

## THE CYPRUS LEGISLATIVE COUNCIL ORDER, 1882,

AND

THE STATUTES OF THE IMPERIAL PARLIAMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND STYLED "THE PARLIAMENTARY ELECTIONS ACT, 1868, AND THE CORRUPT AND ILLEGAL PRACTICES PREVENTION ACTS, 1883 AND 1895."

IN THE MATTER OF AN ELECTION PETITION FOR THE ELECTORAL DISTRICT OF NICOSIA AND KYRENIA.

BETWEEN

PASCAL CONSTANTINIDES, GEORGE CHACALLI, AND  
 ACHILLEAS LIASSIDES, *Petitioners,*

AND

KYRILLOS PAPADOPOULOS, METROPOLITAN BISHOP  
 OF KITION, THEOPHANI THEODOTOU AND ANTONI  
 THEODOTOU, *Respondents.*

ELECTION PETITION—CYPRUS LEGISLATIVE COUNCIL ORDER, 1882, ART. 15—CORROBORATION—CYPRUS COURTS OF JUSTICE ORDER, 1882, ART. 196—CORRUPT TREATING—AGENCY—JOINT CANDIDATURE—PUBLICATION OF ENGLISH LAWS IN FORCE IN CYPRUS—LAW OF 25 REBI-UL-EVVEL, 1289—"FOR THE TIME BEING"—COSTS.

*In the Cyprus Legislative Council Order, 1882, Art. 15, "the law in force in England for the time being relating to corrupt practices at elections" means the law in force at the time of the election and trial, and not the law in force at the date of the Order in Council.*

*It is not necessary that the English Statutes in question should have first been published in the Cyprus Gazette.*

*In order to invalidate an election on the ground of corruption it is not necessary to show that but for the corruption the elected candidate would not have secured a majority.*

*The circumstances which constitute "corrupt treating" and "joint candidature" considered.*

*Whether in any particular case a person is an agent of the candidate is a question of fact to be determined from all the circumstances of the case.*

*Art. 196 of the Cyprus Courts of Justice Order, 1882 (requiring corroboration of the evidence of a single witness) does not apply to the trial of an election petition.*

Election Petition tried by the Chief Justice under the provisions of Art. 15 of the Cyprus Legislative Council Order, 1882.

The facts sufficiently appear from the judgment.

*Rees Davies, K.A., Artemis, Chrysofinis and Neoptolemos Pascal for the Petitioners.*

*Theodotou in person and for the other Respondents (with him Sevastli, Kyriakides, and Demosthenes Severes.)*

TYSER, C.J.

PASCAL  
CONSTANTI-  
NIDES AND  
OTHERS  
AND  
KYRILLOS  
PAPADOPOU-  
LOS AND  
OTHERS

*Judgment:* This is a petition against the return of Kyrillos Papadopoulos, Metropolitan Bishop of Kition, Theophani Theodotou and Antoni Theodotou as being duly elected members of the Legislative Council of this Island.

It alleges that the return is null and void on the ground that the said persons so returned were, and that each of them was by themselves and their agents, before, during and after the election guilty of bribery.

It further alleges in similar terms that the said persons were guilty of treating, undue influence and other corrupt and illegal practices.

It further alleges that there was general intimidation, bribery and treating and that the said persons so returned coalesced and stood as joint candidates at the election and that by reason thereof each of them is responsible for any corrupt practices committed by or on behalf of any other.

Particulars of the different charges were delivered under an order of the Court.

No sufficient evidence was forthcoming in support of the charges of intimidation and the only charges which it is necessary to consider are certain charges of bribery and treating.

With regard to the personal charges, in the particulars there were no personal charges against the Bishop of Kition, there were no sufficient particulars of personal charges against Antoni Theodotou, and of the particulars of personal charges against Theophani Theodotou some were dropped and the others were not proved.

As to the other charges, of which there were a great many, some were dropped at the trial, in others evidence adduced did not agree with the particulars and they were abandoned, in others the witnesses were of so unsatisfactory a nature that reliance could not be placed on the evidence; in some I was of opinion, for reasons which I stated at the hearing that the charge was not true. There remain only the charges hereafter mentioned on which it is necessary to pass judgment.

The Chief Justice then proceeded to consider in detail the various charges of bribery. Only one of these (No. 41) involved any question of law. The reference to the case in question was as follows:

As to particular No. 41 there was only one witness in support of the charge contained in the particular and it was argued that no finding could be based on the evidence of one witness and counsel for the Respondents cited Art. 196 of the Cyprus Courts of Justice Order, 1882.

I do not think that that clause applies to the trial of an Election Petition and to the decision of one of the charges in the particulars.

The Chief Justice, having next considered in detail the various charges of treating, proceeded as follows:

The treating is proved.

The next question I propose to consider is whether the different cases of treating which have been proved were corrupt.

Treating is corrupt on the part of the person treating when at the time he treats he does so for the purpose of influencing any other person in the exercise of his power of voting.

