

JACKSON, C.J.: We feel no doubt whatever that the conviction was wrong and ought to be quashed. We can find nothing in the Shop Assistants Law of 1942 either in the definitions in section 2 or in the Schedules upon which the trial Court seems to have relied, to suggest that where no sale takes place to any member of the public, either of goods or services, the business is a retail trade or business within the meaning of that particular Law. None of the authorities which have been cited to us deal with cases in which neither goods nor services are sold to members of the public, and in our view that is an essential characteristic of a business falling within the ambit of this particular Law.

Conviction quashed.

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[JACKSON, C.J., AND GRIFFITH WILLIAMS. J.]
(March 22 and April 13, 1949)

ANDREAS PANAYIDES, *Applicant,*

v.

THE POLICE, *Respondents.*

(*Case Stated No. 55.*)

Criminal Law—Extortion by public officer—Receipt of reward after performance of duty—Cyprus Criminal Code, section 98.

The accused was employed in the Public Service as a clerk in the Passports Office in Nicosia. At the request of P., a fellow villager, the accused helped him fill up the necessary forms for the issue of a passport, and took it to him at the village when it was ready. There was no suggestion of any promise of payment by P. or of any expectation of payment on the accused's part. After the accused had delivered the passport, P. pressed him on three occasions to take some payment for his trouble. The accused refused any payment on the first two occasions but he eventually accepted £1, and that payment was the subject of the charge, under section 98 of the Cyprus Criminal Code. The accused was convicted and he applied to the trial Judge to state a Case. One of the points raised on behalf of the accused was that even if the receipt of the money was in any way connected with the performance of the accused's official duties, it was received after those duties had been performed and was consequently outside section 98.

Held, that the section penalised the receipt of a reward by a public officer "for the performance of his duty as such officer" and there was nothing in the wording of the section which limited its scope to the receipt of rewards before a duty was performed or completed and as an inducement or motive for the performance of that duty. The section imposed an absolute prohibition on the receipt of rewards by public servants, beyond their proper pay and emoluments, for the performance of their official duties, whether the reward was paid before or after the duties had been performed.

Conviction affirmed.

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Case stated by the President of the District Court of Famagusta on the application of the accused (Case No. 6378/48).

Fuad Bey for the applicant.

P. N. Paschalis, Crown Counsel, for the respondents.

The facts of the case are set forth in the judgment of the Court which was delivered by :

JACKSON, C.J. : This is a case stated by the President of the District Court of Famagusta on the 12th January, 1949, at the request of a defendant who was convicted of an offence under section 98 of the Criminal Code.

The case stated was so deficient in the information that it gave that we would have felt compelled to refer it back to the President for amendment if that course had been practicable. Unfortunately the President is now absent from Cyprus and we wished to avoid the delay that would have been involved by waiting for his return. In proceedings upon a case stated, the Supreme Court will not, normally, refer to the record of the trial, but only to the case as stated by the lower Court. Nevertheless, in the circumstances, we have taken the unusual course of consulting the record in order to enable us to understand the statement of the case where this seemed obscure. We wish to say, however, that we have ourselves formed no conclusions of fact from the evidence recorded and have used it only for the purpose we have mentioned.

The defendant, whose home is in the village of Trikomo in the Famagusta District, was employed as a clerk in the Passports Office in Nicosia. A fellow villager, named Panayiotou, who knew the defendant and his employment, wanted a passport to enable him to travel to England and asked the defendant, who was then visiting Trikomo, for his help. There was no suggestion of any promise of payment by Panayiotou or of any expectation of payment on the defendant's part. The defendant procured and filled up the necessary forms for his friend and, when they had been completed, he took them to the Passports Office in Nicosia where the remaining steps were to be taken. Some time after these preliminaries Panayiotou, then on a visit to Nicosia, called at the Passports Office and asked his friend, the defendant, if his passport was ready. The defendant replied that it was not and Panayiotou thereupon asked the defendant if, when the passport was ready, he would collect it and bring it to Panayiotou at Trikomo. This the defendant did, having previously signed an official receipt for it in the Passports Office on the 24th March, 1948. When the defendant delivered the passport to

