

[STRONGE, C.J., THOMAS AND SERTSIOS, JJ.]

1933.
June 13.OTTOMAN
BANK
v.
DASCALO-
POULOS
(No. 2).

OTTOMAN BANK

v.

ANGELOS DASCALOPOULOS (No. 2).

Practice—Appeal to Privy Council—Conditional Leave—Right to oppose granting of final leave.

The appellant had on 20th May obtained conditional leave to appeal to the Privy Council upon condition that he should lodge £500 security within fourteen days, and that he should despatch the record to England within three months. The appellant lodged his security and on the date of his application for final leave, 10th June, the record was ready for despatch to England.

The respondent, the successful plaintiff in the Court below, opposed the application for final leave to appeal, not upon the ground that appellant had not complied with the conditions upon which conditional leave was granted, but upon the ground that since the granting of conditional leave fresh facts had come into existence, and that, if these facts had been before the Court, it would not have granted conditional leave. Respondent sought to put in an affidavit containing the new evidence.

Held: the right of the respondent to oppose the application for final leave to appeal is limited solely to cases of irregularities in procedure or failure to carry out the terms on which conditional leave was granted.

Clerides for applicant (defendant (appellant)).

Triantafyllides for respondent (plaintiff).

The judgment of the Court was delivered by the Chief Justice.

JUDGMENT:—

STRONGE, C.J.: Conditional leave to appeal to His Majesty in Council was given by this Court on 21st April. The appellant now asks for final leave to be granted since he has complied with the conditions of the Court's previous order, except that as to the despatch of the record to England, which he now undertakes to do within ten days.

The respondent, who obtained judgment in his favour in the Court below, opposes the application for final leave, citing the following passage from Bentwich's "*Privy Council Practice*," 2nd Edition, pp. 25-26:

"When these conditions have been satisfied, the appellant should apply to the Court for final leave to appeal, and the respondent may then offer any reason against the application being granted."

Counsel submits that fresh facts have come into existence since the Court gave conditional leave; further that, if these facts had been previously before the Court, it would not have granted conditional leave. Counsel asks leave to put in an affidavit and upon the new facts therein appearing to request the Court to refuse final leave to appeal and rescind its order for conditional leave.

By its previous order this Court gave the appellant leave to appeal to the Privy Council upon certain conditions. When these conditions have been complied with the leave becomes operative and the appellant is entitled to a final order. We are unanimously of opinion that the words "any reason" in the passage cited from *Bentwich* are intended to have reference solely to reasons connected with the carrying out of the conditional order, *e.g.*, an irregularity in procedure or a failure to carry out any of the requirements of that order, and do not allow objections to be raised on other grounds to the granting of final leave.

Final leave to appeal granted.

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OTTOMAN
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[STRONGE, C.J., THOMAS AND FUAD, JJ.]

POLICE

v.

NEOCLIS HARALAMBOUS & STEFANIS YANNI.

Criminal Law—Possession of property reasonably suspected of being stolen—Cyprus Criminal Code, Section 297—Elements of offence—What must be proved to establish.

The appellants were convicted of being in possession of an ox reasonably suspected of being stolen. They sought to set aside the conviction on the ground that there was no evidence of larceny, nor *animus furandi*.

Held: (1) no evidence of larceny is necessary. Section 297 requires proof (a) that the accused was in possession of the property; (b) that a person other than the accused suspected that the property was stolen; (c) that the grounds for this suspicion were reasonable; and upon proof of these three matters, the accused is guilty of a misdemeanour, unless he satisfies the Court that he acquired possession lawfully.

(2) the words "reasonably suspected of being stolen property" in Section 297 refer *not* to any suspicion of the property being stolen which the person in possession of it might have, but to a suspicion entertained by some one else, *e.g.*, the person who finds or sees it in his possession;

(3) matters to be proved to establish a charge under Section 297 are not the same as on a charge of larceny;

(4) a prosecution under Section 297 will not lie where either before or upon charging the accused it is known that certain property has been stolen, and that the property found in possession of the accused is that same property or part of it.

1933.
Nov. 28.