

BOVILL,
C.J.
&
TEMPLER,
ACTING J.
1891.

[BOVILL, C.J. AND TEMPLER, ACTING J.]

REGINA v. MEHMET AHMET

REGINA v. FLORENZO HADJI ANDONI

REGINA v. HADJI PAVLI HADJI MICHAIL.

Oct. 24.

MAGISTERIAL COURT—OFFENCE NOT TRIABLE SUMMARILY—
DISMISSAL OF CHARGE IN CASE OF—JURISDICTION—CYPRUS
COURTS OF JUSTICE ORDER, 1882, SECTIONS 48, 52 AND 89.

A Magisterial Court purported to try summarily (without the consent of the accused) a charge of an offence not within its summary jurisdiction.

HELD: That these proceedings were a nullity and formed no bar to the institution of fresh proceedings for the same offence.

APPLICATION under Section 63 of the Cyprus Courts of Justice Order, 1882, for an order directing the Magisterial Court of Famagusta to issue summonses to the defendants to appear and answer to a charge of being in the unlawful possession of firearms contrary to the provisions of Section 2 of the Firearms Law, 1889.

The Queen's Advocate: The facts appear to be that summonses were issued against the three defendants returnable on the 2nd September before the Magisterial Court. On the 9th September the charges against them were dismissed on the ground that more than two months had elapsed since the notice required by Section 5 had been served upon the defendants calling upon them to deliver up the firearms in their possession to the Commissioner. The charge was not one which could be tried summarily by a Magisterial Court, yet the Court purported to dismiss the charge under Section 48 of the Cyprus Courts of Justice Order, 1882, which operates as an acquittal.

Further summonses were applied for and refused, on the ground that the charges had been already heard and dismissed.

The Magisterial Court had no jurisdiction to try this case summarily and I contend that the proceedings were a nullity.

The Court ordered that the defendants should be served with notice to appear and show cause why the summonses asked for should not be issued.

Ikonomides, for defendants, showed cause: The proceedings before the Magisterial Court are a bar to any further proceedings.

Judgment: In this matter the Queen's Advocate has applied for an order of this Court directing the Magisterial Court of Famagusta to issue a summons to Florenzo Hadji Andoni of Acherito to appear and answer to a charge of an offence under the Firearms Law, 1889.

The application is made on a sworn information made by the Queen's Advocate before Mr. A. G. Lascelles, Acting President of the District Court of Famagusta, on the 24th of September.

In this document it is alleged that summonses were taken out against the accused and two others in a similar position on the 3rd day of August, 1891, and proceedings taken thereon before the Magisterial Court of Famagusta, but that no regular decision was arrived at, the Court having, without the consent of the accused, dealt with the case irregularly in a summary manner, and given a decision purporting to acquit the accused on the ground that more than two months had elapsed since the commission of the offence.

The accused has had ample opportunity of meeting this statement and of correcting it if it is in any way inaccurate, but it stands uncontradicted.

It appears from a perusal of the Firearms Law, 1889, that there is only one offence distinctly referred to in that law. The law enacts that it shall be unlawful for certain classes of persons therein defined to possess or use firearms at any time after the expiration of one month after the passing of the law (the date of which was the 26th of April, 1889), and by a subsequent clause it is enacted that every person who, in contravention of the law, possesses or makes use of any firearms, shall on conviction, be liable to imprisonment for any term not exceeding six months or to a fine not exceeding £10.

In the sworn information of the Queen's Advocate it is alleged that the accused, being a person prohibited from possessing and using firearms under the law, was found in possession of a firearm on the 17th day of July, 1891, and it continues, in the words we have already quoted,

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BOVILL, to say, that a summons was taken out against the accused
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 & under, which the Queen's Advocate contends were abortive.
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The offence with which the accused is thus charged, is one, for which he cannot be tried summarily, except on his expressing his willingness to be so tried.

Until he has so done, the Magisterial Court would only have jurisdiction to hold a preliminary enquiry; and, as the result of such enquiry, either to commit the accused for trial or to discharge him, and if in the exercise of that jurisdiction they discharged him, that would be no bar to subsequent proceedings being instituted against him for the same offence. It would, however, be within the discretion of the Magisterial Court to refuse, or to allow such further proceedings to be instituted.

