

TYSER, C.J.  
&  
BERTRAM,  
J.  
1909  
April 24

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

POLICE

v.

MEHMED ALI.

CRIMINAL LAW—ENCROACHMENT ON PUBLIC SQUARE—JURISDICTION OF  
MAGISTERIAL COURT—TITLE TO LAND—OTTOMAN PENAL CODE, ART. 264—  
POWER OF SUPREME COURT TO RESTRAIN EXCESS OF JURISDICTION.

The principle that in cases in which the title to immovable property comes into question, the criminal jurisdiction of a Magisterial Court is ousted does not apply to cases in which the immovable property in question is claimed as the property of the public, and in which the right of the public to the property is the foundation of the jurisdiction of the Magistrate.

The Defendant was charged under Art. 264 of the Penal Code with encroaching on a public square and claimed that the place in question was within the boundaries of his qochan.

HELD: That the Magistrate was entitled to enquire into the title of the property and that his jurisdiction was not ousted.

The question whether the Supreme Court has an inherent power to restrain excess of jurisdiction in inferior Courts raised but not decided.

This was an application to the Court to quash a conviction of the Magisterial Court of Famagusta. The applicant was convicted under Art. 264 of the Ottoman Penal Code of encroaching on a public square. He produced a qochan based upon a hojet, and claimed that the alleged square was his private property. The Magistrate decided that the qochan did not include the square, convicted him, inflicted a fine and ordered the removal of the obstruction.

*Amirayan* appeared for the prosecution and questioned the jurisdiction of the Court to entertain the application.

*Michaelides* for the Applicant. I appeal to the Court as a Court of Cassation. The Supreme Court, as the highest Court of the Island must have an inherent power of restraining inferior tribunals within the limits of their jurisdiction. Here the Magistrate had no right to enquire into the title to immovable property. He did so, and inflicted a fine, and from a fine no appeal lies. I have no other remedy, but an application to this Court.

The Court dismissed the appeal.

*Judgment:* THE CHIEF JUSTICE: This appeal must be dismissed. Even if we possessed the jurisdiction contended for (which is a point we need not determine), we could not in this case make the order asked for.

It may be a general rule that where the title to immovable property comes into question, the criminal jurisdiction of a Magisterial Court is ousted, but this rule cannot apply where the title is the very question which the Magistrate has to decide.

This is the rule laid down by the English authorities. In *Ex parte Vaughan* (1866) L.R., 2, Q.B., 116, Cockburn, C.J., said, "where the title to property comes into question, no doubt the jurisdiction of justices is ousted, but that doctrine cannot apply to cases where the title is an essential element in the enquiry which the justices have to determine." So also in *R. v. Young*, 52 L.J., M.C., 55, where an Act gave the Magistrates jurisdiction over the offence of "throwing or laying down stones, iron, etc., or other materials in a street," and the Defendant maintained that the spot on which certain iron had been laid down was his private property, it was held that the jurisdiction of the Magistrates was not ousted as the Act gave them power to determine what was a street.

Under this article of the Penal Code the Magistrate was bound to enquire whether the place in dispute was a public square, and if a claim was set up that it is private property he was bound to enquire into the title.

There may be cases in which a Magistrate, exercising a criminal jurisdiction, would not have power to enquire into a question of title, but this is not one of those cases.

BERTRAM, J., concurred.  
*Appeal dismissed.*

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

HAJI AHMED ABDULLAH

v.

EMINE HASSAN AND OTHERS.

TYSER, C.J.  
&  
BERTRAM,  
J.  
1909  
April 26

JURISDICTION OF SHERI COURT—"RELIGIOUS MATTER"—MARRIAGE—  
"AGHIRLIK"—CONVENTION OF 4TH JUNE, 1878—COURTS OF JUSTICE ORDER  
IN COUNCIL, 1882, ART. 20.

The Sheri Court has exclusive jurisdiction to enquire into an action between Moslems in which the status acquired by the parties by virtue of marriage and their mutual rights and obligations arising out of that status come directly in issue.

The District Court is not given jurisdiction merely because the claim involves the payment of a sum of money.

The jurisdiction of the District Court is not however ousted in cases in which such questions only arise incidentally.

The Plaintiff sued the Defendant demanding the return of a sum alleged to have been paid to her as "Aghirlik" on the occasion of their marriage on the ground that she had refused to consummate the marriage.

HELD: That the District Court had no jurisdiction to entertain the claim.

In cases involving questions whether of Moslem or Christian religious law, it is desirable that the Moslem or Christian Ordinary Judge, as the case may be, should be a member of the District Court.

This was an appeal from the District Court of Nicosia. The tribunal being composed of the President and Mitzis, J.