TYSER, C.J. & BERTRAM, J.

REX v. TOGLI NICOLA

We mention this point because it seems to be the general practice of advocates to advise those whom they are defending on these charges, not to make any statement.

The appeal must be dismissed and the sentence confirmed.

Appeal dismissed.

ASSIZE COURT OF LIMASSOL 1908

Jan. 29

(ASSIZE COURT OF LIMASSOL.)

[TYSER, C.J., BERTRAM, J., STUART, ACTING P.D.C., ATTA BEY AND OIKONOMIDES, JJ.]

REX

v.

MICHAEL HAJI NICOLA KOKINOFTA.

CRIMINAL PROCEDURE—CYPRUS COURTS OF JUSTICE ORDER IN COUNCIL, 1882, ART. 151—FILING OF INFORMATION IN ASSIZE COURT BY ORDER OF DISTRICT COURT.

CRIMINAL LAW—OTTOMAN PENAL CODE, ARTS. 222 AND 245—LARCENY—"LUCRI CAUSA."

The Defendant was charged before the Magistrate upon two charges: (1) larceny under Art. 222 of the Ottoman Penal Code, and (2) killing animals under Art. 245. The Magistrate dismissed the first charge and committed the prisoner to the District Court upon the second. The District Court, on hearing the evidence, made an order under Art. 151 of the Cyprus Courts of Justice Order in Council, 1882, directing that an information should be filed against the accused in the Assize Court on the first charge.

HELD: By the Assize Court, that the dismissal of the first charge by the Magistrate did not preclude the District Court from making the order.

It is not necessary to constitute the crime of larceny (sirqat) in Ottoman law that the thing taken should have been taken *lucri causa*. It is sufficient if it was taken with the intention of depriving the owner of the property.

The Defendant with two others broke into a stable at night and took out three mules, which they rode some distance from the stable and there slaughtered.

HELD (Oikonomides, J., dissenting): That the Defendant was guilty of larceny.

The Defendant in this case was charged before the Magistrate upon two charges, (1) larceny under Art. 222 of the Ottoman Penal Code, and (2) killing animals under Art. 245.

It appeared from the evidence that on the night of 27th November, 1907, the Defendant and two other men (one of whom pleaded guilty, and the other of whom gave evidence for the Crown), broke into the stable of one Perikli Oiconomides, and took out three mules, which they rode to a spot at some distance from the stable and there slaughtered.

The Magistrate, being of opinion that these facts did not disclose an offence amounting in law to larceny, dismissed the first charge and committed the prisoners for trial before the District Court on the second.

The District Court, having heard the evidence came to the conclusion that there was evidence that the accused had committed an offence upon a conviction of which they would be liable to a more severe punishment than could be awarded to them upon a conviction of the offence for which they were being tried, and acting under Art. 151 of the Cyprus Courts of Justice Order in Council, 1882, ordered an information to be filed in the Assize Court for the larceny under Art. 222.

Theodotou for the first Defendant raised the preliminary objection, that the Magistrate having dismissed the first charge the District Court had no power to direct that it should be again preferred before the Assize Court. The Court had consequently no jurisdiction to entertain the charge.

Bucknill, K.A., was not called on.

The Court decided that inasmuch as Art. 151 of the Order in Council was perfectly general in its terms, there was nothing in the dismissal of the first charge by the Magistrate to preclude the District Court from ordering an information to be filed in the Assize Court.

Theodotou, in addressing the Court on the evidence, submitted that, even assuming the facts alleged to be proved, the charge of larceny was not made out. To constitute larceny there must be the *animus furandi* at the time of the taking and it is essential to the *animus furandi* that the taking should be *lucri causa*, that is to say, that its object should be the obtaining of some material benefit for the taker. This is the principle of Roman law. It does not seem to have been embodied in the French Code. In English law there is only one case to the contrary *R.* v. *Cabbage** R. and R., 292, and in that case the judges were divided.

Bucknill, K.A., was not called on.

Judgment. CHIEF JUSTICE: The question we have to determine is whether in order to constitute the crime of *sirqat* in Turkish law it is necessary that the taking should be *lucri causa*. This is not essential to the crime of "vol" in French law and in interpreting the Ottoman Penal Code, which is very largely based upon the French Penal Code, the principles of the French law are often a very useful guide.

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* In *R.* v. *Cabbage* the facts were that the prisoner forced open a stable door and took out a horse, which he led for a mile and then backed into a coal-pit. The object of the prisoner was to prevent the horse from contributing to the evidence against a person who was accused of stealing it. Six judges out of eleven were of opinion that it was not essential that the taking should be *lucri causa*, but some of the six thought that the object of the prisoner might be deemed a benefit or *lucrum*.

In *R.* v. *Guernsey*, 1 F. and F., 394 (which was not cited in the argument), the prisoner abstracted a confidential despatch from the Colonial Office and published it in a newspaper. His object was to gratify his resentment against the Secretary of State for the refusal of an appointment. No pecuniary or other material benefit resulted to him from the publication. The Jury were informed that the only question for them to consider was whether at the time of the abstraction of the document the prisoner intended to deprive the office of all property in it, and to convert it to his own use.

ASSIZE COURT OF LIMASSOL

REX v. MICHAEL HAJI NICOLA KOKINOFTA

The case of *R.* v. *Cabbage* shows that it is not essential to the crime of larceny in English law. Our colleague Atta Bey is of opinion that the term *sirqat* in Turkish law does not imply a taking *lucri causa*. We are all of opinion (with the exception of our colleague Oikonomides, J.) that it is not an essential element of the crime that the object of the person taking the thing in question should be to obtain some material benefit for himself. What is essential is that he should intend to deprive the owner of the property in it.

Sentence: Three years hard labour.

ASSIZE COURT OF PAPHOS 1908

Jan. 31

(ASSIZE COURT OF PAPHOS.)

[TYSER, C.J., BERTRAM, J., STUART, P.D.C., SAMI EFFENDI, AND DEMETRIADES, JJ.]

REX

v.

TEVFIK OMER.

CRIMINAL LAW—LARCENY WITH VIOLENCE—OTTOMAN PENAL CODE, ART. 221.

A person may be convicted of larceny with violence under Art. 221 of the Ottoman Penal Code (which refers to " violence where no traces of wounds are left ") even although the violence in question leaves traces of wounds.

A prosecution does not fail because the Crown proves circumstances of greater aggravation than those charged.

The accused was charged under Art. 221 of the Ottoman Penal Code with the crime of larceny with violence committed on one Haji Hassan Mustafa. It was proved that he attacked the complainant, who was sleeping in a mosque at Poli, wounded him with a knife anf robbed him of 14*s.* 6*p.* in money.

The Ottoman Penal Code recognises the following degrees of larceny with violence:—

1. Larceny with violence, and four other aggravating circumstances (Art. 217);
2. Larceny with violence, not leaving traces of wounds, and two other aggravating circumstances (Art. 218);
3. Larceny with violence, leaving traces of wounds, and two other aggravating circumstances (Art. 218);
4. Simple larceny with violence, leaving no traces of wounds (Art. 221).

This scheme seems not to provide specifically for the case of simple larceny with violence leaving traces of wounds.

Bucknill, K.A., for the Crown, submitted that the words in Art. 221, " where no trace of wounds is left " were not intended to exclude cases where the violence used left traces of wounds. They must be taken to mean, " even though no traces of wounds are left."