[COLOTAS, D.J.]

MUNICIPALITY OF NICOSIA,

v.

KYPROS CHARALAMBOUS,

Accused.

(*District Court Nicosia—Case No.* 10582/71).

Street or public place—Pavement—Obstruction—"Wilful Obstruction"—"Unreasonable use"—Offence constituted where obstruction was caused deliberately or intentionally as opposed to accidentally—Section 182(1)(*f*)(*i*) *of the Municipal Corporations Law, Cap.* 240 (*now Laws* 64 *of* 1964 *and* 15 *of* 1965).

Cases referred to:

Stinson v. *Browning,* English and Empire Digest Reports Vol. 26 p. 468;

Wolverton U.D.C. v. *Willis* [1962] 1 All E.R. 243;

Arrowsmith v. *Jenkins* [1963] 2 All E.R. 210;

Nagy v. *Weston* [1965] 1 All E.R. 78.

D. Georghiades, for the Prosecution.

E. Vrahimi (*Mrs*), for the Accused.

The following ruling was delivered by:

COLOTAS, D.J.: In this case the accused is charged with "placing goods on a public pavement obstructing the free passage there, contrary to section 182(1)(f)(i) of the Municipal Corporations Law, Cap. 240 now 64/64 and 15/65" ("Τοποθέτησις ἐμπορευμάτων εἰς Δημόσιον πεζοδρόμιον ἐμποδίζων τὴν δημοσίαν διάβασιν ἐπὶ αὐτοῦ κατὰ παράβασιν τοῦ ἄρθρου 182 (1)(f) (i) τοῦ περὶ Δήμων Νόμου Κεφ. 240 νῦν 64/64 καὶ 15/65").

Section 182 (1) (f) (i) of Cap. 240 provides that:–

" 182(1) Any person who, in any street or public place within any municipal limits –

.....

(f) (i) wilfully causes any obstruction by means of any cart, carriage truck, or barrow or any animal or other means;

.....

shall be guilty of an offence and shall on summary conviction, be liable to a fine not exceeding twenty pounds or to imprisonment for a term not exceeding fourteen days....."

The facts as disclosed by P.W.1 are briefly as follows:-

On the date of the alleged offence accused parked his wheel barrow loaded with various merchandise for sale on the left hand side pavement of Solomou bridge when facing Solomos statue. The said pavement is 22 feet wide at the point where the barrow was parked. The barrow is 7 feet 10 inches long and 4 feet 2 inches wide. An ordinary saloon car was parked behind the said barrow across the pavement occupying about 2/3 of its width. A free space for pedestrians was left in front of the barrow only about 2 feet wide. There are many bus-stops on the said bridge and at the time when the accused was seen by P.W.1 (about noon) many pedestrians were gathering there in order to take the bus and return home.

At the closing of the case for the prosecution the learned counsel for the accused made a submission of no case to answer.

A submission of no case to answer may be made and upheld:-

"(a) When there has been no evidence to prove an essential element in the alleged offence;

(b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it". (Practice Note, per Lord Parker C.J. [1962] 1 All E.R. p. 448).

In this case the submission of the learned counsel for the accused that no *prima facie* case has been established against the accused is based on the ground that the Prosecution has failed to prove any "wilful obstruction" which is an essential element of the offence with which accused is charged.

Defence counsel argued—rightly—that the offence with

which accused is charged must be founded on a "wilful obstruction" and not on any obstruction. Defence counsel further argued that an obstruction is wilful when it is "unreasonable" and she cited in this respect *Stinson* v. *Browning*, English and Empire Reports Vol. 26 p. 468. This case was decided in 1866. The accused did not use the pavement in an unreasonable manner—Defence counsel argued—as there was sufficient space left by him for pedestrians.

As to what amounts to a "wilful obstruction" and to an "unreasonable use" of a highway, pavement or other public place there is a number of recent decided cases:–

(1) In *Wolverton U.D.C.* v. *Willis* [1962] 1 All E.R. p. 243 the accused was charged with encroaching the footway in front of his green grocery shop. The encroachment had been caused by the accused by placing several boxes of fruit on the pavement outside his shop occupying a space of 12 feet 8 inches long and 11 inches wide over a footway 7 feet 9 inches tapering to 6 feet 3¾ inches wide. In this case Slade J. in delivering the judgment of the Court said (p. 245 letter I):–

> " A similar encroachment by a tradesman on a footway came before this Court earlier this year in *Seekings* v. *Clarke* ([1961] 59 L.G.R. 268). The charge in that case was laid under s. 121(1) of the Highways Act, 1959 which provides that:–
>
> > ' If a person without lawful authority or excuse in any way wilfully obstructs the free passage along a highway he shall be guilty of an offence.....'
>
> In that case, also, the justices held that the encroachment did not constitute an offence, applying, it would seem the 'de minimis' rule. In delivering his judgment (with which Winn J. and Widgery J. agreed) allowing the appeal, and remitting the case to the Justices with an intimation that the offence had been proved, Lord Parker C.J. said:
>
> > ' It is perfectly clear that anything which substantially prevents the Public from having free access over the whole of the highway which is not purely temporary in nature is an unlawful obstruction..... In my judgment however in this case it is quite impossible to say that the principle of 'de minimis' applies. Here was a substantial projection into the footway whereby

the public were prevented from having free access over the whole of the footway.

