

[BOVILL, C.J. AND SMITH, J.]

REGINA

Plaintiff,

v.

EUGENIA PAPA ELIA

Defendant.

BOVILL,
C.J.
&
SMITH, J.
1890.
April 21SPECIAL CASE RESERVED BEFORE CONVICTION—C.C.J.O., 1882,
SECTIONS 139 AND 140.

A special case was reserved by a District Court for the opinion of the Supreme Court on an objection taken to the information before the witnesses for the prosecution were called.

HELD: That under the provisions of the Cyprus Courts of Justice Order, 1882, Section 139, a question reserved by a District Court can only be submitted for the opinion of the Supreme Court in cases where the trial has resulted in a conviction.

CASE reserved for the opinion of the Supreme Court by the District Court of Kyrenia.

The Queen's Advocate filed an information against the defendant, charging him with selling intoxicating liquor without a licence, contrary to the provisions of Section 12 of the Licensing Law, 1889. The defendant pleaded not guilty. An objection was then raised on behalf of the defendant, that the information was irregular, inasmuch as under Section 46 of the Customs and Excise Regulations Ordinance, 1879, the information should have been in the name of the Chief Collector of Customs.

The District Court thereupon adjourned the trial, and stated the following question for the opinion of the Supreme Court: "Is it obligatory that an excise penalty under Section 12 of Ordinance X. of 1889 should be prosecuted for in the name of the Chief Collector of Customs under Section 46 of Ordinance XXIV. of 1879?"

Pascal Constantinides, for the defendant: The question is, whether Section 117 of the Cyprus Courts of Justice Order has altered the effect of Section 46 of the Ordinance of 1879?

Law (acting Queen's Advocate): The District Court was premature in stating this case, and should have proceeded with the case, and if the defendant was convicted then a case could have been stated.

[The Court intimated that they were inclined to think that the permissive words in Section 46 of the Ordinance of 1879, were not obligatory and would not deprive the Crown of the right to prosecute in the name of any of its Officers, other than the Chief Collector of Customs. The Cyprus Courts of Justice Order, 1882, requires all informations to be filed by the Queen's Advocate.]

BOVILL,
C.J.
&
SMITH, J.
REG.
v.
EUGENIA
PAPA ELLA.
April 25.

Judgment: This case comes before us on a question reserved by the District Court of Kyrenia. The accused, as appears from the record of the proceedings before us, was committed for trial, and was in due course brought before the District Court for trial. He pleaded not guilty, and thereupon his advocate took an objection to the validity of the prosecution, on which the Court reserved the question of law, on which the matter comes to our notice.

Mr. Law objects to the jurisdiction of this Court, on the ground that the accused has not yet been convicted, and he argues that although it may be thought from a perusal of Sections 138 and 139 of the Cyprus Courts of Justice Order, that a question of law may be raised at any stage of the proceedings, a perusal of Sections 140 and 141 renders it clear that an Assize Court or a District Court, though it may make special entries or reserve questions of law, must nevertheless proceed to a finding as to the guilt or innocence of the accused, and cannot call on the Supreme Court for a decision on a question of law until the accused is convicted.

Section 140 does not provide for the consideration of any question of law by the Supreme Court except on an appeal by a person who has been convicted, or on a question being reserved by a Court by which a person is convicted, and the same section, which lays down what powers the Supreme Court has, after considering and determining the question of law, does not contemplate any case where the accused has not been convicted.

This argument seems to us to be correct. No provision is made for the powers of the Supreme Court in any case other than those we have specified; and as the law gives no right to the prosecutor to appeal, it becomes a useless formality to forward questions of law to the Supreme Court in cases where the District or Assize Court consider that they should find a verdict of not guilty. It is only in the case where the accused is found guilty that the necessity for the interposition of the Supreme Court arises. This is a new aspect of the law to us, and probably the same view has never occurred or been suggested to the Judges of the District Court.

We are, however, of opinion that Mr. Law's view of the law is right, and that what is intended is, that a person brought to trial shall plead and be tried; questions of law may be reserved as they arise, and if the accused is convicted they can be stated for the decision of the Supreme Court—if the accused is not convicted they become unnecessary to be considered. That this is the correct meaning of the Cyprus Courts of Justice Order is much strengthened

by a consideration of the other clauses regulating the procedure. The accused, by Section 122, may plead guilty or not guilty, or by Section 153 he may plead (a) that he is brought before the wrong Court, or (b) that he has been previously tried, or (c) that he has received a pardon for the same offence. Subject to anything that may arise on any of these last three pleas, the trial is, by Section 123, directed to proceed, the case against the accused being opened and evidence given in support of it. When the case for the prosecution is closed, the accused has every opportunity of making his defence, and all that he has to put forward by way of defence, whether on legal grounds or on the facts, unless it be competent for him to put it forward by way of plea under either Section 122 or Section 153, should be brought forward by way of defence at the close of the case for the prosecution. Had the trial of the accused in this instance been conducted on these lines, the objection which was taken by the advocate for the accused would have been taken by way of defence, and the whole case would then have been before the Court, so that they could have then and there disposed of it by proceeding to acquit or convict the accused, in the latter case stating the question of law on which Mr. Shakalli relies.

Under these circumstances we do not think that the question of law on which our opinion is desired is properly before us, and we must therefore abstain from any formal decision on the question of law submitted to us, but we do not think there is any harm in our adverting to the fact that we have expressed our views on that question in Court, and what has there been stated by us, may perhaps obviate the necessity of any further proceedings for the definite settlement of that question. If, however, a formal decision on the subject is required, it must be obtained on a question of law, formally stated, after conviction, should the accused in this case be finally convicted.

Case remitted to the District Court.

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