

1957  
July 4  
REGINA  
v.  
NICOS  
SOFOCLEOUS  
(No. 2).

[BOURKE C.J. AND ZEKIA J.]

REGINA

v.

NICOS SOFOCLEOUS (No. 2).

(*Question of Law Reserved No. 113*).

*Criminal procedure—Retrial—Validity of preliminary inquiry—  
New preliminary inquiry ordered by consent—Power of trial  
Judge—Criminal Procedure Law, Cap. 14, sections 63 (1),  
91 (b) and 142 (1) (d).*

*Question of Law—Reserved on application of Attorney-General—  
“Stage of proceedings” at which application can be made—  
Criminal Procedure Law, Cap. 14, section 145.*

On appeal a retrial of the accused was ordered by the Supreme Court under the provisions of section 142 (1) (d) of the Criminal Procedure Law, Cap. 14. In pursuance of that order the case came for trial before John J. sitting in the Special Court at Nicosia. Counsel for accused questioned the validity of the preliminary inquiry upon which the information was founded, but no circumstances in support of such contention were put before the Court. Eventually, with the consent of counsel on each side, the Judge made an order for a new preliminary inquiry to be held.

Upon the application of the Attorney-General, under the provisions of section 145 of the Criminal Procedure Law, Cap. 14, the Special Court reserved the question whether there was any jurisdiction vested in it to order a fresh preliminary inquiry. It was argued on behalf of the accused that the Supreme Court could not proceed to determine the question reserved under section 145, on the ground that the new trial had not commenced and so there was no “stage of proceedings” at which an application for the reservation of a question of law could properly be made.

*Held*: (1) that the Supreme Court could proceed to determine the question reserved under section 145 of the Criminal Procedure Law, Cap. 14.

*A.-G. v. Kounnides* (unreported) (Question of Law Reserved No. 109/56 decided on Dec. 6, 1956) applied;

(2) that, in the circumstances of the case and as things stood before him, the Judge had no jurisdiction to order a fresh preliminary inquiry, and his order was accordingly null and void.

*Case remitted to lower Court.*

Cases referred to:

- (1) *Regina v. Sofocleous* (No. 1), at page 89 of this volume.
- (2) *Attorney-General v. Kounnides* (unreported) (Q.L.R. No. 109/56, decided on Dec. 6, 1956).

**Question of Law Reserved.**

At the Special Court composed of John J. the accused was charged with murder (Case No. 465/57). Counsel for the accused questioned the validity of the preliminary inquiry upon which the information was founded and the judge ordered the holding of another preliminary inquiry.

*M. N. Munir, Q.C.*, and *D. Goodbody* for the appellant.

*Sir P. Cacoyiannis* and *A. Myrianthis* for the respondent.

The facts of this case sufficiently appear in the judgment of the Court which was delivered by :

BOURKE C.J. : This is a question of law reserved for the opinion of the Supreme Court by a Judge of the Special Court upon an application by the Attorney-General under the provisions of section 145 of the Criminal Procedure Law (Cap. 14).

For reasons that appear from the judgment of this Court in the appeal of *Regina v. Nicos Sofocleous* (No. 1)\* Criminal Appeal No. 2081, a retrial of the accused was ordered by virtue of the provisions of section 142 (1) (d) of the Criminal Procedure Law. In pursuance of that order the case came for trial before Mr. Justice John sitting in the Special Court at Nicosia. It appears from the circumstances as stated by the learned Judge that an application for adjournment was made on behalf of the Crown on the ground that certain witnesses had not arrived from the United Kingdom. It seems that counsel for the defence in effect questioned the validity of the preliminary inquiry upon which the information was founded. There was no attempt to determine this question or to put before the Court any circumstances in support of any such a contention. Instead it was suggested to the learned Judge that it would be proper for him to order a new preliminary inquiry to be held by the Special Justice. Apparently with the consent of counsel on each side such an order was made. The question now reserved is whether there was any jurisdiction vested in the Special Court to order a fresh preliminary inquiry when there was an order by this Court for a new trial.

It is submitted in the first place by Sir Panayiotis Cacoyiannis for the respondent that this court cannot proceed to determine the question reserved under section 145 of Cap. 14, on the ground that the new trial had not commenced and so there was no "stage of proceedings" at which an application for the reservation of a question of law could properly be made. Having regard to the decision of this Court in *Attorney-General v. Christos Ioannou Kounnides*† we do not think that there is substance

\* At page 89 of this volume.

† Unreported (Question of Law Reserved No. 109/56, decided on Dec. 6, 1956).

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in this submission ; but if we are wrong in that, we consider that this Court is entitled to resort to its inherent power to see that its orders are properly carried out.

It is as well to quote what this Court had to say concerning the preliminary inquiry in Criminal Appeal No. 2081 under reference above :—

“ As to the preliminary inquiry there is no allegation of any irregularity raised as a ground of appeal nor was any submission put forward before the trial Court that the procedure was defective and the order of committal was bad. The appellant was represented before the committing Justice by Mr. Myrianthis and at his trial by Sir Panayiotis Cacoyiannis and Mr. Myrianthis who have also appeared on this appeal. There is nothing upon the written record of the committing Justice to show that the necessary consent and approval were given under section 63 (1) to dispense with interpretation ; but there is no suggestion or reason to conclude that there was non-compliance with the law and the presumption is that the appellant's advocate did consent under the proviso to the subsection and the Justice gave his approval. The fact remains that the evidence at that stage of twelve of the fourteen witnesses who testified in English was not translated for the appellant ”.

In our opinion it is quite clear, nor is there any serious dispute about it, that the learned Judge of the Special Court had no power or jurisdiction to order another preliminary inquiry to be held. It is of course open to the defence at a trial to contest the validity of a preliminary inquiry and the committal order made therein. If in fact in the present case there was no compliance with section 63 (1) read with section 91 (b) of Cap. 14, it is open to the defence, and as no one disputes, to lay the circumstances before the Judge of trial and to make such submission as may be thought fit as to the validity of the preliminary proceedings and order of committal.

We have no hesitation in deciding that in all the circumstances and as things stood before him, the learned Judge sitting to conduct the new trial ordered by this Court had no jurisdiction to order a fresh preliminary inquiry and his order is accordingly null and void. In accordance with the provisions of section 145 (3) (b) the case is remitted to the lower Court with the opinion of this Court as stated upon the question reserved.

*Case remitted to lower Court.*