

1984 February 2

[A LOIZOU SAVVIDES PIKIS JJ]

ANDREAS ANTONIOU SARMALLIS AND ANOTHER  
*Appellants*

THE POLICE  
*Respondents*

(Criminal Appeals Nos 4478-79)

*Animals Certificates Law Cap. 29—Possessing an animal—a calf  
—without a certificate of ownership contrary to section 4 of the  
Law—Duty of the Prosecution to prove that the calf an “animal”  
within the meaning of s 2 of the Law—Size and description of  
calf such that trial Court could properly infer that it was an animal* 5

*Forfeiture—Made under the Animals Certificates Law, Cap 29—  
Amounts to a punishment in the sense of Article 12 3 of the Consti-  
tution—Reasons therefor must be given—Though reasoning  
for ordering forfeiture in this case not as thorough and explicit  
as it ought to have been not so inadequate to the point of justifying  
intervention of Court of Appeal* 10

The appellants were found guilty of being in possession of an animal—a calf—without a certificate of ownership contrary to section 4 of the Animals Certificates Law, Cap 29 Upon appeal against conviction and sentence it was contended that the prosecution failed to prove that the calf in question was an animal within the definition\* of the Law and that the decision respecting forfeiture of the animal was unreasoned 15

*Held*, that though it was incumbent on the prosecution to prove that the calf in the possession of the appellants was an animal within the meaning of s.2 of Cap 29 the size and description of the calf was such that the trial Court might properly infer it was an animal within the meaning of the word. that, further, it emerged from the statements of the appellants themselves to the police adopted in statements made by the appellants from the dock that the animal in their possession was of 20 25

\* Section 2 of Cap 29 defines “Animal” as including “\_\_\_\_\_ ox or any other neat cattle whatsoever but does not include the unweaned offspring of any such animal”

a kind that required the issue of a certificate of ownership; accordingly the appeal against conviction must fail.

(2) That forfeiture is a punishment in the sense of Article 12.3 and as such must be proportionate, like any other sentence, to the gravity of the offence; that, moreover, reasons must be given indicating the basis upon which the trial Court exercises its discretion with regard to forfeiture, one way or the other; that the trial Judge laid emphasis on the absence of any explanation on the part of the appellants as to the circumstances under which they came into possession of the animal in question; that the absence of such explanation in the circumstances of this case raised serious questions; that although the reasoning supplied by the trial Judge was not as thorough and explicit as it ought to have been it is not so inadequate to the point of justifying intervention on the part of this Court; accordingly the appeal against sentence must, also, fail:

*Appeals dismissed.*

Cases referred to:

*Antoniades and Another v. Police*, 1964 C.L.R. 139 at p. 142.

20 **Appeals against conviction and sentence.**

Appeals against conviction and sentence by Andreas Antoniou Sarmallis and Another who were convicted on the 26th October, 1983 at the District Court of Famagusta (Criminal Case No. 1087/83) on one count of the offence of possessing an animal without a certificate of ownership contrary to section 4 of the Animals Certificates Law, Cap. 29 and were sentenced by Arestis, D.J. to pay £30.- fine each.

*A. Andreou*, for the appellants.

*M. Photiou*, for the respondents.

*Cur. adv. vult.*

A. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Pikis.

PIKIS, J.: The appellants were found guilty of being in possession of an animal without a certificate of ownership in contravention of the provisions of s.4 of the Animals Certificates Law, Cap. 29. Section 4 makes it an offence to possess an animal without a certificate of ownership.

The main defence of appellants before the trial Court was that they were in possession of the requisite certificate of ownership

of the calf under their control, conveyed in a car on the Dhekelia –Larnaca road. The Judge dismissed this contention holding that the certificate of ownership in their possession was issued in respect of another calf transported earlier that day by the appellants while they travelled in the opposite direction. 5  
The trial Judge accepted the evidence of the policeman manning the checkpoint and considered such evidence reliable and accurate having regard to the opportunity he had to observe the characteristics of the two calves. In his evidence, they differed in appearance and size. There was other evidence as 10 well supporting the contention there were two and not one calf.