Under Clause 48 of the Cyprus Courts of Justice Order, however, if the accused were willing that the case should be tried summarily and if the Court were of opinion that the accused, if convicted, would be adequately punished by a sentence of imprisonment for a term not exceeding one month or a fine not exceeding £5, or both, the Magisterial Court might try the case summarily.

In the case before us, the Queen's Advocate alleges on oath that the Court has, without the consent of the accused irregularly dealt with the case in a summary way, and given a decision purporting to acquit the accused; and he contends that the extended jurisdiction created by Clause 48 of the Cyprus Courts of Justice Order cannot be exercised until the accused has declared that he is willing that the case should be tried summarily. It is not suggested on behalf of the accused, that he was ever asked whether he was willing that the case should be dealt with summarily, or that he ever in any way expressed his willingness, that the case should be so dealt with. We have been furnished with a certified copy of the notes taken on the hearing of the charge. There is nothing on those notes to indicate that the accused was asked whether he was willing to be tried summarily, or that he ever expressed his willingness to be so tried, or made any statement on that subject, and from the notes it appears that the Magisterial Court dismissed the charge and directed the prosecutor to pay the defendant's costs, that is, they purported to deal with the

case in the manner in which they are authorised by the Cyprus Courts of Justice Order to deal with cases which in the ordinary course of events fall within their powers of summary jurisdiction, and not in the manner in which that order authorises them to deal with cases on preliminary enquiry, in which case they would have had power only to discharge the accused and would have had no power to make any order as to costs.

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It appears to us clear that the Magisterial Court has purported to try this case summarily, and to dismiss the charge, which is equivalent to an acquittal on trial on information; and that they have done this without any expression on the part of the accused of his willingness to be tried summarily.

For the accused, however, it is contended that he having been acquitted by the Magisterial Court, the judgment of that Court puts an end to all enquiry as to whether the decision was one which it was under the circumstances competent for them to give or not, in fact that a judgment having been given it must be assumed that the Court properly exercised the jurisdiction necessary to empower them to give it, and that for that reason it must be taken that the accused is acquitted, and no further proceedings concerning this particular charge can be had.

With regard to this contention, we cannot hold that it is correct. Where a Court has given judgment in a matter manifestly within its competence it may, no doubt, be difficult to interfere with, or go behind that judgment, on the ground of any technical error in the earlier procedure, but that is not the fault that is found with the present judgment. The fault urged against it is, that it is on the face of it *ultra vires*, and that unless there is anything in the proceedings which shows, that the jurisdiction to acquit was rightly exercised, it must be held to have been exercised without authority.

Were we to hold that, because the Court has proceeded to judgment, we must assume it was right in so doing, there appears to us no reason why the same view should not be acted on, if an accused person who had been irregularly convicted were to object to a judgment on the ground, that

BOVILL, it was beyond the power of the Court to give it, and that
 C.J. he had not assented to be tried summarily. In that case
 & no one would, we believe, be found to suggest that the
 TEMPLER, accused was not entitled to prove that the Court had
 ACTING J. exceeded its jurisdiction, and in this particular respect
 REGINA we see no reason why the accused should stand on a different
 v. footing to the prosecutor or complainant.
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REGINA We are quite clear that the circumstances which might
 v. have given the Magisterial Court jurisdiction to try the
 FLORENZO accused summarily in this case never arose, and that,
 HJ. ANDONI. therefore, their judgment purporting to dismiss the charge,
 REGINA which is equivalent to an acquittal, is a nullity.
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The case then stands in this position. A charge or complaint has been made, a summons has been issued calling on the accused to appear and answer to that charge, and, on his appearance, an irregular and impotent decision has been given.

We are of opinion that the effect of such a decision is simply to nullify all the previous proceedings which led to it, and leave merely the original charge standing against the accused ; and that the complainant is, under the circumstances, entitled to ask for the issue of either a summons or a warrant to have the case properly investigated in the presence of the accused.

The Magisterial Court not thinking it right to issue either the one or the other, the complainant is right in applying to this Court for an order on the Magisterial Court to issue a summons or warrant, and for these reasons we shall make our order for the issue of a summons to the accused absolute.

Court directed to issue summons.
