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When one looks at the Fourth Schedule one sees that the only portions of the Moslem Sacred Law saved are: (39) The Moslem Sacred Law relating to wills, succession and inheritance, and (40) The Moslem Sacred Law relating to vakfs. Any other provision of the Moslem Sacred Law is now just as foreign to these Courts as the Canon Law of Greek-Orthodox Church which, in accordance with several Supreme Court decisions, has to be proved as a fact by experts before the District Court can take cognizance of it and apply it.

For the above reasons I am of the opinion that the appeal should be allowed, judgment set aside, and the case be remitted to the District Court to require proper proof of the existence of divorce before proceeding with the action.

Judges of the Supreme Court having differed in opinion the judgment of the Court below stands by virtue of section 53 *of the Courts of Justice Law,* 1935.

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[CREAN, C.J., AND GRIFFITH WILLIAMS, J.]

ANDREAS XENI, OF KATO VAROSHA, *Appellant,*

v.

POLICE, FAMAGUSTA, *Respondent.*

(*Case Stated No.* 3/39.)

STATEMENT OF A CASE—SUMMARY CRIMINAL JURISDICTION—DISTINCTION BETWEEN IMPRISONMENT AND COMMITTAL TO REFORMATORY—COURTS OF JUSTICE LAWS, 1935 AND 1938, SECTIONS 20(1), 23(1)(9) AND 34(4)—JUVENILE OFFENDERS LAW, 1935.

The appellant was charged before the President, District Court of Famagusta, sitting in the Juvenile Court, with the theft of a 10*s. note, and on his plea of guilty was committed to the Reformatory for* 9 *months. He failed to declare his intention for leave to appeal at the time sentence was passed on him, and instead of making an application asking for leave to declare his intention to appeal he made an application for leave to appeal. His application for leave to appeal not being entertained, he applied to the trial Court for leave to declare his intention to appeal notwithstanding that the seven days provided for in section* 34(2) *of the Courts of Justice Laws,* 1935 *and* 1938, *had expired. The President, District Court, refused this application as it was out of time, and appellant being dissatisfied with this decision applied for a case to be stated, upon which the President, District Court, stated a case for the opinion of the Supreme Court.*

HELD: (1) *That before a case can be stated the District Court must be exercising its summary criminal jurisdiction on the determination of an information or a complaint and the point must actually arise therein ;*

(2) *That an application for an extension of time within which to apply for leave to appeal is not a matter where the District Court exercises its summary criminal jurisdiction, as there must be a charge before the Court before it can exercise its summary jurisdiction ;*

(3) *That committal of a juvenile offender to Reformatory is not an imprisonment, therefore the appellant had no right of appeal under section* 34, *sub-section* (4), *of the Courts of Justice Laws,* 1935 *and* 1938.

Mr. Gavrielides for the appellant.

Mr. Paschalis, K.C., for the respondent.

The facts of the case and arguments of counsel appear sufficiently in the judgments.

Judgments : CREAN, C.J.: The appellant is 15 years of age and is therefore a " young person " as defined in the Juvenile Offenders Law of 1935.

He was charged before the President of the District Court of Famagusta on the 11th day of August, 1939, with the theft of a 10*s.* note. He pleaded guilty to this charge, and was committed to the Reformatory for nine months as a punishment.

At the time this order was made he did not declare his intention to appeal; nor did he file a notice of his intention to appeal within seven days from the date of the sentence prescribed by Law 38 of 1935. Instead of filing a declaration of his intention to appeal he filed an application for leave to appeal.

The learned President of the District Court held that as this notice of application for leave to appeal was not made within the prescribed time, he had no power to accept it.

The appellant's advocate then applied to the President to state a case, giving as a reason therefor that there was an inherent power in the Court to extend the time for appealing. The learned President granted his application and stated the case which is now before us.

On the case coming before this Court for consideration the learned Solicitor-General raised a preliminary point that the President had no power to state the case and consequently submitted that no order could be made upon it.

