

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.

ASSIZE
COURT
OF
NICOSIA

—
} REX
v.
CHRISTOPHORO
IANNI
—

[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.