

1974

Nov. 26

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SELEK LTD.

v.

THE MEDICAL  
DEPARTMENT

[TRIANTAFYLIDIS, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

SELEK LTD.,

*Appellants,*

v.

THE MEDICAL DEPARTMENT,

*Respondent.*

(Criminal Appeal No. 3559).

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*Sale of Food and Drugs Law, Cap. 261—Sale of food not of the quality demanded by purchaser—Section 4 of the Law—Reasonable doubt as to the origin of the sample sold to purchaser—Conviction quashed.*

*Observations with regard to the need of conducting prosecutions of this nature by counsel.*

**Appeal against conviction.**

Appeal against conviction by SELEK LTD. who were convicted on the 6th March, 1974 at the District Court of Kyrenia (Criminal Case No. 1598/73) on one count of the offence of selling food to a purchaser contrary to section 4 of the Sale of Food and Drugs Law, Cap. 261 and was sentenced by Boyadjis, S.D.J. to pay a fine of £50.- with £10.500 mils costs.

*L. Demetriades*, for the Appellants.

*C. Kypridemos*, Counsel of the Republic, for the Respondents.

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

TRIANTAFYLIDIS, P.: The Appellant company appeals against conviction in respect of the offence of selling food, namely lemon juice, to a purchaser in contravention of section 4 of the Sale of Food and Drugs Law, Cap. 261; according to the particulars of the charge on which the conviction was based, the said lemon juice was not of the quality demanded by the purchaser, in that it contained not more than 80% of lemon juice instead of being pure lemon juice.

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The main issue in this appeal has been the origin of the sample which was regarded as establishing the non-genuineness of the lemon juice sold to the said purchaser. It was obtained from a drum stored at the premises of the Appellants; and it was stated in evidence that sixty-six drums containing lemon juice had been sold and delivered to the purchaser concerned but he did not transport them to his own premises, because of lack of space there; so he had asked the Appellants to keep them in their store for the time being.

There has been called by the Appellants evidence showing that together with the sixty-six drums in question there were stored other drums, also containing lemon juice, which was destined to be sold later to others; and this version has not been disputed in cross-examination at the trial and it remained uncontradicted by any other evidence.

As was very fairly conceded, during the hearing of this appeal, by counsel appearing for the Respondent, in the absence of more positive identification of the drum from which the said sample was taken, it cannot be said that, on the evidence as a whole, there was established, with the certainty required in a criminal trial, that the drum from which the sample was taken was, in fact, one of the sixty-six drums which had been sold and delivered to, but had not yet been removed from the Appellants' premises by, their purchaser. One cannot, indeed, evade the justifiable, in the circumstances, reasonable doubt that the sample may have been obtained from one of the other drums in the store of the Appellants; thus, the commission by the Appellants of the offence of selling to a purchaser lemon juice not of the quality demanded by him has not been duly proved.

As a result this appeal is allowed and the Appellants' conviction is set aside.

Before concluding we would like to observe that at the trial the prosecution was not conducted by counsel, but by a public officer from the Department of Medical Services, who did not possess any legal qualification; and we do share the view expressed by the learned trial Judge that the fact that the conduct of the prosecution, in a case of this nature, was not entrusted to counsel has deprived the trial Court of valuable assistance in the course of its effort to ascertain fully what exactly did take place.

*Appeal allowed.*