PETROS DEMETRIOU HJICONSTANTI,
Appellant,

v.

THE MINISTRY OF AGRICULTURE,
Respondent.

(*Criminal Appeal No.* 3061).

Citrus Grove—Establishing citrus grove without a licence contrary to sections 7(1)(2) *and* 8(1)(a) 2(a)(b) *of the Citrus Groves (Survey and Registration) Law,* 1966 (*Law No.* 45 *of* 1966)—*Conviction—Findings of trial Court sustained—Appeal dismissed—See, also, herebelow.*

Citrus Grove—Uprooting order made by the trial Court—No indication that it has been complied with—Directions made by the Court of Appeal authorizing statutory authority under section 8(3) *of Law* 45/66 (supra) *to proceed with the execution of said uprooting order at the expense of the appellant.*

Criminal Procedure—Appeal—Directions made by the Court of Appeal authorizing the statutory authority to proceed with the execution of an uprooting order made by the trial Court—Section 8(3) *of Law* 45/66 (supra).

The facts sufficiently appear in the judgment of the Court.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Petros Demetriou HjiConstanti who was convicted on the 15th November, 1968, at the District Court of Kyrenia (Criminal Case No. 177/68) on one count of the offence of establishing a citrus grove contrary to sections 7 (1) (2), 8 (1) (*a*) (2) (*a*) (*b*) of the Citrus Groves (Survey and Registration) Law, 1966 (Law No. 45 of 1966) and was sentenced by Demetriades, D.J. to pay a fine of £15 and was further ordered to uproot the trees in excess of the number allowed by the Law.

A. S. Christofides, for the appellant.

S. Georghiades, Counsel of the Republic, for the respondent.

The judgment of the Court was delivered by :—

VASSILIADES, P.: We find it unnecessary to call upon counsel for the respondent.

The cultivation of citrus groves in Cyprus has developed, during the last fifty years—particularly during the last thirty years—to an extent to which, on the one hand, citrus products are an important item in the export trade of the island, while on the other hand, their cultivation has developed a water problem as they depend on the possibility to irrigate them ; and, therefore, they draw so heavily on the water supply of the island. The extensive cultivation of citrus groves created a water problem for the Government of the country, particularly in the areas where the water supply is limited.

Under the pressure of that problem, the Government found it necessary to introduce legislation in order to enforce a policy of bringing the development of orange-groves and their irrigation under control. The consequence was the enactment of Law No. 45/66, in July, 1966, the contents of which make the object for which it was enacted very clear. I need say no more, for the purposes of this case, about the provisions of this statute which require the registration and, thus, the control of the existing groves and those which made unlawful the planting of citrus groves without a permit from the appropriate statutory authority. I only propose to read some of those provisions which are connected with the statutory offences before us in this appeal.

Section 8 (1) (*a*) (*b*) of Law 45/66 reads as follows :

" 8.—(1) Any person who—

(*a*) without a licence establishes a citrus grove or extends an existing citrus grove, or commences the establishment of a citrus grove or commences to extend an existing citrus grove, or suffers or allows such establishment or extension ; or

(*b*) does anything contrary to the conditions of the licence.

shall be guilty of an offence and shall be liable to a fine not exceeding two hundred pounds or to imprisonment for a term not exceeding one year or to both such fine and imprisonment."

In the same section the legislator further provided that in addition to such punishments of fine and/or imprisonment, the Court before which such cases are tried, will have the power to order the uprooting of the trees planted without the required permit ; and to punish with further consequences, the failure to comply with any such order.

Furthermore, the legislator provided that in such a case the Court could authorize the appropriate statutory authority to proceed with the uprooting of the unlawfully planted trees, at the expense of the party concerned, such expense being considered as part of the punishment. This was the law in force regarding the planting of citrus trees as from the 28th of July, 1966.

The appellant was prosecuted in the District Court of Kyrenia in February, 1968, upon a charge, under sections 7 and 8 of the Law in question (Law 45/66), for establishing, between January, 1967 and February, 1968, a citrus grove at the locality described in the charge in the area of the village where the appellant lives, the village of Karavas, on a plot of land fully described in the charge, without obtaining the required licence from the appropriate authority. In answer to the summons he appeared in Court in September, 1968, and pleaded not guilty to the charge.

The case went to trial, at which the appellant, employing the services of an able advocate, strongly contested the proceeding against him. The prosecution called six witnesses and produced in evidence the statement of the appellant, to a police officer, in answer to a formal charge.

When called upon for his defence, the appellant chose to make a statement from the dock, which, at page 7 of the record, reads as follows :—