The reasons why the learned President of the District Court had no power in a proceeding of this nature to state a case were put before the Court in the most lucid manner by the learned Solicitor-General and he has referred us to section 23 (1) of Law 38 of 1935. According to this section, as argued by the Solicitor-General, the District Court must be exercising its summary criminal jurisdiction on the determination of an information or a complaint and the point must arise therein, before it can state a case, and that a proceeding such as an application for extension of time within which to file a notice of appeal, is not one in which the Court is exercising summarily its criminal jurisdiction.

In support of this branch of his argument he refers us to the English Summary Jurisdiction Act, 1857, and on reference to this Act it does

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seem clear that in order that a Court may exercise its summary criminal jurisdiction there must be a hearing and a determination of an information or a complaint: And he submits that an application for an extension of time within which to file a notice, is not within this category. It is submitted by the Solicitor-General that the wording of clause 74 of the Courts of Justice Order, 1927, bears out his contention in that it indicates clearly by its wording that there must be a charge before the Court, before it can exercise its summary jurisdiction.

In this proceeding before the District Court the order made by the President was one refusing to accept a notice of application for leave to appeal it being out of time. As to this, we are referred by the learned Solicitor-General to sub-section (9) of clause 23 of Law 38 of 1935, and that sub-section reads: " Any person convicted by a District " Court who applies to such Court to state and sign a case shall be " deemed to have abandoned any right to apply for leave to appeal to the " Supreme Court under Part IV." The effect of this sub-section is that once a case is stated and signed, the appellant must be taken to have abandoned any right he had to apply for leave to appeal.

This sub-section the Solicitor-General has referred us to is very important; for, on reading it, it is obvious that the fact of the appellant applying for and having a case stated and signed for this Court's determination, deprived him of any right he might have had to apply for leave to appeal, and therefore his application for leave to appeal must now be considered as an anachronism.

We are also referred to section 20 (1) and (2) of Law 38 of 1935 which shews what offences shall be tried summarily by the President, District Court, and the District Court, and it is suggested by the learned Solicitor-General that there is nothing in this section which can be taken as an indication that an application for an extension of time within which to file a document can be considered as a criminal matter in which the Court was exercising its criminal jurisdiction.

Another section of the Courts of Justice Laws, 1935 and 1938, which is very relevant to this proceeding and to which the Solicitor-General has referred, is section 34 (1) of Law 29 of 1938. It appears from that section that only a person who has been sentenced to be imprisoned without the option of a fine or to pay a fine exceeding ten pounds either as a punishment for an offence or for failing to do or abstain from doing any act or thing required to be done or left undone, has the right to appeal.

The appellant in this case was not sentenced to be imprisoned without the option of a fine; but was committed to the Reformatory which is not imprisonment.

He was not sentenced to pay a fine, and he was not ordered to do or abstain from doing any act, therefore he had no right of appeal and if he had no right of appeal it appears to me there was no purpose in applying for leave to appeal.

Interpreting the words of this section in their ordinary meaning and the words of sub-section (9) of clause 23 of Law 38 of 1935 in their ordinary meaning, I am unable to see how this application for leave to appeal was made. The efforts of the advocate for the appellant are no doubt quite praiseworthy, and he has shewn a good deal of zeal in the interests of his client; but, I fear, there has been a misreading or a misinterpretation of the words of the different sections bearing on these proceedings.

As the arguments of the Solicitor-General appear to me to be quite irrefutable, I think no order can be made on this case stated and signed.

GRIFFITH WILLIAMS, J.: The question which has come before us for decision arises out of a case stated by the President, District Court, Famagusta. The facts shortly were as follows:—

On the 11th August, 1939, the President, District Court, Famagusta, sitting in the Juvenile Court, Famagusta, (by virtue of the Juvenile Offenders Law No. 39 of 1935) sentenced a juvenile to be sent to the Reformatory for a period of nine months on his pleading guilty to an offence with which he was charged.

The juvenile, thinking the sentence excessive, on 17th August, 1939, filed in the District Court, Famagusta, an application for leave to appeal. This application on being forwarded in the ordinary way to the Supreme Court, where it was received on the 19th August, 1939, was seen to be out of order, as the record of the case contained no minute to the effect that the juvenile had declared his intention of applying for leave to appeal to the Judge who convicted him, in compliance with section 34 of Law 38 of 1935, as amended by Law 29 of 1938. It was accordingly returned to the Registrar at Famagusta.