We were not asked on appeal to upset the above finding of fact. The appeal is confined, so far as the conviction is concerned, to the age of the calf, and its dependence on the cow whose offspring it was. In the submission of counsel the 15 prosecution failed to prove that the calf in question was an animal within the definition of the law. In view of such failure the charge ought to have been dismissed. The appeal against sentence is solely directed against that part of it directing forfeiture under s.6 of Cap. 29. Here the submission is that the 20 decision respecting forfeiture is unreasoned to the extent of warranting our intervention.

“Animal” is defined by s.2 of the law as including inter alia “ ox or any other neat cattle whatsoever but does not include the unweaned offspring of any such animal”. Mr. 25 Andreou argued there was no evidence for the trial Court that the calf was not the unweaned offspring of a cow. A similar submission was made before the trial Judge. So far as we may gather from the record, the learned trial Judge misconceived the implications of this submission. He treated 30 it as amounting to a submission that the burden was on the prosecution to prove absence of a certificate of ownership and dismissed it on the ground that the facts relevant to possession of a certificate were peculiarly within the knowledge of the appellant who failed to produce any such certificate for the 35 second calf in his possession. For the reasons indicated below we consider it unnecessary to discuss the line of authority establishing when facts may properly be regarded as peculiarly within the knowledge of the accused and the nature of the burden cast upon him in such circumstances. We are content with 40 affirming that under s.4 Cap. 29 the burden lies on the person

in possession of an animal to prove that he is in possession of a certificate of ownership. But as mentioned this is not the question we have to resolve. What we have to decide is whether the prosecution failed to prove that the calf in the possession of the appellants was an animal within the definition of the law. No obligation is cast by law to obtain or be in possession of a certificate in respect of an animal that does not qualify as an "animal" within s.2 of the law. It was incumbent on the prosecution to prove that the calf in the possession of the appellants was an animal in this sense. The size and description of the calf was such that the trial Court might properly infer it was an animal within the meaning of the word. But this was not the only evidence before the Court indicating that the calf was an animal in this sense. It emerges from the statements of the appellants themselves to the police adopted in statements made by the appellants from the dock that the animal in their possession was of a kind that required the issue of a certificate of ownership. In fact they claimed they had one. A certificate of ownership can only be issued in accordance with s.3 subsection 1 of the law in respect of an animal qualifying as such under the provisions of s.2. So, by their own admission the calf in their possession was an "animal". This fact, viewed in combination with the nature and description of the animal carried later in the day, bigger and stronger than the animal in their possession in the first place for which they carried a certificate of ownership furnished irrefutable evidence that what they carried was an animal within the definition of the law and not any unweaned offspring of an animal. In our judgment the appeal against conviction fails.

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### SENTENCE

Forfeiture is a punishment in the sense of Article 12.3 and as such must be proportionate, like any other sentence, to the gravity of the offence. As much is beyond controversy. Moreover, reasons must be given indicating the basis upon which the trial Court exercises its discretion with regard to forfeiture, one way or the other. (See *Antoniades and Another v. The Police*, 1964 C.L.R. 139, 142). The extent of the reasoning inevitably depends on the facts and details of the case. It must indicate the factors taken into account and generally enlighten as to the basis upon which the discretionary powers

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of the Court are exercised. The learned trial Judge laid emphasis on the absence of any explanation on the part of the appellants as to the circumstances under which they came into possession of the animal in question. The absence of such explanation in the circumstances of this case raised serious questions. The Judge was confronted with stark defiance of the provisions of the law requiring a certificate of ownership bringing to the fore the risks inherent from violation of the provisions of Cap. 29. The Animals Certificates Law is intended to ensure, by proper application of its provisions, that no-one comes illegally into possession of an animal; another object of the law is to make animal trading subject to proper control. No doubt the trial Judge was influenced by the increase recently noticed in illegal transactions with regard to animals. Although the reasoning supplied by the trial Judge was not as thorough and explicit as it ought to have been, it is not so inadequate to the point of justifying intervention on our part. The observation of the trial Judge that appellants failed to furnish any explanation about the animal in their possession cannot be extricated from the background of the case and appellants' allegations in connection therewith found false by the Court. This part of the appeal fails as well.

The appeals are dismissed.

*Appeals dismissed.*