

I am not too confident in my opinion on this point, as I am differing from the President of the District Court and the Turkish Judge; but it certainly appears to me that Christo is a man who buys goods for re-sale in their manufactured state: and that he is therefore a *tujar* or "trader" as defined by the Code.

The only reason advanced, so far as I understood, for holding that he is not a trader is that his business was on a small scale; he only kept two or three apprentices and made about 1,300 to 1,500 pairs of boots in a year. But the Code makes no distinction between a large and a small trader.

I do not say that every shoemaker, blacksmith or carpenter is necessarily a "trader." A man who merely does jobs to order may not be a trader; but one who makes it his business to buy materials and manufacture them and then sell the manufactured goods is a *tujar* as defined by the Code, whether his business is large or small.

The order appealed from must be set aside and the Respondent Christo declared to be in a state of bankruptcy. The Applicant will add his costs in the District Court and in this Court to his debt.

FISHER, ACTING J.: Concurred.

Appeal allowed.

HUTCHIN-
SON, C.J.
&
FISHER,
ACTING J.

CHRISTO
NICOLAOU,
EX-PARTE
STENE N.
ELEUTHE-
RIADES.

[HUTCHINSON, C.J. AND FISHER, ACTING J.]

POLICE,

v.

KYRIAKO KLEANTHI.

POLICE,

v.

IANNAKI COSTI AND IANNI IANNAKI.

CRIMINAL PROCEDURE—SUMMARY CONVICTION—CYPRUS COURTS OF JUSTICE
ORDER IN COUNCIL, 1882, ART. 48—CONSENT OF ACCUSED TO SUMMARY
TRIAL.

Where a prisoner is convicted of an offence not triable summarily without his consent it is necessary to the validity of the conviction that the consent should appear on the records of the Court.

These were appeals from the Magisterial Court of Larnaca. The conviction in the first case for an offence against Art. 202, in the second case against Art. 179 of the Ottoman Penal Code.

In neither case did it appear that the prisoner consented to be tried summarily.

Rossos for Kyriako Kleanthi.

Amirayan for the Crown in both cases.

HUTCHIN-
SON, C.J.
&
FISHER,
ACTING J.
1906

May 5

HUTCHIN-
SON, C.J.
&
FISHER,
ACTING J.
POLICE
v.
KYRIAKO
KLEANTHI

Judgment: The same point arises in each of these cases. They are appeals by the Defendants from convictions by a Magisterial Court; in each case the Defendants were charged with and convicted of an offence punishable with imprisonment for a term exceeding one month; but there is no statement or note in the formal conviction, or anywhere in the notes of proceedings, that the Defendants were willing that the case should be tried summarily. The question therefore arises whether the convictions are not bad because the Magistrates had no jurisdiction to try the cases summarily without the consent of the accused and there is no record of such consent.

The jurisdiction of a Magisterial Court to try a case summarily is given by Sec. 48 of the Cyprus Courts of Justice Order, 1882. It is limited to cases within the local jurisdiction of the Court which are punishable with imprisonment for any term not exceeding one month, or with fine not exceeding £5, or with both; provided that where the offence is punishable with imprisonment for more than one month but not more than three years, or with fine exceeding £5, or both, "and the accused is willing that the case should be tried summarily," the Court may try it summarily.

In the cases now under appeal it does not appear that the accused were willing that they should be tried summarily. But it is urged by the prosecution that it is not essential that the consent of the accused should be recorded; that it ought to be assumed that everything was rightly done, and that as no objection is noted, it ought to be assumed that they consented.

In the second case the Defendants did not appear; in the first case the Defendant appeared and said that he was not asked whether he was willing to be tried summarily.

The Magisterial Court cannot assume that the accused is willing to be tried summarily; his willingness must be expressed. If any authority on that point is required it may be found in two cases reported in 2 C.L.R., 16 and 147 (*R. v. Mehmed Ahmed, Florenzou Haji Antoni Haji Pauli Haji Michael* and *In the matter of a charge against Ioanni Simeonidi*) and the fact that he was willing must appear on the records of the Court; otherwise the records will apparently shew that the Court dealt summarily with a case which was beyond its jurisdiction.

Similar questions have often arisen in England, and there the rule is stated by Paley (*Summary Convictions*, 7th edition, pp. 33, 186), to be that "jurisdiction must always appear upon the face of summary proceedings."

The convictions must therefore be set aside.

Appeal allowed.