On 31st August, 1939, the juvenile applied *ex parte* to the President, District Court, Famagusta, for leave to declare his intention to apply for leave to appeal against the sentence, notwithstanding that the seven days provided for in section 34 (2) of the Courts of Justice Law, 1935, (as amended by Law 29 of 1938) had expired. It was contended by him that notwithstanding the express time limit laid down by the Courts of Justice Law, 1938, the Court had inherent jurisdiction to enlarge the time within which the declaration of intention to apply for leave to appeal could be made.

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The learned President held as follows:—

1. that applications for leave to appeal under sub-section (4) of section 34 of the Court of Justice Law, 1935, were on the same footing in regard to procedure as other applications under the section and that therefore the provisions of sub-section (3) of the section applied.

2. that in view of the express wording of sub-section (3) of the same section—particularly the words: " No application for leave to " appeal shall lie "—the District Court had no power to enlarge the period of seven days allowed by the section.

The juvenile being dissatisfied with this decision requested the learned President to state a case for the opinion of the Supreme Court.

On this matter coming on for hearing before the Supreme Court—Mr. Paschalis, the Solicitor-General, appearing on behalf of the Police (Famagusta) took the preliminary objection that the President, District Court, had no power in this instance to state a case, and that in consequence this Court had no power to give any decision on the point therein submitted.

I have considered the arguments of the learned Solicitor-General, and have arrived at the conclusion that I am bound to agree with his submission, and hold that this was not a right question to be submitted to us as a case stated. The circumstances in which a case may be stated by a District Court are specified in section 23 (1) of Law 38 of 1935 which reads:—

" Any party dissatisfied with the decision of a District Court exer-
" cising summary criminal jurisdiction as being erroneous on a point of
" law or as being in excess of the jurisdiction or of the powers of the
" Court, may, etc., apply in writing to the Court which gave the decision
" to state and sign a case, setting forth the facts and grounds of such
" decision for the opinion of the Supreme Court."

The particular question raised for our consideration is whether a President, District Court, or District Judge is only exercising summary criminal jurisdiction when he is actually engaged in trying an offence and can only state a case on points of law arising at that trial or whether he can submit a case stated on a point of law arising out of some matter ancillary to a summary criminal case he is trying or has tried, when the circumstances are such that he has an additional power to exercise. It is apparent that in the present instance the question of law submitted did not arise at the trial, since it relates only to the interpretation to be put on a procedure section regulating appeals from summary trials.

Summary criminal jurisdiction is given to Presidents of District Court by sections 19 and 20 (1) of the Administration of Justice Law, 1935. Section 20 (1) reads as follows:—

" The Presidents, District Court, shall have jurisdiction to try " summarily *all* offences punishable with imprisonment, etc."

By sub-section (9) of section 23 of the same law " Any person con- " victed by a District Court who applies to such Court to state and sign " a case shall be deemed to have abandoned any right to apply for leave " to appeal to the Supreme Court under Part IV."

Clearly this section does not contemplate a President, District Court, or District Judge stating a case on anything other than the law raised in a summary trial before him since it is made an alternative remedy to an appeal from a conviction.

In the case before us the point for consideration is as to whether or not a President, District Court, or District Judge has a right to extend time beyond the seven days limited for giving notice of intention to appeal so as to make it possible for an appeal to be brought. If this sub-section (9) of section 23 is construed strictly the present case stated would be a bar to subsequent appeal, the very object for which application to state the case was made; and this would be so even though this Court were to hold that the learned President had power to extend the time for applying for leave to give notice of intention to appeal. But section 23 (9) seems rather to show that this kind of legal point for submission in a case stated was not contemplated in or provided for by the Administration of Justice Law.

The Cyprus section 23 of the Administration of Justice Law, 1935, follows the English Summary Jurisdiction Act, 1857, section 2, of which confers on Justices of the Peace virtually same powers of stating cases as is given by our section 34 of the Administration of Justice Law, 1935. It is as follows:—

" After the hearing and determination by a justice or justices of the " peace of any information or complaint which he or they have power " to determine in a summary way by any law now in force or hereafter " to be made either party to the proceeding before the said justice or " justices may, if dissatisfied with the said determination as being " erroneous in a point of law apply in writing within three days after " the same to the said justice or justices to state and sign a case setting " forth the facts and grounds of such determination for the opinion " thereon of one of the superior courts of law to be named by the party " applying."

