

DICKIN-
SON,
ACTING C.J.
&
LUCIE-
SMITH,
ACTING P.J.
POLICE
v.
YACOUMI
NICOLA

This was an application for revision of a conviction and sentence of the Magisterial Court of Nicosia under section 46 of Law 1 of 1886. The applicant was originally charged before the Magisterial Court with an offence under Law 2 of 1879, section 64 (1). It appears that the applicant made an admission of guilt to the Police. On the case being called before the Magistrate, the applicant failed to appear and the police, without proving service, asked for an adjournment which was refused, and the case was dismissed. The Police then took out a summons against the applicant under Art. 116 of the Ottoman Penal Code to which summons applicant appeared and pleaded guilty and was fined £1 or ten days imprisonment. The applicant applied for inquiry.

HELD: That clauses 67 and 70 of the Cyprus Courts of Justice Order in Council, 1882, lay down the procedure to be adopted in the event of an accused person failing to attend on a summons, and that these clauses override Art. 116 of the Ottoman Penal Code. (*Vide* Reshad's Commentary on Art. 116, of the Ottoman Penal Code.)

Court commented on the practice of the Police in endorsing the word "admits" on a summons produced to the Court, and suggested that such practice should be discontinued.

Application granted and conviction set aside.

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1927
March 23

[DICKINSON, ACTING C.J. AND LUCIE-SMITH, ACTING P.J.]

FOREST DEPARTMENT

v.

YANNI LOIZO.

LAW 22 OF 1879, SECTION 6 AND SECTION 28—LAW 8 OF 1881, SECTION 11—
PROCEDURE ON FLEA OF NOT GUILTY—CYPRUS COURTS OF JUSTICE ORDER,
CLAUSE 76.

S. Pavlides for Appellant.

Solicitor-General for the Crown.

Appellant was charged with an offence under section 6 (h) of Law 22 of 1879, submitted to jurisdiction, and pleaded not guilty, which plea was recorded. Appellant's advocate then admitted the facts and stated that the locality where the alleged trespass occurred was not included in the permit held by the accused. The prosecution admitted that the accused did in fact hold such a permit. On these admissions Court without hearing any evidence for the prosecution called on accused to prove that he had a special agreement with the Principal Forest Officer.

Solicitor-General submitted that in view of the admissions the burden of proof was thrown on accused under section 11 of Law 8 of 1881.

HELD: That clause 75 of the Cyprus Courts of Justice Order in Council, 1882, lays down the procedure to be followed in the event of an accused person pleading not guilty, and that that Order is to be followed in preference to earlier legislation.

Query: Whether this does not also apply to subsequent legislation. See *Police v. Nissiforo Sava*.

Police v. Michael Yorgho Katsiamali, Vol. 10, C.L.R., p. 92, referred to.

Further held that the charge should have been brought under section 28 of Law 22 of 1879, which defines a specific offence by a person holding a permit and not under section 6 which deals with a person not holding such a permit.

Appeal allowed, conviction and sentence set aside on ground of irregularity.

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[DICKINSON, ACTING C.J. AND LUCIE-SMITH, ACTING P.J.]

POLICE

v.

SALIH ALI BEKTASH, OF PLATANI.

CULTIVATION OF ERAZI MEVAT—OTTOMAN PENAL CODE, ART. 254—LAND CODE, ART. 103—TRANSLATION—NOTIFICATION NO. 7038 OF 23RD FEBRUARY, 1904—NO LEGAL AUTHORITY—STATED CASE—QUESTIONS OF LAW ARISING AT TRIAL—LAW 1 OF 1886, SECTION 47 (1)—OBITER.

DICKINSON,
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ACTING P.J.
1927
April 6

This is a case stated by the Magisterial Court of Lefkoniko.

The accused was charged before that Court on the following charge:—

That " he, on or about the month of November, 1925, at the locality ' Stiraka,' near " Platani, did encroach on the Hali land by ploughing six donoms of the said Hali " land, thus destroying ten pine trees and caused £2 damage," contrary to Art. 254 of the Ottoman Penal Code and Gazette Notification No. 7038 published in the Cyprus Gazette of the 23rd February, 1904.

It is admitted that the accused in 1925 entered into, ploughed up, and cultivated Erazi Mevat registered in the name of the Government.

The Magistrate states that he is not satisfied that any damage was caused by the accused to the trees on the land in question. He reserves the following questions for this Court:—

- " 1. Is accused's act punishable ?
- " 2. If so, can Ottoman Penal Code, Art. 254 and Notice 7038 of the 23rd February, " 1904, apply ?
- " 3. If not, what law can be applied ?
- " 4. Matters being so, can Law 8 of 1881, apply ? "