoman subject.

These are the crucial essentials which must be established before an applicant can obtain his certificate. Now the Governor found it necessary to formulate regulations under the powers vested in him by clause 5 of the Order in Council, and among those regulations he ordered that a Register of all Forms of Applications should be kept at the Secretariat (April 10, 1918, *Cyprus Gazette*, 11th April, 1918). The

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application form on which accused made his false statement refers to these regulations, and we think we are entitled to assume by implication that the Governor under the powers given him by section 5 of Order in Council directed that, in order to obtain a certificate, an applicant must fill in an Application Form No. S. 65 as a condition precedent to the Government considering the granting of any such certificate. In making such a regulation we hold that the Governor was acting within the powers vested in him by clause 5 of the Order in Council, which are very wide and comprehensive.

We recognize that in order to examine the truth of an applicant's statement as to the two crucial essentials to the issue of a Certificate of British Nationality, it was found necessary to make as full an investigation as practicable into the life and civil status of the applicant, and for this reason the Form of Application set out a number of questions with a view to ascertaining how and through whom the Government might conduct those investigations.

It is a fact that before the War people travelled about freely over the greater part of the world without passports, and consequently no official records are available to check the statement of an applicant that he was in Cyprus on November 5, 1914; therefore it was found necessary to formulate various questions with a view to eliciting what persons would be likely to know of the whereabouts of an applicant on that date.

Government required, *inter alia*, that the Mukhtar of the village or quarter where applicant resides should give a certificate to the effect that applicant was living in Cyprus on the 5th November, 1914. It is to be recognized however that an official may have no personal knowledge of the facts he gives a certificate for.

He may have to rely on information supplied to him by persons interested in applicant's favour, and this would be so more to-day than in applications made at dates nearer to 1914. Memory as to where somebody else was eleven years ago at a particular date must be hazy in the extreme.

Thus it was thought necessary to support the certificate of the Mukhtar by references to personal friends of the applicant who might be supposed to have better knowledge than the Mukhtar of the applicant's whereabouts at the crucial date. Hence question No. 23 in the Application Form. Here again it was doubtless thought that these friends might be influenced in applicant's favour to state that he was in Cyprus on the date in question even if they were not absolutely certain of the fact.

So again the Government considered it necessary to ascertain the names and residences of the actual members of the applicant's family, his father and mother, his wife, if any, and his children.

These persons, or at least some of them, might be presumed to be in a better position to know where the applicant was on the 5th November, 1914, than anybody else. Furthermore it is to be observed that the granting of a Certificate of Nationality to a person about to leave the Island for a foreign country (upon which the issue to him of a passport would necessarily depend) containing a false declaration concerning the applicant's dependants such as wife, and/or children and parents, in certain cases might throw the burden of maintaining these dependants on the community of this country. Also a copy of this form of application for a certificate containing these false statements as to being married or not might obviously facilitate the commission of the offence of bigamy in a foreign country. The applicant has chosen to deny the existence of a wife whom the Government could have interrogated as to the whereabouts of her husband on that day, thereby depriving the Government of their most reliable source of information as to the truth of his statement on that crucial matter.

Regarded from that view alone the existence, or otherwise, of a wife seems to us a highly material particular, and, as to this, he has deliberately made a false statement.

The answer of the Court to the question submitted to it, is, that the statement of the applicant that he is not married, in reply to the question whether he is married or not, is a false statement in a material particular within the meaning of clause 6 of the Order in Council, 1917.

We remit the case to the Magisterial Court directing that it convict and sentence the accused.

[NETTLETON, C.J. AND DICKINSON, P.J.]

SHERIFF OF LIMASSOL

v.

CHRISTOS O. THEODOROS.

CONTEMPT—APPLICATION BY SHERIFF TO CIVIL DISTRICT COURT TO COMMIT—
COMMITTAL—PROCEDURE—INHERENT JURISDICTION—CRIMINAL MATTER—ARTS.
185, 187, 189 AND 212 OF THE ORDER IN COUNCIL, 1882—ARTS. 112, AND 123 OF THE
OTTOMAN PENAL CODE.

Appeal from an order of a Civil District Court dated 5th February, 1926, convicting appellant and passing sentence on him of three months imprisonment for contempt of Court.

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