

24th. February, 1953.

Judge :

The Hon. Mr. Justice A.V. Camilleri, B.Litt., LL.D.

**His Majesty the King versus Richard Vivian Dudley Beaumont  
Power of Arrest by the Police — Liberty of the Citizen —  
Art. 372 (2), 455 (2) and 572 of Chapter 12.**

*Any person charged with a crime by a summons, when awaiting trial, can be arrested by the Police, if the Executive Authorities come to know, or he acts in such a way as to leave a reasonable suspicion, that evasion, either by hiding or by escape, is being sought by that same person.*

*On the strength of this rule, the accused in this case, who was awaiting trial, was arrested by the Police on giving reasonable suspicion that he was seeking evasion; but he was set again free, under his personal recognisance to appear on the date and place to be fixed for the trial, in view of the circumstances of the case and of the other principle that the liberty of the citizen must be upheld.*

The Court, — Having seen the application of Richard Vivian Dudley Beaumont of the 23rd. February, 1953;

*Omissis;*

The facts in short are the following. Applicant is awaiting trial pending before this Court, on two charges, one of fraud and the other of excoquerie (vide Bill of Indictment no. 8789). He was brought before the Court by a summons, and not in custody. He is living with his family on board a craft which was lately moored at Marsamussetto Harbour. On the 20th. February, 1953, at 2.30 p.m., he left that harbour; and the Police, to whom the order to sail was not made known, fearing an escape of applicant from these Islands, effected his arrest. Applicant is now seeking an order from the Court to have the arrest reversed, on the ground that it was arbitrary. The hearing of the trial has been fixed for the 10th. March, 1953, at 9 a.m.

The law contemplates the power of arrest with the Police etc. in Book II Laws of Criminal Procedure, Part I, Title I; but the present case, in the considered opinion of

this Court, should be governed by the following rule, for the sections dealing with arrest do not contemplate the present point at issue;

Any person charged with a crime by a summons, when awaiting trial, can be arrested by the Police if the Executive Authorities come to know, or he acts in such a way as to leave a reasonable suspicion, that evasion, either by hiding or by escape, is being sought by that same person;

This rule finds its roots in sections 372 (2), 455 (2) and 572, of the Criminal Code, which enjoin the arrest of the person charged in default of appearance; and the last section mentioned lays down the power of re-arrest if a just cause exists, and on demand of the Police or the Attorney General, of any person on bail — sections which go all to secure the appearance of the person charged, so essential in our criminal trials, which cannot be held in the absence of a prisoner. It is absurd to hold that the Police should rest inactive in the case of a person charged by summons, and act when the person charged is on bail, on coming to know that the person is seeking evasion to appear before the trial Court, or in case of a reasonable suspicion. That the rule is tenable if the facts, or reasonable suspicion of evasion to appear before the Court, are proved, goes without saying;

On the strength of the fore-going principle, it must be affirmed that, as applicant has made a home of the floating craft in question, where he is living with all his family, the act of leaving his moorings and sailing out of Marsamuscetto Harbour, may not be said to be such as not to cause a reasonable suspicion, the more so that this was done without previous notice to the Police, and with the admitted intention of going on an outward harbour like Marsaxlokk. The statement of applicant, not on oath, that he was looking for new moorings out there, at Marsaxlokk, for the summer — which is yet far away — may have strengthened the already suspicious members of the executive force;

In view of this consideration, the arrest cannot be, by any stretch of imagination, considered arbitrary;

Having established that important fact, it is not out of

place to state that applicant, against whom an impediment of departure of a civil and criminal nature had been issued and served on him, could have reasonably been more cautious before sailing out of Marsamuscetto Harbour, in that he could have made known to the authorities concerned his intention, openly disclosed in Court today on oath, in the sense that he was going to seek another mooring at Marsaxlokk, or elsewhere, for the coming summer months. Customs officer Francis Buttigieg corroborates applicant as to the south-easterly direction of the craft in question, rendering reasonably possible and probable his affirmation that he was leading his craft to any of the bays on that side of the Island. Be it said, also, that applicant has been waiting for his trial for such a long time; and if he had in point of fact harboured seriously the idea of avoiding appearance before this Court, he could have done so a long time ago;

These being the facts, applicant must not be kept in custody. The principle of the liberty of the citizen should and must, in consequence, prevail;

Having seen sections 568, 569, 570 and 571, of the Criminal Code;

Orders that applicant be set free and at liberty under the mere personal recognisance of the same Richard Beaumont for the sum of £100, binding himself in the acts of this Court to appear on the date and place to be fixed for the hearing of his trial;

And thus disposes of the demand contained in the said application.

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