

(ASSIZE COURT OF NICOSIA.)

ASSIZE
COURT
OF
NICOSIA
1909

[TYSER, C.J., BERTRAM, J., HOLMES, P.D.C., IZZET EFFENDI
AND MITZIS, JJ.]

March 19

REX

v.

CHRISTOPHORO IANNI.

CRIMINAL LAW—JUVENILE OFFENDER—INDECENT OFFENCE—PARENTAL
CASTIGATION—SCHEME OF PUNISHMENTS OF OTTOMAN PENAL CODE.

In cases of indecent offences by young boys, the Court, if satisfied that the parent has done his duty in the matter will be disposed to bind over the offender to come up for judgment when called upon, rather than condemn him to a long term of imprisonment.

The accused, a boy of 15, was charged with committing sodomy upon a little boy, several years his junior, and was convicted.

The Court, having commented on the duty of parents in such cases, deferred sentence until the following day and released the convict on bail. In the interval his father, in the presence of an officer of police, and the doctor who had given evidence in the case, administered to the boy an adequate castigation.

These facts having been brought to the notice of the Court, the boy was bound over to be of good behaviour for six months and to come up for judgment when called up.

Bucknill, K.A., for the Crown.

Theodotou for the Defence.

Judgment. THE CHIEF JUSTICE: The crime committed in this case is of a very serious nature, and if the accused had been older it would have been necessary to sentence him to a considerable term of imprisonment.

I wish to say a few words about the behaviour of the relations of the accused in this case. People in such cases seem to think that they must screen the criminal by withholding evidence. If they would only trust the Court, they would find that the only desire of the Court is to deal reasonably in such matters.

The Court never looks upon the punishment as something given in retaliation for the crime. Those who have studied the Penal Code know that it has three classes of punishments. The first is "frightening or deterrent punishments." The second is "corrective punishments" and the third consists of small punishments, to enforce order, or "police punishments."

The Court always endeavours as far as possible to secure that the punishment may tend to the reformation of the criminal. If the public would only act with the Court some good might be done.

There is one point to which we should like to draw attention. The distribution of the punishments is not always quite adequate. In cases of this kind, for a man the appropriate punishment is a "deterrent punishment," for a boy the punishment should be a corrective punishment. It is indeed a pity that in such a case as

this a boy should be brought into the Assize Court at all. It would be better if the law were altered, so as to allow the Magisterial Courts to dispose of such cases summarily, by administering castigation.

In this case the father now seems to have done his duty. It would be well that he and others in the like situation should remember the old maxim "he who spares the rod spoils the child." Under the circumstances, our order is that the boy be bound over to be of good behaviour for six months and to come up for judgment when called upon.

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

MICHAEL HAJI ZEMBILI

v.

MARITZA LOUKA.

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

March 26

PRACTICE—APPEAL—APPEAL BY LEAVE—FAILURE TO FILE ORDER GRANTING LEAVE—"DEFECT IN FILE OF PROCEEDINGS"—ORDER XXI, RULES 1, 21B.

Where an appeal is made by leave the omission to file a copy of the Order granting leave to appeal is fatal to the appeal, and the Supreme Court has no power to relieve against it.

Such an omission is not a "defect in the file of proceedings" under Order XXI, rule 21b.

This was an appeal from the District Court of Nicosia.

Paschales Constantinides for the Respondent took a preliminary objection, that the appeal being by leave, the order granting leave was not filed. Order XXI, rule 1. *Malamatenios v. Irikzade* (1907) 7 C.L.R., 55.

Theodotou for the Appellant. This omission constitutes "a defect in the file of proceedings," within the meaning of Order XXI, rule 21b and the Court may relieve against it.

The Court allowed the objection and dismissed the appeal.

Judgment. THE CHIEF JUSTICE: What we have to discover is the intention of the person who framed this rule. The words in rule 1 "shall be dismissed" are quite clear. When therefore the draftsman afterwards goes on to provide for a "defect in the file of proceedings" he cannot be referring to the points covered by the imperative words of rule 1. Otherwise the provisions of rule 21b. would operate as a general repeal of those of rule 1.

I am disposed to think that the expression "defect in the file of proceedings" does not mean something wrong in the file that ought to be right—something due to failure on the part of the parties. The words must be read in connection with the second part of the rule and point rather to some omission on the part of the officer of the Court.*

BERTRAM, J., concurred.

Appeal dismissed.

* The origin of the rule is no doubt to be sought in the case of *Raghib Bey Hafuz Hassan* (1894) 3 C.L.R., 105, see p. 109.