[STRONGE, C.J., THOMAS AND SERTSIOS, JJ.]

REX

v.

CHARALAMBOS SOLOMONIDES AND 11 OTHERS.

Criminal Law—Committal for Trial—Bail—Cyprus Courts of Justice Order, 1927, *Clause* 128.

On 14th November the applicants were committed for trial to the Nicosia Assizes then proceeding. The Assizes finished on 22nd December without trying the applicants. On the following day the Magistrate re-committed the accused for trial before the Nicosia Assizes on 12th February, 1934. Applicants Nos. 1, 2, 3, 4, 5, and 8 were refused bail, but the remainder allowed bail each in sum of £200 with sureties for £300. Applicants thereupon applied for bail to the Supreme Court.

Held: (1) That the object of bail was to secure the attendance of the accused at the trial.

(2) that upon the admission of the Crown that there was not the slightest probability of the accused not attending the trial, the prisoners should be released on bail on their own recognizances.

(3) that notice of the application should be served upon the Attorney-General.

(4) that evidence of the facts relied upon by—

(*a*) the applicant in support of his application, and

(*b*) the Crown in opposing the application should be established by affidavit.

Police v. *Stavro Nikola* (1) followed.

Vias Markides for applicants.

Blackall, Attorney-General, for the Crown.

JUDGMENT :—

STRONGE, C.J.: Cases frequently come before this Court in which a Magisterial Court having convicted a person upon a minor charge has refused him bail pending the hearing of his appeal. Such action on the part of the Magisterial Court is attributable to misapprehension and it is, therefore, necessary to consider briefly the principles in the light of which such applications should be considered and determined.

The object of the bail is unquestionably to secure the attendance of the person accused at his trial or on the hearing of his appeal, as the case may be, and in considering the question whether bail ought to be granted or refused the magnitude of the crime charged against him is a material element. Taking first of all the most serious offences known to the law, that is to say, treason and murder, it will be found that bail is seldom if ever granted in the case of treason because of the irresistible temptation to abscond.

(1) 7 C.L.R. 14.

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In cases of murder bail may only be granted upon the order of a Judge of the Supreme Court. In offences of a less serious nature, *e.g.*, the more common felonies, bail is very frequently granted since the temptation to evade trial is not so great.

The accused were committed for trial upon six charges. Counts 1 and 2 are laid under Section 58 of the Criminal Code which has been recently amended so as to change the offence charged from a misdemeanour to a felony punishable with five years' imprisonment.

In the case of *Police* v. *Stavro Nikola* (1) to which my learned brother Sertsios has referred me, the Court held that: "On every such application notice must be given to the prosecutor or the King's Advocate as the case may require, and unless the prosecution appears to consent there must also be an affidavit stating the facts." It is clear, therefore, that evidence should be produced to the Court by affidavit, by the applicant if the application is opposed, and by the Crown where the Crown desires to adduce any facts on which it relies in opposition to the application. In the present case the Attorney-General has distinctly stated that there is not the slightest probability of the applicants not attending the trial.

The principal object of bail is to secure the attendance of the accused at the trial. Mr. Justice Hawkins was of opinion that a prisoner should be released upon his own recognizances in every case where there was a reasonable expectation of his appearing at the trial.

In view of this the Court is unanimously of opinion that there was in the case now before it no reason to refuse bail.

One of the applicants is serving a sentence for another offence, and he naturally cannot be granted bail. Three of the others are interned under an Order of the Governor, I think these applicants should be admitted to bail and be at large within the limits of the places where they are so interned.

Applicants Nos. 6, 7, 9, 10, 11 and 12 were each granted bail in the sum of £200 with two sureties for £150 each. In view of the position in life of the applicants the amount of bail fixed was in my opinion so excessive as to amount in effect to a denial of bail.

In view of all the circumstances I think that in order to secure the applicants attendance at the trial it would be reasonable to admit them to bail upon their personal recognizances in the sum of £50 each.