Panayiotou, the latter asked him how much he should pay for all the trouble the defendant had taken to prepare the forms and to bring the passport to Trikomo. The defendant refused any payment. On the following day Panayiotou again offered money to the defendant and it was again refused. Panayiotou said in his evidence that he knew that "passport agents" were being paid £5 or £6 for filling up forms. Accordingly, a day or two later, he again pressed his friend, the defendant, to take some payment for his trouble and offered him two or three pounds. The defendant took £1 and that payment was the subject of the charge.

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Although all the facts mentioned above do not appear expressly in the statement of the case, none of them are disputed and they are clearly the facts upon which the President's findings were based.

The charge, under section 98 of the Criminal Code, alleged the receipt by the defendant, being a public servant, of £1 from Panayiotou as a reward for the performance of his duty in addition to his proper pay.

Upon conviction the defendant was ordered to pay a fine of £1 and 32s. costs. The maximum penalty under the section quoted is three years imprisonment and a fine in addition.

Two points were raised on behalf of the defendant in his application to the President to state a case for the opinion of the Supreme Court. The first is that the money was not received by the defendant for the performance of his duty as a public officer. The second is that even if the receipt of the money was in any way connected with the performance of the defendant's official duties, it was received after those duties had been performed and is consequently outside section 98 of the Code.

We deal with the second point first. The section penalises the receipt of a reward by a public officer "for the performance of his duty as such officer" and we can see nothing in the wording of the section which limits its scope to the receipt of rewards before a duty is performed or completed and as an inducement or motive for the performance of that duty. The section seems to us to impose an absolute prohibition on the receipt of rewards by public servants, beyond their proper pay and emoluments, for the performance of their official duties, whether the reward is paid before or after the duties have been performed.

The first point raised on behalf of the defendant—that the money was not received by him for the performance of his official duty—is not a question of law, or even a question

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of mixed law and fact, but solely a question of fact. In proceedings upon a case stated, the Supreme Court can consider only questions of law. So far as the facts are concerned, the Supreme Court, as we have already said, has before it only the findings of the trial Court as set out in the statement of the case and it is bound by those findings. We would not, therefore, consider this point at all were it not for some obscurity in the findings of the trial Court which, as we have already explained, we have been unable to correct by reference back to that Court for clarification.

The trial Court found that it was the duty of the defendant, as a clerk in the Passports Office, to help applicants for passports to obtain one. The trial Court also found that the defendant had done far more to help his fellow villager than his duties required. The Court did not state specifically what particular act or acts performed by the defendant for his friend, and for which the small reward was offered and accepted, were his duty. Moreover, the case includes statements relating to the defendant's duty which it is difficult to understand. We refer, in particular, to the statement that the defendant's duty to help the applicant Panayiotou "did not cease with the handing over of the passport by him but continued until the three attempts to pay him for the services so rendered were made." Nevertheless, when once it had been found that it was the duty of the defendant, as a clerk in the Passports Office, to help applicants for passports, and when once it was evident, as it was, that the defendant had in fact done everything that his position and knowledge as a clerk in the Passports Office enabled him to do, it becomes clear that the trial Court was justified in finding as a fact that the acts which the defendant had performed to help his friend included acts within his duty. Having reached that conclusion of fact, the trial Court was clearly justified in concluding also that the payment which the defendant had accepted was, in part at least, a payment for the performance of his duty.

For these reasons we feel bound to confirm the defendant's conviction. We have given the facts a good deal more fully than they are given in the trial Court's statement of the case and in so doing we have been partly influenced by a wish that a full statement should be available for the consideration of those who will have to determine the future of this defendant in the public service.