

[HALLINAN, C.J., AND MELISSAS, J.]

(April 2, 1952)

ANDREAS IOANNOU OF NICOSIA,

Appellant,

v.

THE POLICE,

Respondents.

(Case Stated No. 71.)

Resisting unlawful arrest of companion—Unlawful arrest is breach of peace—A push not excessive force and lawful.

A police constable unlawfully arrested the appellant's companion. The appellant resisted this unlawful arrest by pushing the police constable. The trial Court convicted the appellant of assault on the constable.

Held: the constable in unlawfully arresting the appellant's companion was committing a breach of the peace, and the appellant was entitled to aid his companion. He had not used excessive force.

Conviction was set aside.

Case Stated by the appellant from the decision of the District Court of Nicosia (Case No. 12201/51).

Ph. Clerides, for the appellant.

R. R. Denktash, Junior Crown Counsel, for the respondent.

The facts of the case appear in the judgment of the Court which was delivered by:

HALLINAN, C.J.: In this case the companion of the appellant ironically saluted a police constable who thereupon arrested him and asked him his name. The appellant intervened, presumably to secure the release of his friend and pushed the police constable. The police constable thereupon arrested the appellant who resisted arrest by running away and refusing to give his name.

On these facts the District Judge held that the arrest of the appellant's companion was unlawful, but that the appellant by pushing the police constable had committed an unlawful assault and his arrest was therefore justified. The District Judge further held that the appellant was also guilty of resisting the police. Counsel for the appellant submitted that in law the appellant was entitled to assist his companion in resisting unlawful arrest and might use such force as was necessary to do so. The push which the appellant gave the police constable was not excessive force in the circumstances and the arrest of the appellant was therefore unlawful. In these circumstances the appellant was entitled to resist unlawful arrest, and his convictions for assault and for resisting the police were therefore bad.

1952
April 2
ANDREAS
IOANNOU
v.
POLICE.

In support of his argument counsel for the appellant referred the Court to *Regina v. Lockley*, 176 English Reports, page 511. In that case it was decided that—

“A constable has no right to arrest a person for merely disorderly conduct, unless he be committing or is on the point of committing a breach of the peace, and the person so attempted to be arrested and his companions may use necessary force to prevent such an arrest.”

Another authority was cited to us by Crown Counsel for the respondents which would appear to be an authority in support of the appellant. This is the case of *King v. Osmer*, 102 English Reports, page 1086. There it was said by Lord Ellenborough, C.J. :—

“For if a man without authority attempt to arrest another illegally, it is a breach of the peace, and any other person may lawfully interfere to prevent it, doing no more than is necessary for that purpose;”

Crown Counsel has submitted that the force used in the present case was excessive but we do not consider there is any substance in this submission. He also submitted that before it may be said that an unlawful arrest constitutes a breach of the peace the person whom the police are unlawfully arresting must be resisting; and since in the present case there is no evidence that the appellant's companion was resisting, there was no breach of the peace and the appellant's intervention was not justified. It is this point which caused us to take time in giving our decision. In Wharton's Law Lexicon (14th Edition) at page 747 the expression “breach of the peace” is described as “a violation of that quiet peace and security which is guaranteed by the laws for the personal comfort of the subject of this Kingdom”. Although the matter is not free from doubt, I am of opinion that the act of unlawful arrest in the circumstances of this case constituted a breach of the peace and therefore I consider that the appellant was justified in using such force as was necessary to secure the release of his companion from unlawful arrest.

Since the appellant by pushing the police constable had not committed an offence it follows that his own arrest was unlawful and his subsequent resistance was justified.

For these reasons I consider that the convictions in this case must be quashed.

MELISSAS, J. : I concur.