In the opinion of this Court that case decides:- (i) That every member of the public is entitled to unrestricted access to the whole of a footway, so far as he may be prevented by obstructions lawfully authorised; (ii) that subject to the de minimis principle, any encroachment on the footway which restricts him in the full exercise of that right and which is not authorised by law is an unlawful obstruction; and (iii) that every member of the public so restricted in the use of the footway is necessarily obstructed in that, to the extent of the obstruction, he is denied access to the whole of the footway; that is he is obstructed in his legal right to use the whole of the footway".

The same decision says further down "..... it seems to this Court that any unlawful encroachment on a footway must be deemed to obstruct, and, a fortiori, to incommode the passage of persons over and along such footway, and, accordingly that it is not necessary to allege or to call evidence to prove that any particular person was in fact so obstructed or incommoded".

It is clear from the above decision that an encroachment of only 11 inches wide on a pavement about 7 feet wide was considered unreasonable use of the said pavement and therefore it created an unlawful obstruction.

(2) In *Arrowsmith* v. *Jenkins* [1963] 2 All E.R. p. 210 at page 211 Lord Parker C.J., has this to say in interpreting the provisions of the aforesaid section 121(1) of the Highways Act, 1959:-

" For my part I am quite satisfied that this provision on its true construction is providing that if a person without lawful authority or excuse intentionally, that is by an exercise of his or her free will, does something or omits to do something which will cause an obstruction or the continuance of an obstruction, he or she is guilty of an offence. Counsel for the Appellant, has sought to argue that if a person acts in the genuine belief that he or she has lawful authority to do what he or she is doing, then if an obstruction results he or she cannot be said to have wilfully obstructed.

Quite frankly, I do not fully understand that submission. It is difficult certainly to apply it here. I imagine it can be put in this way, that there must be some *mens rea* in the sense that a person will be guilty if he knowingly does a wrongful act. For my part I am quite satisfied that that consideration cannot possibly be imported into the words 'wilfully obstructs' in this enactment. If anybody by exercise of free will does something which causes an obstruction then I think that an offence is committed".

It can be also safely gathered from the above decision that a "wilful obstruction" is an obstruction which is caused, deliberately or intentionally—as opposed to accidentally—that is by an exercise of free will.

(3) In *Nagy* v. *Weston* [1965] 1 All E.R. p. 78 in which the accused was charged with causing a wilful obstruction on a highway contrary to the above mentioned section (i.e. s. 121(1) of the Highways Act, 1959), Lord Parker, C.J. says at page 79:-

> " Whether or not the user amounting to an obstruction is or is not an unreasonable use of the highway is a question of fact. It depends on all the circumstances, including the length of time the obstruction continues, the place where it occurs, the purpose for which it is done, and, of course, whether it does in fact cause an actual obstruction as opposed to a potential obstruction".

Applying the above authorities to the facts of this case. I reached to the conclusion that *prima facie*:-

(a) The obstruction caused by the accused is a "wilful obstruction"; because it can be safely gathered from the facts that it was not caused accidentally but deliberately i.e. by the exercise of the free will of the accused.

(b) The use of the pavement by the accused at the material time cannot be considered as reasonable as:-

  (i) The purpose for which pavements are made is to facilitate the pedestrians to walk freely and safely over them.

  (ii) The public has the unrestricted right to use the whole of a pavement, as above, especialiy In a

busy place as Solomos Square is and at a time (12 noon) when the said square becomes busier due to the increased gathering of people for the purpose of catching the bus for their homes.

(iii) Having in mind that the accused parked his barrow on the said pavement for the purpose of exposing his goods for sale it is obvious that the obstruction continued or was intended to continue for a considerable long time.

(iv) The use of a pavement for the purpose of exposing goods for sale on a barrow parked on the pavement cannot be considered as a proper and reasonable use of the pavement.

(v) The accused left a space 2 feet wide only for the use of the pedestrians which is obviously insufficient for that purpose at that time and place and therefore an obstruction was actually caused.

(vi) The fact that a car was also parked on the same pavement (unlawfully too as P.W.1 explained) occupying the whole of the remaining space behind the accused's barrow cannot be raised as a defence in my opinion but on the contrary it should have prevented the accused from parking his barrow there (if the car was parked prior to the parking of the barrow) or from continuing having his barrow parked there (if the car was parked after the accused had parked his barrow).

In view of all the above I find that a *prima facie* case has been established against the accused sufficiently to require the accused to be called upon to make his defence.

Order accordingly.