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This section, however, has been held to permit cases to be stated only on points of law arising at or out of the actual summary trial; and the English authorities on the section show that Justices could not state cases on ancillary matters.

On account of this it was found expedient in England to give Magistrates further powers; and by the Summary Jurisdiction Act, 1879, section 33, they were empowered to state what was called a " special case " in matters on which they required the guidance of the High Court, and which were not legal points arising out of the actual trial.

Stone 70th edition at p. 114, note (*n*), states:—

" Until the passing of this Statute (S.J.A., 1879), there was practically " no means of reviewing in a divisional court a decision of justices except " upon the determination of an information or complaint or where " justices exceeded their jurisdiction. The Statute enables an aggrieved " party to obtain a decision upon a question of law arising upon any " matter."

The relevant section of the 1879 Act reads as follows:—

" Any person aggrieved who desires to question a conviction order or " determination or *other proceeding* of a court of summary jurisdiction " on the ground that it is erroneous in point of law or is in excess of " jurisdiction may apply to the court to state a special case setting " forth the facts of the case and the grounds on which the proceeding is " questioned and if the court declines to state the case may apply to the " High Court of Justice for an order requiring the case to be stated."

Application for a case to be stated under the 1857 Act can only be made " after the hearing and determination of any information and " complaint, if the parties are dissatisfied with the determination as " being erroneous in point of law." This restricts recourse to the " Case Stated " procedure to cases in which dissatisfaction arises out of the actual trial of the case.

But by the Act of 1879 " Any person aggrieved who desires to question " a conviction order or determination or other proceeding of a Court " of Summary Jurisdiction on a point of Law may apply for a ' special " case ' to be stated."

This Act clearly gives greatly extended powers to Justices of stating cases in circumstances where under the older Act they would have been unable to do so. Under this later Act application could be made in such a case as that now before us; as it would come under the very wide phraseology of the words " other proceeding of a Court of Summary " Jurisdiction."

Unfortunately in this Colony there is no section giving such powers to Courts of Summary Jurisdiction as those included in section 33 of the Act of 1879; the only powers of stating a case they have, therefore, are restricted to matters of Law or jurisdiction arising at the actual trial. For this reason I must hold that this was not a matter in which the learned President should have stated a case.

A further point raised by the Solicitor-General before us was that no appeal as to sentence could lie, as by section 34 (1) and (4) of Courts of Justice Law (as amended by Law 29 of 1938) a convicted person may only appeal as to sentence when he has been sentenced either to imprisonment without option of a fine or to pay a fine exceeding £10.

By section 9 of the Juvenile Offenders Law, 1935, a clear distinction is drawn between imprisonment and sending to a Reformatory. Section 9 (2) is as follows:—

" No young person shall be sentenced to imprisonment if he can be " suitably dealt with in any other way whether by fine, corporal punish- " ment, committal to a reformatory or otherwise."

From this section it seems clear that the sentence of nine months at a Reformatory imposed in this case was not " imprisonment without option " against which an appeal would lie under section 34 of the Administration of Justice Law.

Counsel for the juvenile pointed to section 10 of the Juvenile Offenders Law, 1935, which reads: " No appeal as to sentence shall lie where a " child or young person is sentenced to whipping only," and contended that this section by necessary implication permitted appeal from any other sentence. But this does not seem to me to be the right interpretation to put on it. The Juvenile Offenders Law is one of a kind sent out from England to be passed in all Colonies irrespective of the local laws in force there. It is not intended entirely to take the place of the ordinary criminal procedure, but to be supplementary to it. We must therefore construe this section 10 in its narrow sense as meaning no more than it says. Actually it seems to be of no practical value in this Colony, as whipping is not one of the sentences enumerated in section 34 (1) of the Courts of Justice law in respect of which an appeal lies.

I am therefore of opinion (1) that the learned President had no power in this instance to state a case for the opinion of the Supreme Court, (2) that from the sentence he imposed on the juvenile no appeal would lie.

No order made on the case stated and signed.