Whether or no that is the purpose for which the treat is given is a question of fact, and where that purpose is not expressly proved it may be inferred from the facts of the case which are proved.

The corrupt purpose may be expressly proved, for example, if the person treated is asked to come and partake of the treat and then vote for the party whose success the treater is trying to procure.

In this case it is clear that the treat is given or promised for the purpose of inducing the person treated to vote in the manner he is asked to vote.

In other cases the corrupt purpose may be inferred from a variety of facts.

The relative positions of the treater and the person treated are material.

The effect which the treat provided would be likely to have on the person treated is material.

The part taken by the treater in the election is material.

The time when the treat is given is also material.

There may be other things which support or disprove an inference of fact that a corrupt purpose existed in the mind of the treater.

Again there may be corrupt treating when the treat is corruptly given on account of any person having voted or refrained from voting.

Here again the corruption may be expressly proved as, for example, where the treater promises to any one a treat after voting if he will vote as he wishes.

It may be inferred as, for example, when there has been a practice to treat after an election on which it may be supposed the voters would calculate.

Treating is not corrupt when it is a mere form of ordinary hospitality or in relation to business matters and there is no purpose of influencing votes.

It has been contended for the Respondents that there is a universal custom in Cyprus for villagers to treat villagers and for merchants, shopkeepers and others to treat and be treated by their clients whenever or wherever they meet and especially if the clients come to the place of residence or business of the persons with whom they deal; that this is an ordinary form of hospitality or treating in relation to business matters; that all the cases of treating proved are either of the one nature or the other and cannot be held to be corrupt.

In the first place it is not true that all the cases of treating come within these kinds of treating.

The treating at Prastio, Meniko, Kato Zodia, Athienou and Petra and the treating by Katalanos at Nicosia cannot be brought within either class.

TYSER, C.J.

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The treats at Atheniou, Kato Zodia, Meniko, Petra and Prastio were obviously given in connection with the election by leading men in the different villages to other voters in the village whose vote they hoped would be on their side.

In the case of Kato Zodia there was evidence that the determination to give the treat was only come to when it was known that the leader of the other party was going to give a treat and that it was given to counteract the influence which the other feast might have on the votes.

I have no doubt that in all the five cases the object of the feasting was to secure votes for the party favoured by the treaters and for the success of which the treaters were working.

In each case it appears that the treaters were working for the Kition party and the feast given by them was, as I find, only part of that work.

There is another class of cases, such as the treating at Karmi, Kyrenia and the treating by Athanassi Haji Constandi at Lefka, and the treating at Paleochori.

In these cases clients were being treated by the persons with whom they dealt, and any custom to treat clients is evidence to be taken into consideration in deciding whether the treaters had a corrupt purpose in treating or not.

In such cases if it is shewn that the treater takes no interest in political questions, and exerts no influence on voters and that the treating does not exceed in amount what would be usual if the people came in for a non-political purpose, such as a cattle show, the Court might draw the inference that there was no corrupt purpose.

Now the evidence shews that it is usual in Cyprus for merchants, shop-keepers and others to treat their clients, and also that it is usual for villagers and others to treat and receive treats from their friends with whom they have no business relations.

The latter cases seem to be cases of pure hospitality, but the former, the treating of clients, appears from the evidence to be a matter of business.

The objects of treating clients would appear to be:

- (1) The maintenance of good relations with clients who are profitable in business, so that they may be easier to deal with and less likely to transfer their business to a rival.
- (2) To advertise the merchant, or other person treating, as a person with whom it is desirable to deal, and so to attract other clients.

The treating of clients is proved not to be a pure matter of hospitality, but a means of influencing clients and others so as to gain the object of the treater, which is, in ordinary cases the promotion and extension of his business. A client who is a social equal may be entertained by a merchant as a friend but that is not a matter which is peculiar to merchants or tradespeople.

It is quite clear that the treating in a similar way of clients by merchants or others would be a powerful means of promoting the objects of the treaters in other matters, whether political or otherwise, if the treaters so desired.

In these cases the Court must look at all the evidence to see whether there was a purpose in the mind of the treater to influence votes.

If the treating is in excess of what is usual that would be a matter which would tend to shew that the usual object was not that with which the treat was given.

If for example a person treated on the eve of an election in a way which was greatly in excess of the treating customarily given for the purposes of business that would be some evidence that business purposes were not the sole object of the treating.

If the person charged with treating gives evidence which is not true and of which the tendency is to conceal the amount of the treating, it would be evidence that he knew there was something to conceal and that the treating was corrupt.

If the person charged with treating was shewn to have taken an active part in the electioneering campaign and to have exerted his influence to obtain voters for his side it would be a fact to be taken into consideration in determining whether the treating was for the purpose of influencing the voters.

If a candidate for election were to treat or the agent of the candidate there would be a strong presumption that the treating was corrupt.

. After dealing with the several charges on the basis of the principles thus enunciated, the Chief Justice proceeded:

I will now consider whether the persons, guilty of bribery and corrupt treating, or any of them, were agents of the Respondents or any of them.

