

1965  
Sept. 24

[VASSILIADES, TRIANTAFYLIDIS, JOSEPHIDES, JJ.]

ANDREAS  
PAPAIOANNOU  
v.  
THE POLICE

ANDREAS PAPAIOANNOU,

*Appellant,*

v.

THE POLICE,

*Respondents.*

(*Criminal Appeal No. 2778*)

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*Criminal Law—Appeal—Sale of edible oil with acidity higher than the 6% allowed under the Manufacture and Sale of Olive Oil Law (Law No. 23 of 1963)—Conviction and sentence quashed because of defectiveness of charge.*

*Criminal Procedure—Appeal—Concession by Respondents' Counsel that charge was defective—Amendment of charge at hearing of appeal not allowed.*

The appellant, a bottler of olive oil, was convicted of the offence of selling during the month of October, 1964, a sealed bottle containing 200 drams of lambante olive oil, with an acidity of 8.8. % as edible black olive oil, category " C " with an acidity not exceeding 6% to the grocer named in the charge, contrary to sections 2,6 (1) (a) (4) (5) and 3 (g) of the Manufacture and Sale of Olive Oil Law, 1963 (Law No. 23 of 1963). At the trial it was established that the appellant had sold the oil in question together with other similar bottles containing oil to the said grocer in July, 1964 ; and that the sale in October was a sale of one of such bottles by the grocer to an officer of the Ministry of Commerce and Industry who bought it for checking purposes.

The contention of the appellant was that when he sold the oil in July its acidity was not higher than the 6% allowed by the statute. At the hearing of the appeal counsel for the respondents conceded that the charge was defective in that the appellant had parted with the ownership and possession of the oil in question in July when he sold it to the grocer ; and that he could only be connected with the sale in October, as an accomplice, or under a different section of the statute.

*Held*, (1) we take the view that it is now too late in the day to allow an amendment of the charge. The accused might well have to meet a different case, if faced with a charge for the

sale in July ; or, for the sale in October under a different section of the statute. In the circumstances the appeal must be allowed ; and the conviction and sentence set aside.

1965  
Sept. 24

—  
ANDREAS  
PAPAIOANNOU  
v.  
THE POLICE.

*Appeal allowed. Conviction  
and sentence set aside.*

*Per curiam* : This case is still one more example of what happens when such prosecutions involving technicalities, are not handed to persons with the necessary legal training, right from the start.

#### **Appeal against conviction.**

Appeal against conviction by the appellant who was convicted on the 22nd May, 1965, at the District Court of Larnaca, (Criminal Case No. 15/65) of the offence of selling Lambante Olive oil as edible black olive oil category 'C' contrary to sections 2,6 (1) (a) (4) (5) and 3 (g) of the Manufacture and Sale of Olive Oil, Law, 1963 (Law No. 23 of 1963) and was sentenced by Orphanides, D.J. to pay a fine of £8.

*G. M. Nicolaidis*, for the appellant.

*S. Georghiades*, counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :

VASSILIADES, J.: This is an appeal from a conviction and sentence of the District Court of Larnaca for the sale of edible oil with acidity higher than the 6% allowed under Law 23 of 1963 for the manufacture and sale of olive oil.

The appellant is a bottler of such oil, which he sells to retailers in bottles bearing his trade-label, for the market. He was charged and convicted for the sale of " a sealed bottle containing 200 drams " of oil " during the month of October, 1964 ", to a grocer named in the charge.

The evidence adduced in support of the prosecution, established that the appellant had sold the oil in question together with other similar bottles containing oil to the grocer in July, 1964 ; and that the sale in October was a sale of one of such bottles by the grocer to an officer of the Ministry of Commerce and Industry who bought it for checking purposes.

1965  
Sept. 24

—  
ANDREAS  
PAPAIOANNOU  
v.  
THE POLICE

The case for the accused, at the trial, was that when he sold the oil to the grocer in July, its acidity was not higher than the 6% allowed by the statute. The trial Judge drew the inference that the acidity of the oil in July was as found after the sale by the grocer to the Ministry official in October, and convicted the appellant as charged.

Mr. Georghiades for the respondent-Authority conceded this morning before us, that the charge was defective in that the appellant had parted with the ownership and possession of this oil in July when he sold it to the grocer ; and that he could only be connected with the sale in October, as an accomplice, or under a different section of the statute which was intended to involve the bottler in all subsequent sales.

We take the view that it is now too late in the day to allow an amendment of the charge. The accused might well have to meet a different case, if faced with a charge for the sale in July ; or, for the sale in October under a different section of the statute. This case is still one more example of what happens when such prosecutions, involving technicalities, are not handed to persons with the necessary legal training, right from the start.

In the circumstances the appeal must be allowed ; and the conviction and sentence set aside. But let it be clear that this result acquits the appellant of the offence charged ; not of any offence which he may have committed in connection with the same oil in July ; or, under a different section of the statute.

Appeal allowed. Order accordingly.

*Appeal allowed. Conviction  
and sentence set aside.*