

1983 May 24

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF AN APPLICATION BY PHAEDON G.
ECONOMIDES FOR LEAVE TO APPLY FOR AN ORDER
OF CERTIORARI.

(Application No. 11/83).

IN THE MATTER OF AN APPLICATION BY PHANOS
CHRISTOU AND PAVLOS SAMARAS FOR LEAVE TO APPLY
FOR AN ORDER OF CERTIORARI.

(Application No. 12/83).

Certiorari—Committal for trial by an Assize Court—Court possesses jurisdiction, under Article 155.4 of the Constitution, to grant an order of certiorari, quashing such committal.

5 The applicants sought leave to apply for orders of certiorari in order to quash a decision of the District Court of Larnaca by means of which they were committed for trial by an Assize Court in Larnaca.

10 *On the preliminary issue of whether the Court possessed jurisdiction under Article 155.4 of the Constitution to grant an order of certiorari quashing a committal for trial by an Assize Court:*

15 *Held*, that this Court possesses jurisdiction to entertain further these applications for leave to apply for orders of certiorari. (Irish and Canadian case-law distinguishable on the basis of the particular provisions for committal proceedings which was applicable, at the time, in Ireland and Canada).

Order accordingly.

Cases referred to:

- 20 *R. v. Roscommon JJ* [1894] 2 IR 158;
R. (Hastings) v. Galways County JJ [1909] 4 ILT 185;
R. v. Irwin, 80 Can. C.C. 314;
R. v. Matheson, 123 Can. C.C. 60;
R. v. Schellenberg (1958) 122 Can. C.C. 132;
R. v. Epping and Harlow Justices, Ex Parte Massaro [1973] 1 All E.R. 1011;

Ex Parte Papadopoulos (1968) 1 C.L.R. 496;

Zenios v. Disciplinary Board (1978) 1 C.L.R. 382.

Applications.

Applications for leave to apply for an order of certiorari in order to quash the decision of the District Court of Larnaca in Criminal Case No. 3982/83 whereby applicants were committed for trial by an Assize Court. 5

Chr. Triantafyllides, with *D. Michaelidou (Mrs.)* and *Chr. Demetriou (Mrs.)*, for applicant in Appl. No. 11/83. 10

E. Efstathiou, for applicants in Appl. No. 12/83.

A.M. Angelides, Senior Counsel of the Republic, for the Republic.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following decision. By means of these two applications which, in view of their nature and with the consent of all counsel appearing in these proceedings, are being heard together, the applicants seek leave to apply for orders of certiorari in order to quash the decision of the District Court of Larnaca (in criminal case No. 3982/83) by means of which they were, on 12th May 1983, committed for trial by an Assize Court in Larnaca. 15 20

I have heard, initially, arguments as regards the preliminary issue of whether this Court possesses jurisdiction, under Article 155.4 of the Constitution, to grant an order of certiorari quashing a committal for trial by an Assize Court, because if no such jurisdiction exists, obviously, these applications for leave cannot be granted. 25

It appears, at first sight, that jurisdiction exists under Article 155.4 of the Constitution. 30

Reference, was made, however, in this respect, to Halsbury's Laws of England, 4th ed., vol. 1, p. 151, where, in para. 149, the following are stated: "Certain acts on the part of tribunals may be immune from review by certiorari for reasons of public policy notwithstanding that they are not of a purely ministerial nature". Also, in note No. 5 to the said para. 149 it is stated, inter alia, that "The decision of justices to commit a defendant for trial or to admit him to bail will not be removed, inasmuch 35

as to grant the order in cases of this kind would cause delay and embarrassment in the administration of the law: *R v. Roscommon JJ* (1894) 2 IR 158”.

5 In Halsbury’s Laws of England, 4th ed., vol. 11, p. 806, para. 1529, it is stated that “Certiorari does not lie to remove a decision of justices to commit or refuse to commit a defendant for trial”. In note No. 7 to the said para. 1529 reference is made to the case of *Roscommon*, supra, and to the case of *R. (Hastings) v. Galway County JJ* (1909) 43 ILT 185.

10 Moreover, in the case of *R. v. Irwin*, 80 Can. C.C. 314, it was held that the remedy of certiorari is not available to quash a committal for trial for an indictable offence; and the case of *R. v. Matheson*, 123 Can. C.C. 60, is to the same effect.

15 In the *Matheson* case, supra, Ilsley C.J. appears to have based his view that certiorari did not lie not only on the *Roscommon* case, supra, but, also, on the proposition that, if certiorari did lie to quash a committal for trial he found it hard to understand why there were no reported cases in the English Courts where certiorari for that purpose had ever been applied for, let alone
20 granted.

As a matter of fact there appears from the report (at p. 64) of the *Matheson* case, supra, that in another committal case, *R. v. Schellenberg*, (1958) 122 Can. C.C. 132, an accused, who was not in custody, applied for certiorari to quash his committal
25 for trial and the Chief Justice of the Court of Queen’s Bench in Manitoba, in Canada, said that he had come to the conclusion on the evidence that it would be a case of directing the jury to bring in a verdict of acquittal and that in those circumstances he thought it was his duty, where the prosecution in his opinion
30 could not succeed on the evidence, to quash the committal. Ilsley C.J. in commenting, in his judgment in the *Matheson* case, on the *Schellenberg* case stated the following: “It may be that the fact that there is no Grand Jury, as I understand it, Manitoba had some bearing on the decision, although there
35 is no suggestion of anything of the kind in the judgment”. A reference to the Grand Jury as a safeguard in relation to a person’s committal for trial by an Assize Court is to be found, also, in the report of the *Roscommon* case and it seems to have been one of the reasons for which in

the *Roscommon* case it was held that no certiorari lay to quash the committal.

Much more recently a motion for leave to apply for an order of certiorari quashing a committal for trial by a Crown Court in England was entertained in *R. v. Epping and Harlow Justices, Ex Parte Massaro*, [1973] 1 All E.R. 1011, and though such motion was refused on other grounds it does not appear that the jurisdiction to entertain it was doubted at all. 5

Furthermore, in the case of *Ex Parte Papadopoulos*, (1968) 1 C.L.R. 496, Josephides J. granted leave to apply for an order of certiorari in order to quash a committal made by a coroner for the trial of a person before an Assize Court on a charge of homicide. 10

In the light of all the foregoing I have reached in the present case the conclusion that the Irish and Canadian case-law, to which I have already referred and on which the aforementioned passages in Halsbury's Laws of England appear to have been based, are distinguishable on the basis of the particular provisions for committal proceedings which were applicable, at the time, in Ireland and Canada, and that the safest course, at this stage of these proceedings, is to hold that I possess jurisdiction to entertain further these applications for leave to apply for orders of certiorari; I have to add, however, that in accordance with the precedent of *Zenios v. Disciplinary Board*, (1978) 1 C.L.R. 382, 387, if I, eventually, decide to grant leave to the applicants to apply for orders of certiorari I shall treat the issue of jurisdiction to quash by an order of certiorari a committal for trial by an Assize Court as arising, again, for further consideration and determination together with the merits of the applications for such orders. 15
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Order accordingly.