I will first consider whether the Respondents stood as joint candidates in such a way as to make each of them responsible for any corrupt practices committed by or on behalf of any other.

I shall not attempt to lay down any exhaustive definition of what relation between candidates will constitute them joint candidates in this sense.

It is enough for me to say that if one candidate is shown to be the agent for another candidate the latter will be responsible for any act of the former and for any act of an agent of the former.

The Bishop of Kition was represented by Mr. Theophani Theodotou at the trial of the petition and is bound by any admission made by Mr. Theophani Theodotou in that capacity.

He did not tender himself as a witness and it must be taken that he and his advocate did not wish to contradict any evidence against him which was given at the trial.

Now it appears that both Dr. Antoni Theodotou and Mr. Theophani Theodotou in their speeches were asking the electors to vote for all three of the Respondents.

Mr. Theophani Theodotou says (p. 330): I was the agent of all the others.

Mr. Theophani Theodotou and Dr. Antoni Theodotou went together to Assomatos for electioneering purposes and each of them addressed the electors.

TYSER, C.J.

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The Bishop of Kition writes to Mr. Theophani Theodotou on the 14th August (o.s.) 1906 "if things are in their regular place we must work or rather you must work."

It is conclusively proved that any work done by any of them was done for all of them and that each of them approved of the others working for him.

This would be sufficient in my opinion to make each responsible for what was done by the others or the agents employed by the others.

That there was a coalition is also proved by the publication in the *Kypriakos Phylax*, which appears to be the party newspaper, in which they are always spoken of as the coalition.

I find therefore that there was a coalition and that if any of the persons found guilty of bribery or corrupt treating was the agent of one he was the agent of all.

I will now consider whether any of the persons so found guilty were agents.

There is no legal definition of agency. Whether in any particular case a person is an agent must be gathered from all the facts proved in the case.

The Chief Justice then considered the various cases in which agency was imputed to the persons charged and proceeded as follows:

There are some points made by Mr. Theophani Theodotou which I will mention shortly.

Looking at the whole law contained in the Order in Council I am of opinion:

That the law incorporated in Art. 15 of the Order in Council is in force in the Island so far as it is necessary to decide this petition. It is not necessary to decide how far it is in force as regards other matters, such as the penalties attaching to a person found guilty of bribery.

That the English law to be applied in this case is the law in force at the time of the election and trial.

That the words "for the time being" do not refer to the time when the Order in Council was made.

I find that this law is in force although it may not have been published in the *Cyprus Gazette*.

I find that Clause 15 is not confined to cases where the unsuccessful candidate can show that but for corruption there would have been no majority.

I find that the intention of the enactments in the Order in Council and of the Acts so far as they are incorporated, is to insure the right of the public to a true and honest representation in the Council, and that corrupt practices should have the same effect in regard to the invalidation of an election in Cyprus that they have in England.

The result is that I find that the election is null and void.

As to the costs the Petitioners are entitled to the general costs of the petition.

The Plaintiffs are to have the costs of all the issues of which they have succeeded.

The Judgment declared, that there was a coalition of the Respondents, that the Respondents were by their agents guilty of corrupt practices, to wit, bribery and treating, and that there was general treating.

*Election declared null and void.*

TYSER, C.J.

PASCAL  
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[TYSER, C.J. AND BERTRAM, J.]

REX

v.

NEOCLI ANTONI.

TYSER, C.J.

&  
BERTRAM,

J.  
1907

May 8

CRIMINAL LAW—CORROBORATION—CYPRUS COURTS OF JUSTICE ORDER,  
1882, ART. 196.

*It is not necessary that the corroborative evidence in a criminal trial should actually implicate the accused in the commission of the crime.*

*It is sufficient if it is of such a nature as to satisfy the Court as to the accuracy of the principal witness.*

Appeal of the Defendant from the judgment of the District Court of Paphos.

The charge against the Defendant was that being a person prohibited from possessing or using firearms under the Firearms Law, 1889, he was unlawfully in possession of a gun contrary to provisions of that law.

The principal witness was a woman, Styllou Anastassi, who swore that she saw the Defendant come out of his house carrying two guns, and hand them to an accomplice, who carried them off in a certain direction. Shortly afterwards, on being questioned by a zaptieh, she indicated the direction, accompanied the zaptieh, assisted him to search and herself found one of the guns, hidden among leaves.

The corroborative evidence was that of the zaptieh, who swore that the woman gave him certain information, indicated a direction, proceeded with him thither, searched, and pointed out the gun to him.

The Court convicted the Defendant, who appealed.

No appearance either by the Appellant or Respondent.

TYSER, C.J.: This Court has already decided in *Rex v. Ioannis Haji Nicola* (1902) 6 C.L.R., 5, that it is not necessary that every part of a witness's story should be corroborated.

It is important to note what the section actually says: It says that the evidence of the principal witness must be "corroborated by some other material evidence, which in the opinion of the Court is sufficient to establish the accuracy of the witness."