

[HUTCHINSON, C.J. AND TYSER, J.]

HUTCHIN-
SON, C.J.
&
TYSER, J.
1905

POLICE

v.

STAVRO NIKOLA AND OTHERS,

EX-PARTE STAVRO NIKOLA AND OTHERS,

Applicants.

Nov. 7

BAIL—DISCRETION OF MAGISTRATE—CYPRUS COURTS OF JUSTICE ORDER, 1882, SECS. 108, 109—APPLICATION TO SUPREME COURT—NOTICE—AFFIDAVIT OF FACTS.

The provisions of Secs. 108 and 109 of the Cyprus Courts of Justice Order, 1882, give the Magistrate an absolute discretion as to granting bail.

The Court of Appeal will not interfere when the Magistrate has exercised his discretion reasonably and judicially unless there are strong reasons for doing so.

On application to the Supreme Court for bail notice should be given to the Police or the King's Advocate.

When an application to the Supreme Court for bail is opposed, the applicant should produce an affidavit of facts.

This was an appeal from the District Court of Famagusta, refusing to admit the Defendants to bail with sureties, and directing that they should not be released from the prison until trial except on the deposit of £20 cash each in Court.

The Defendants, of whom there were four, were charged with attempting to steal sheep by night and in company and were on the 30th October, 1905, committed for trial on that charge at the next District Court to be held on the 22nd December, 1905.

The Magistrate noted at the end of the depositions "Bail each accused in £20 (Cash to be deposited in Court)."

The Defendants now applied for bail with sureties, alleging² that the requirement of a deposit of £20 for each man was in effect a refusal to give bail.

The application in the first place was made without any notice being given to the Police and without any affidavit of facts having been filed.

Theodotou for the Appellants.

The King's Advocate for the Police.

Judgment: The application was first made to us without any affidavit as to the facts and without any notice to any one. Of course we could not accede to it without knowing anything whatever about the matter and without giving the prosecution any chance of stating their objections. On every such application notice must be given to the prosecutor or the King's Advocate as the case may require, and unless the prosecution appears to consent there must be also an affidavit stating the facts.

The applicants have now filed an affidavit and have given notice of the application to the King's Advocate, who appeared and said that he did not assent to the application, and he informed us that the Magistrate gave no reason for refusing to accept sureties; and that sureties were tendered but refused. We have seen the depositions taken by the Magistrate and we have communicated with the Magistrate and heard his reasons.

1906

Jan. 6

The power to admit to bail is given by Secs. 107, 108 and 109 of the Cyprus Courts of Justice Order, 1882. By Sec. 108, "Every person charged with any offence except high treason or murder, who can find sureties sufficient in the opinion of the Court to secure his appearance when it is required, may be bailed at any stage of the proceedings, if in its discretion the Court thinks proper to bail him."

And by Sec. 109 "when the preliminary enquiry is finished the accused may be admitted to bail or set at liberty on his own recognizance."

And the last sentence of Sec. 108 says that "Any person charged with any offence other than high treason may be admitted to bail by order of the Supreme Court."

These provisions give the Magistrate an absolute discretion as to granting or refusing bail; and they also give the Supreme Court an unlimited power to bail in every case.

In the present case the Magistrate neither admitted to bail (for he refused to accept any surety), nor set the accused at liberty on their own recognizances, but committed them to prison unless they should deposit £20 in Court; which they say is equivalent to refusing bail.

The first and principal object of these provisions of the Order in Council is to ensure that the accused who has been committed for trial shall appear at the time and place appointed for the trial and take his trial. But the Magistrate may have other good reasons for refusing bail besides the fear that the accused will not appear at his trial. And when a Magistrate has in his discretion (which of course he must exercise reasonably and judicially) refused bail, this Court ought not to interfere except for very strong reasons. If the Magistrate should tell us that he had no objection to bail being allowed, and the King's Advocate did not oppose, we should naturally allow it. But in the present case, having heard the Magistrate's reasons, we think we ought not to interfere.

Appeal dismissed.

[HUTCHINSON, C.J. AND TYSER, J.]

KING'S ADVOCATE,

Plaintiff,

v.

SOLOMO LOIZO AND ANASTASIA SOLOMO, *Defendants.*

LAND CODE, ART. 31—ARAZI MIRIE—PERMISSION TO BUILD—ADDITION TO BUILDINGS.

Where the mutassarif of Arazi Mirie has obtained permission to build and has erected the buildings for the erection of which leave was given, he cannot add to those buildings without obtaining a fresh permission.

This was an appeal of the Plaintiff from the judgment of the District Court of Nicosia.

The facts were as follows:—

In 1898, the Defendant Solomo Loizo, being registered owner of Arazi Mirie, obtained a permit from the Commissioner of Nicosia to erect two rooms and a veranda on the land, and erected them.

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