

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

SMITH, C.J.

&

MIDDLE-
TON, J.
1893.

Oct. 28.

IN THE MATTER OF A CHARGE AGAINST YOANNI
SIMEONIDES.

JURISDICTION—MAGISTERIAL COURT—DISTRICT COURT AS COURT OF APPEAL FROM MAGISTERIAL COURT—§§ 48 AND 82 SUB. § 4 OF THE CYPRUS COURTS OF JUSTICE ORDER, 1882—ARTICLE 179 OF THE OTTOMAN PENAL CODE—THE POLICE MAGISTRATES ORDINANCE OF 1879.

A Magisterial Court cannot deal summarily with a case primarily beyond its jurisdiction without the express consent of the accused first had and obtained.

A District Court sitting as a Court of Criminal Appeal from the decision of a Magisterial Court has no power to re-hear the evidence in the case.

Magisterial Courts appointed in virtue of the Cyprus Courts of Justice Order, 1882, have no authority to act under Ordinance XXIII of 1879.

THE defendant was convicted by a Magisterial Court of a common assault, on what the Judges of the Court considered was an admission by the defendant of the charge made against him, and sentenced to seven days imprisonment.

The defendant was not asked by the Magisterial Court whether he was willing, nor did it appear that he consented, that the case should be dealt with summarily.

The defendant appealed to the District Court.

The District Court ruled that the case must be re-heard before itself, which was done, and the conviction and sentence of the Magisterial Court were confirmed.

The defendant appealed.

Pascal Constantinides (*Diran Augustin* with him) for the appellant.

Two points were raised before the District Court.

(1) Whether what defendant had said amounted to a plea of guilty.

(2) That the Magisterial Court had no right to try the case summarily.

SMITH, C.J. The District Court accepted the argument that the
 & statement of the defendant did not amount to a plea of
 MIDDLE. guilty, and proceeded to try the case again. The District
 TON, J. Court cannot try a case except on information by the
 --- Queen's Advocate. The duty of the District Court as a
 RE YOANNI Court of Criminal Appeal is to see whether the accused
 SIMEONIDES. was properly convicted or not.

As regards the second point the District Court over-ruled it without assigning any reason.

This was a charge of assault under Article 179 of the Ottoman Penal Code which provides punishment up to one year. Under Clause 48 of the Cyprus Courts of Justice Order, 1882, the defendant ought to have been asked if he consented to be summarily dealt with or not.

Templer, Acting Queen's Advocate, in support of the conviction.

Defendant must have consented to be tried summarily. It is not apparent under what law accused was charged. It may be said that the Magisterial Court considered that it had jurisdiction to try the case under Ordinance XXIII. of 1879. If not, is it essential that defendant should have been asked if he were willing to be tried summarily? There is nothing in Clause 48 of the Cyprus Courts of Justice Order to shew that defendant must be asked if he consented. Besides, the Magisterial Court may have inferred that defendant was willing.

As regards the power of the District Court to re-hear the case, Clause 82, sub-section 4, of the Cyprus Courts of Justice Order says the Court may make any such other order as it may think just, and "may by such order exercise any power which the Magisterial Court might have exercised." The District Court in its desire to do justice made an order that it would re-hear the case. There is nothing to shew this order was ultra vires.

Judgment : We are of opinion that this conviction must be quashed, and that the District Court ought to have done so when the case came before it. The defendant was charged with an offence under Article 179 of the Ottoman Penal Code, which is not primarily within the jurisdiction of a Magisterial Court to adjudicate upon. The Magisterial Court, must, unless the accused consented to be dealt with

summarily, send the case for trial. We do not agree with the Acting Queen's Advocate's suggestion that a Magisterial Court may punish a man charged with an offence which is primarily beyond its jurisdiction to decide upon, without that man's expressed consent. Although the law does not say so in terms, there can be no doubt that in such cases the Magisterial Court should ask a defendant if he consents to be dealt with by it, or ascertain that he actually does so. It cannot be pretended here that the Magisterial Court took any steps to ascertain if the defendant consented to the exercise of their summary jurisdiction. We cannot also agree with the Acting Queen's Advocate that the District Court had any jurisdiction to re-hear the case. Sub-section 4 of Section 82 of the Cyprus Courts of Justice Order says "The Court of appeal may adjourn the hearing of the appeal and upon the hearing thereof may confirm, reverse, or modify the decision of the Magisterial Court, or may make such other order in the matter as the Court of Appeal may think just, and may, by such order, exercise any power which the Magisterial Court might have exercised . . ."

In our opinion this power of making orders refers to proceedings to be taken on the decision that may be come to, and not to the mode of coming to that decision. The District Court might perhaps have sent the case back for re-hearing by the Magisterial Court. There is no power under the sub-section for the District Court to rehear the case itself. The Acting Queen's Advocate suggests that the Magisterial Court may have acted under Ordinance XXIII. of 1879, but how can it be said that the Cypriot Judges of the District Court, who constituted the Magisterial Court in the case before us, and who come into existence under the Cyprus Courts of Justice Ordinance, 1882, were appointed Police Magistrates of Nicosia by the High Commissioner under the Ordinance of 1879? The argument is untenable, and for these reasons we think that the District Court had no power to re-hear this case, and that the conviction must be set aside.

SMITH, C.J.
&
MIDDLE-
TON, J.
RE YOANNI
SIMEONIDES.

Appeal allowed. Conviction quashed.