THOMAS, J.: I fully concur in the views just expressed by the learned Chief Justice. An important question of principle is raised here. The applicants were committed for trial by the Assize Court upon charges under Clauses 49

(1) 7 C.L.R. 14.

and 58 of the Criminal Code, and now apply under Clause 128 of the Courts of Justice Order, 1927, to be released on bail. This clause says: "Every person charged with any offence except high treason or murder, who can find sureties sufficient in the opinion of the Court to secure his appearance when it is required may be bailed at any stage of the proceedings if in its discretion the Court thinks proper to bail him." It is clear that under the terms of this clause the granting or refusal of bail is within the discretion of the Magistrate, but it is a discretion which must be exercised judicially; and in the exercise of this discretion the Magistrate should follow the English authorities laying down the principles upon which bail is granted.

Cases are continuously coming before this Court where appellants sentenced to short terms of imprisonment have been refused bail by the Magistrate pending the appeal. In cases where the convictions are quashed great hardship is caused, as the result of refusing bail is to keep innocent persons in prison it may be for several months. It was laid down by the Lord Chief Justice, Lord Russell of Killowen, presiding over the Court of Crown Cases Reserved consisting of five Judges that:

> "It cannot be too strongly impressed upon the magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at the trial." *R.* v. *Rose* (1).

The same opinion is expressed in numerous other decisions.

The general practice is to grant bail except in the gravest offences, unless a good case is made out that the prisoner will abscond, or will disturb the peace, if he is allowed his freedom pending his trial. In the present application the Crown has not, in my opinion, made out any case at all for the refusing of bail.

As to the form of the application, I think such applications should always be accompanied by affidavits setting out the material facts on which the applicants rely. And similarly the Crown should file affidavits establishing the facts relied upon in opposing bail.

Six of the applicants were each granted bail in the sum of £200 with sureties for £300 which they could not possibly find. The amount of bail is in the discretion of the Magistrate and in fixing the sum he should have regard to the condition in life of the accused and the amount of money for which he is likely to be able to obtain a surety. Whenever bail is not granted, the Magistrate ought, in my opinion, to inform the accused of his right to apply for bail to a Judge

(1) 18 Cox C.C. 717 at p. 719.

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of the Supreme Court, as is required by Statute in England where the accused is committed for trial upon a misdemeanour.

I think the application should be granted and the prisoners released on bail upon the conditions proposed by the Chief Justice.

SERTSIOS, J.: I concur in the judgment delivered by the learned Chief Justice, and I may add that, dealing with misdemeanours, it has already been held in *R.* v. *Badger* (1) that a person accused of misdemeanour has an absolute right to bail if he applies to the High Court of Justice under the Habeas Corpus Act, 1679. I fully agree with the Chief Justice in what he has said dealing with the present application, as well as with the opinions expressed by my brother Thomas.

In the circumstances I agree the applicants should be admitted to bail upon the terms stated by the Chief Justice.

Bail granted to all the applicants except No. 2.

1934. Jan. 5.

[STRONGE, C.J., THOMAS AND SERTSIOS, JJ.]

ELENI *alias* ELLI COSTA HAJI STYLIANOU
Appellant,

v.

WHITEFIELDS LIMITED AND OTHERS.
Respondents.

Bankruptcy—Petition—Limited Company added by Court as petitioning creditor—Procedure by such company when added—Omission to sign or verify petition by person added by Court as petitioning creditor—Formal defect or irregularity—Insufficiency of affidavit verifying petition—Attendance of creditor at hearing of petition—Bankruptcy Law, 1930, *Sections* 5 (1) (*a*), 6 (1), 102 (1)—*Bankruptcy Rules* 46, 50 (1), 62, 126.

A petition was presented by five creditors alleging the appellant was indebted to them for £78. 8*s.* 4*cp.*, and supported by an affidavit by the Limassol agents of one of the creditors, Whitefields Ltd., London, stating that appellant was indebted to his principles for £44 upon two bills of exchange. The deponent further stated that to the best of his knowledge and belief that the appellant owed the other petitioners the various sums stated in the petition. Whitefields Ltd., petitioned in respect of a debt due on a bill of exchange drawn on the appellant, payable to the order of the Westminster Bank by whom it was indorsed for collection to the Banque Populaire de Limassol, Ltd. At the hearing the petition was amended by adding after "Whitefields Ltd." "and/or the People's Bank of Limassol, Ltd." This added petitioner neither signed the petition nor filed any affidavit verifying the statements in the petition.

(1) (1843) L.R. 4 Q.B. 468.