

ASSIZE
COURT
OF
NICOSIA
1908

June 9

(ASSIZE COURT OF NICOSIA.)

[BERTRAM, ACTING C.J., HOLMES, ACTING P.J., BROS, ACTING P.D.C.
AND MITZIS, J.]

REX

v.

CHRISTOPHI NICOLA.

CRIMINAL PROCEDURE—LOCAL JURISDICTION—COMMITTAL OF PRISONER FOR TRIAL—IRREGULAR COMMITTAL—JURISDICTION OF ASSIZE COURTS—CYPRUS COURTS OF JUSTICE ORDER IN COUNCIL, 1882, ARTS. 48, 49, 50, 56, AND 89.

A prisoner, resident in the Nicosia District, was committed by the Nicosia Magisterial Court for trial by the Nicosia Assize Court for an offence alleged to have been perpetrated in the Nicosia District. At the trial, it transpired that the offence was perpetrated in the Kyrenia District.

HELD: 1. That, inasmuch as by Art. 56 of the Cyprus Courts of Justice Order in Council, 1882, a Magisterial Court has power to hold an investigation into an offence alleged to have been perpetrated by a person resident within its local jurisdiction and inasmuch as by Art. 89 of the same Order, if the evidence is sufficient to justify committal, the Court is required to commit the case for trial to the District Court or the Assize Court, as the case may be, of the District in which the offence was alleged to have been perpetrated the committal was regular.

2. That, inasmuch as by Art. 50 of the same Order, the Assize Courts have jurisdiction to try all charges of offences perpetrated in Cyprus, the Nicosia Assize Court had jurisdiction to try the case.

In this case the prisoner was committed by the Magisterial Court of Nicosia for trial by the Assize Court of Nicosia on a charge of shooting and wounding one Kyriako Georgiou, at Pentedactylon near Kythrea.

It transpired in the course of the evidence that the alleged offence was perpetrated on the other side of the Nicosia border, and consequently in the Kyrenia District.

Fisher, Acting K.A., for the Crown.

Paschales Constantinides and Theodotou for the prisoner.

Judgment: In this case the prisoner was committed by the Magisterial Court of Nicosia for trial by the Assize Court of Nicosia on a charge of shooting and wounding one Kyriako Georgiou, at Pentedactylon, Kyrenia.

It has transpired (or at any rate, it has been sworn) in the course of the evidence that the alleged offence was perpetrated on the other side of the Nicosia District border, and consequently in the Kyrenia District.

Two questions therefore arise. The first is whether the committal of the case was regular, and if not whether the Court has jurisdiction to try a case not regularly committed to it. The second is, assuming the committal to be regular, has the Assize Court of Nicosia jurisdiction to try a charge of an offence which the evidence shows to have been perpetrated in another district.

With regard to the first point, the committal was perfectly regular on the face of it. The only question is whether the evidence given here has not disclosed an irregularity of substance. There is however no such irregularity. The committal is regular both in substance and in form.

To ascertain the jurisdiction of the Magisterial Courts for the purpose of preliminary enquiries, Arts. 48 and 56 of the Cyprus Courts of Justice Order in Council, 1882, must be read together. It appears from Art. 56 (*b*) that a Magisterial Court has jurisdiction to summon before it for the purpose of a preliminary enquiry any person charged with committing an offence, if such person is alleged to reside or be within the local jurisdiction of the Court. Now the prisoner in this case was alleged to reside, and did reside at Kythrea, within the local jurisdiction. The Magisterial Court was consequently perfectly competent to hold the enquiry. Next as to the committal. By Art. 87 it is directed that if the evidence justifies a committal, the Magisterial Court shall commit the accused to the District Court, or to the Assize Court (as the case may be) "*of the District in which the offence is alleged to have been committed.*" Now this offence, in the charge before the Magistrate, was alleged to have been perpetrated "at Kythrea," in the Nicosia District. The Magistrate was consequently bound to commit the accused to this Court. The committal therefore was quite regular, and any other committal would have been irregular.

Secondly, as to the jurisdiction of this Court. Is the jurisdiction of this Court ousted, because in the course of the case it transpires that a prisoner, who is sent for trial by the Assize Court of the District, on the ground that his offence was alleged to have been perpetrated in this District, really perpetrated the offence in another District? We do not think so. Reading Arts. 49 and 50 of the Order in Council together, it seems clear that the true construction of Art. 50 is not that the Assize Courts of Cyprus have jurisdiction to try all charges of offences perpetrated in Cyprus within their respective Districts, but that each Assize Court has jurisdiction to try all charges of offences perpetrated in Cyprus, whether perpetrated within the District of the Court or not.

Whether an Assize Court would have jurisdiction to try a charge of an offence outside its District, if the committal was irregular, is a question, which cannot be decided here, because, as is pointed out above, the committal in this case was perfectly regular.

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