

TYSER, C.J.
&
BERTRAM,
J.
1908
March 24

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

POLICE

v.

NICOLA MICHAEL AND OTHERS

CRIMINAL PROCEDURE—POWER OF COURT OF APPEAL TO INCREASE SENTENCE—NON-APPEARANCE OF APPELLANT—ESTREATMENT OF RECOGNISANCES—CYPRUS COURTS OF JUSTICE AMENDMENT ORDER, 1902, ART. 12—CRIMINAL LAW AND PROCEDURE AMENDMENT LAW, 1886, SEC. 39.

The Supreme Court on confirming a conviction by a Magisterial Court has power to increase the punishment awarded by the Magisterial Court.

The accused were sentenced by the Magisterial Court of Paphos to one day's imprisonment and appealed to the Supreme Court, where they failed to appear. As the Court had no power to postpone the commencement of the sentence and under the circumstances a simple confirmation of the sentence would have been nugatory, the Court increased it by inflicting a fine and directed the recognisances of the accused to be estreated.

This was an appeal from the judgment of the Magisterial Court of Paphos.

The four prisoners were convicted of an offence against Art. 258 of the Ottoman Penal Code and sentenced to be imprisoned for 24 hours and to pay the costs of the witnesses for the prosecution amounting to 2s.

None of the prisoners appeared at the hearing of the appeal and as under Sec. 42 of the Criminal Law and Procedure Amendment Law, 1886, the Court was precluded from directing that the imprisonment should commence on a future day, and as it would be some days before the warrant of the Court could be executed in the Paphos District, the result of a simple confirmation of the sentence would have been that the prisoner would escape the sentence of the Magisterial Court altogether.

It did not appear from the notes of the Magistrate that the prisoners offered any real defence at the trial or that the case involved any point of law.

Amirayan, for the Crown, referred to two cases in which on appeal the Supreme Court had increased the sentences of the inferior Courts, *R. v. Ahmed Suleiman and others* 19th September, 1891, *Police v. Yanni Papa Argyro* 17th June, 1901.

Judgment: Under the circumstances of this case a mere confirmation of the sentence would be nugatory, as the term of the sentence will in all probability expire before the prisoners can be arrested.

It is clear to us that under Sec. 39 of the Criminal Law and Procedure Amendment Law, 1886 (which by Art. 12 of the Order in Council of 1902, is applied to the hearing of these appeals), we have power to increase the sentence of the Magisterial Court.

The first paragraph of that section is divided into two parts. The first part, *i.e.*, down to the words "to acquit him," is concerned with the finding of the Court as to the guilt or innocence of the accused. The rest of the paragraph is concerned with the punishment, and it is clear that whether the Supreme Court sentences the

prisoner for the offence of which he was originally found guilty, or for any other offence, in either case it has power to increase the punishment awarded by the inferior Court.

We confirm the sentence of the Magisterial Court but increase it by inflicting a fine of 5s. and we direct that the recognisances of the accused by estreated.

Sentence increased.

TYSER, C.J.
&
BERTRAM,
J.
} POLICE
v.
NICOLA
MICHAEL

[TYSER, C.J.]

TYSER, C.J.
1908
} April 1

IN THE MATTER OF AN ELECTION PETITION FOR THE
ELECTORAL DISTRICT OF NICOSIA AND KYRENIA.

BETWEEN

PASCAL CONSTANTINIDES, GEORGE CHACALLI, AND
ACHILLEA LIASSIDES, *Petitioners,*

AND

KYRILLOS PAPADOPOULLOS, METROPOLITAN BISHOP
OF KITION, THEOPHANES THEODOTOU AND ANTO-
NIOS THEODOTOU, *Respondents.*

COSTS—TAXATION—DUTY OF REGISTRAR—ADVOCATES' FEES—SUMMONSES TO
WITNESSES.

It is the duty of the Registrar on taxing a bill of costs, to satisfy himself:—

- (1) That the charge under each item is fair;
- (2) That the work charged for has been done, and that the disbursements claimed have been made, either from what appears on the face of the proceedings, or from other evidence;
- (3) That the services charged for on the disbursements made were necessary and that a charge ought to be made for them;
- (4) That any disbursement claimed has been made by or at the request of the party claiming it, express or implied, and that any work for which remuneration is claimed was performed under such conditions that the party is liable to pay for its performance.

Notwithstanding the provisions of rule 8 of the Rules of the 4th July, 1895 and Order XXIII, rule 2, the Registrar may call for proof of payment in any case in which in his opinion proof of payment is necessary for the proof of the claim.

Notwithstanding the provisions of Order XXIII, rule 6 (which directs that the proceedings on the taxation of a bill of costs shall be as nearly as may be the same as on the hearing of an action), it is not the duty of the Registrar on taxing a bill of costs to allow all items that are not disputed. He should satisfy himself that the amount claimed is fair whether an objection is raised or not.

In taxing advocates' fees, it is desirable that the Registrar in every case should require evidence of the terms on which the work was done.

Summonses requiring the attendance of witnesses should direct the witness to attend on the day of the trial and so from day to day until the action is tried.

It is the duty of the advocate on taking out the summons to see that it is drawn up in the proper form.

This was an application to review taxation.