«Δὲν παραδέχομαι γιὰ τὲς ὑποθέσεις ποὺ μὲ κατηγοροῦν. Μίαν ἡμέραν δὲν εἶχα δουλειὰ καὶ ἔκατσα στὸ καφενεῖο καὶ ἐδιάβαζα. Ἤπια κάμποσο κονιάκι, εἶμαι φίλος του καὶ μὲ ἔπιασε πολλὰ καὶ ἤμουν ἀναίσθητος. Ὅπου εἶπα τοῦ γιοῦ μου ' πάρμε στὸ περιβόλι νὰ πάρω ἀέρα γιατὶ ἐν ὑποφέρω '. Μετὰ καμμιὰν μισὴν ὥρα εἶχα ἀκούσει νὰ φωνάζουν ' κ. Πέτρο κ. Πέτρο ' ὅπου εἶδα ἕναν ἀστυνομικὸν καὶ τὸν κ. Βυρίδην, τὸν ὁποῖον τότε δὲν ἤξερα. Ἐγὼ πάλι δὲν ἐμπόρηα ἤμουν πολλὰ στενοχωρημένος. Τοὺς εἶπα ' Ἤντα ποὺ εἶναι '. Ὁ ἀστυνομικὸς μοῦ εἶπεν ' Ἔννεν τίποτε ἔτο μιὰν ὑπογραφήν '. Κάτι μοῦ ἐδιάβασαν ἀλλὰ ἐν ἀντελήφθηκα τὶ ἦταν. Καὶ ἔφυγαν ἀφοῦ μὲ ἔβαλαν καὶ ὑπόγραψα πάνω σὲ ἐκεῖνο τὸ χαρτὶ ἀλλὰ ἐν ἤξερα γιὰ πιὸ σκοπὸ ἦταν. Δὲν παραδέχομαι τίποτε ὅτι ἐφύτεψα δέντρα. Τίποτε ἄλλο.»

Later, in the proceedings, further evidence was called for the purpose of sentence, particularly in connection with the plot on which the plantation stood.

In a considered judgment delivered on October 12, 1968, the trial Judge gave the reasons for which he came to the conclusion that the prosecution had proved the charge against the appellant. The Judge's notes at page 10 of the record, say that he found the evidence of one of the expert witnesses, P.W. 4 Glafcos Loucaides, sufficiently corroborating the fact that plot 393 was planted with citrus seedlings to an extent prohibited by the relevant law.' The Judge further found that the planting of the young trees was done at the expense and with the co-operation of the appellant who was the farmer in control of the land in question. " For the above reasons "—the trial Judge concludes—" I find the accused guilty as charged "; which can only mean guilty of the charge which reads : (charge read).

Upon this conviction, the trial Judge proceeded to deal with the question of sentence. At the instance of the appellant, further evidence was taken, after which the trial Judge passed the following sentence :—" Accused to pay £15 fine or to go to prison 75 days and to uproot the trees in excess of number allowed by the Law unless the accused obtains a permit from the citrus Committee within two months ". That was the sentence passed on the appellant on the 15th November, 1968.

Within the period provided by the Criminal Procedure Law, the appellant filed through his advocate, the present appeal against his conviction and sentence as above. In the course of the hearing of the appeal, learned counsel for the appellant abandoned the appeal against sentence ; and we have no doubt in our mind that he took the right course for his client, in the circumstances. We do not think that, in the circumstances of this case, the fine of £15 was an adequate sentence in the application of the Law. But the sentence is not before us at this stage. Apparently the trial Judge confined himself to such a small fine, because he had connected it with an order for the uprooting of the trees, which might well mean considerable expense to the appellant, in addition to the loss of his trees now about a couple of years old.

The appeal against conviction was taken on three grounds : The first is that the land does not belong to the appellant ; the second is that the citrus trees found on the plot were not

planted by him ; it was contended that there was no evidence that they were planted by him ; and the third is that the plot in question belongs to six other persons and that the appellant did not know who planted them.

Learned counsel was, naturally, in great difficulty trying to find an answer to the question why was his client fighting such a hard battle in defending this plantation if he had no interest in it? The obvious object of the defence is that the unlawfully planted trees should remain there.

Having heard exhaustively counsel for the appellant in a desperate struggle to keep his client's trees on the plot, we found it unnecessary to call on the other side. It was a most difficult case to argue because, the conviction rests on proofs which by their nature are not only real evidence, but they are immovable evidence. The land is there ; the registration of the plot is there, in the books of the Land Registration Office ; the planted trees are there ; and the appellant's connection with them is obvious. The only part missing is the required respect for the truth which would enable the appellant to say that he had those trees planted, notwithstanding the recently enacted legislation, because he did not think that the executive authority would ever force him to uproot them.

We find no reason whatsoever to disturb the findings of the trial Judge, upon which the conviction rests ; and this appeal must, therefore, fail. But the matter cannot end there. The two months' period for uprooting the trees, as provided in the trial Court's order, has elapsed. We have no assurance that the trees have been uprooted ; nor is there any indication that the uprooting order of the District Court shall be complied with. Apart of any consequences for such disobedience of the Court's order, on the part of the appellant, this creates the conditions under which we can proceed to make an order under the relevant provisions in the statute, authorizing the appropriate authority to take the necessary action for the execution of the uprooting order ; and we hereby direct and order accordingly, under section 8 (3) of the statute. It is, no doubt, regrettable that we should have to make such an order. But the Courts must never hesitate in their duty to apply strictly and effectively the law. In this country, the law is made for its people, by their elected Government, through an elected House of Representatives, the constitutional legislature responsible to the

electorate. It may well be presumed that what may appear to be a hard law, was a necessary measure for the common benefit and in the public interest. It must be fully enforced.

We shall adjourn this case for a month to hear from the prosecutors when and how was this order executed. And also to hear what steps have been taken in the meantime under the District Court's order.

Adjourned to the 20th March, 1969, for counsel for the prosecution to inform the Court accordingly.

Conviction upheld ; appeal left over for one month to follow compliance with uprooting order.