

FISHER,
C.J.
&
GRIM-
SHAW,
P.J.
1924
June 26

[FISHER, C.J. AND GRIMSHAW, P.J.]

REX

v.

ALI AHMED REIS,
MOUSTAFA AHMED REIS,
MOHAMMED SHAKIR.

CRIMINAL LAW AND PROCEDURE—C.C.J.O., 1882, CLAUSES 49, 122, 123, 153—
PLEA TO JURISDICTION—CUSTOMS AND EXCISE REGULATION LAW, 1879, SECS. 26,
44, 49 (a)—POWER OF DISTRICT COURT TO ORDER FORFEITURE.

HELD: A plea to the jurisdiction under clause 153 of the Cyprus Courts of Justice Order, 1882, should be put forward when the accused is called upon to plead, and must be tried and decided by the Court before further proceeding with the trial.

Section 26 and section 49 (2) of the Customs and Excise Regulation Law, 1879, must be read in conjunction for the purpose of charging a criminal offence.

Section 44 of the Customs and Excise Regulation Law, 1879, does not apply to a vessel which has brought goods which become liable to forfeiture to Cyprus.

A District Court, in exercise of its criminal jurisdiction, has no power to order forfeiture under that section.

This was an appeal against convictions by District Court.

The facts sufficiently appear from the judgment.

S. Pavlides for the Appellants.

The Assistant King's Advocate for the Crown.

Judgment: In this case the appellants were charged on information before a District Court for offences against the Quarantine Law, 1879, and the Customs and Excise Regulation Law, 1879. The third appellant was described on the information as being of Lazkieh, *i.e.*, Latakia, a place which is not in Cyprus. He was defended by an advocate, and on being called upon to plead, in accordance with clause 123 of the Cyprus Courts of Justice Order, 1882, he pleaded not guilty. Having done so his advocate submitted that he was not triable by a District Court inasmuch as he was not an Ottoman subject within the meaning of clause 49 of the Cyprus Courts of Justice Order, 1882, as amended by the Cyprus Courts of Justice Amendment Order, 1917. No application to withdraw the plea of not guilty was made, nor was any admission made on the part of the prosecution nor any evidence tendered by the defence on the question of nationality. The Court directed that the trial should proceed and treated the objection to the jurisdiction as if it were triable concurrently with the question of the guilt of the

accused, and at the close of the case they held that there was no evidence before them in support of the objection. Had the plea to the jurisdiction been made, as it should have been, when the accused was called upon to plead, or had the Court allowed the plea of not guilty to be withdrawn and a plea to the jurisdiction substituted, the proper course would have been to have proceeded to try the issue as to jurisdiction and then, if their judgment on that issue was against the appellant, to have proceeded with the trial in the ordinary way.

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It is to be noted that the third appellant was described in the information as of a place outside Cyprus, and in the trial of the issue as to jurisdiction this fact might perhaps have affected any *prima facie* presumption there might be as to his nationality.

The appellants were convicted on three charges, the first being a charge under section 4 of the Quarantine Law, 1879. No question arises as to the correctness of this conviction. The second charge on which they were convicted was under section 26 of the Customs and Excise Regulation Law. It should have been laid under that section coupled with section 49 (2), and with that amendment the conviction must stand. The only other question calling for consideration arises by reason of the Court having added to their judgment a finding that eighty okes of tumbeki and twenty okes of tobacco "were concealed on arrival of the ship under sections 42 and 44 of 24 of 1879," and that the said tumbeki and tobacco and the ship together with her tackle apparel and furniture should accordingly be forfeited.

The matter of concealment did not form the subject matter of any charge and the order of forfeiture was an independent and separate thing from the finding of the Court as to the guilt of the appellants. In our opinion there was no jurisdiction to make any such order in these proceedings. Forfeiture is a result which is independent of any criminal proceedings, and there is no enactment either expressly or impliedly giving a District Court jurisdiction to make any such order as was made in this case. Moreover section 44 does not apply to a vessel bringing goods to Cyprus which subsequently become liable to forfeiture.