FISHER, C.J. & STUART, P.J. 1922

December 2

[FISHER, C.J. AND STUART, P.J.]

HOUSTOUN

v.

KING'S ADVOCATE.

Plaintiff is a Scotchman who visited Cyprus shortly after the Occupation and purchased a large number of pieces of land in and around the town of Kyrenia, and has resided there for the greater part of his time ever since. Inter alia *he bought the properties which are now the subject matter of this action. He purchased a block of land lying on the east of the old Turkish cemetery on the east of the town lying generally between the Bellapaise road and the moat surrounding the castle of Kyrenia.*

He was registered as owner of this piece in January, 1880. *To the west of the town of Kyrenia he purchased a large block running between the Lapithos road and the sea. This he had formed into an estate which is know as Livadhia, and he became registered owner of this about the same time as the eastern block. It is from these two blocks of land that the Government has confiscated certain areas.*

From the eastern block two pieces called 3 *and* 4.

From the Western "Livadhia" property two pieces called 1 *and* 2.

The whole of the original blocks of land are registered as Arazi-Mirie. Plaintiff has cultivated part of the eastern block and certain peices of the Livadhia property, but in general he has not tilled the land nor grown cereals thereon since he purchased the land in 1880.

In April, 1921, *a local enquiry, at the instance of the Government, was held into this non-cultivation of these large tracts, and certain portions of the properties were marked off on the plans of the Land Registry Office as liable to confiscation, on the grounds that they were cultivable and had not been cultivated for the last ten years.* Vide *Law* 14 *of* 1885.

These portions are numbered 1, 2, 3, *and* 4. *The Government ordered these portions to be confiscated and invited Plaintiff to nominate an assessor and to pay the "bedel misl" or equivalent value, and the Government further stated that if Plaintiff did not avail himself of this offer those portions of the properties would be put up to auction and sold.*

A certain amount of correspondence took place, and on December 8th, 1921, *Government wrote to Plaintiff stating that the portions confiscated would be registered as belonging to the Government on January 1st,* 1922, *and unless he paid the "bedel misl" these properties would be sold by auction.*

Plaintiff asked for leave to sue Government for the return of these properties, and was granted the usual formal leave and he instituted this action.

The facts are fully disclosed in the various judgments.

The District Court gave judgment as follows:—

This action is in the nature of a petition of right. Plaintiff claims to be registered as the owner of four properties confiscated by the Government and registered in the name of Government on January 1st, 1922.

Plaintiff submits in respect of properties called lots 1 and 2:—

1. That the land confiscated was not cultivable;
2. That, as far as he could, he has turned the land to valuable use by permitting trees and shrubs to grow thereon.

Plaintiff submits in respect of property called lot 3:—

1. That it is in part not cultivable;
2. and as to the other part, which is admittedly cultivable, it has been used during the 42 years he has held it for public or charitable purposes.

Plaintiff submits in respect of property called lot 4 that it is not cultivable;

In respect of all the four properties—

Plaintiff submits (1) that he has always treated the properties in the same way since he purchased them in 1880; (2) that Government has acquiesced with full knowledge of the circumstances during all that period. That lot 3 almost adjoins the Government offices in Kyrenia; (3) that no warning has ever been given him; (4) that Government is estopped from exercising a right which arose three years after he purchased the properties in 1880.

The King's Advocate replies:—

1. That the land is public land within the meaning of Art. 2, Law 14 of 1885.
2. That it has not been cultivated for ten years;
3. That the confiscation by Government is justified and carried out according to law.

I must here remark that the real points at issue were not clearly set out by me when issues were made. I did not fully grasp the case at the time, and I think it proper here and now to set out what I consider they should be, viz.:

1. Plaintiff to prove that the land is uncultivable;
2. Has the land been cultivated ?
3. Was the confiscation justified ?
4. Did Government offer the properties to Plaintiff within the provisions of Art. 3, Law 14 of 1885 ?

In consequence of my not setting out the first issue with particularity Mr. Christis complained against having to open.

As a general rule there is embarrassment caused to a party ordered to prove a negative issue, but in this case Mr. Houstoun knows far more

about the property in question than anybody else, and can more easily give information on the subject.

Now after I visited the *locus in quo* I formed my own opinion as to the cultivableness of the properties, and, in spite of a large volume of evidence on the subject, I see no reason to vary my findings which I wrote down immediately after the inspection.

I found then that lots 1 and 2 are (subject to minor corrections agreed to by the King's Advocate) reasonably cultivable. I found then that lot 3 was cultivable in part and uncultivable in part, and I marked what I considered was a good boundary line between the two parts. I found that lot 4 was not cultivable. The test which I applied then was whether, in my opinion, a peasant farmer would cultivate the land regularly with a reasonable hope of gaining some success.

Part of lot 3 and the whole of lot 4 does not come within that test. The lands (half of lot 3 and lot 4) are swampy and during some winters it would be extremely difficult, if not impossible, to plough. The nature of the ground is disclosed by short rushes known as " skilinija " growing nearly all over these parts. When I examined lots 1 and 2 I found a dense shrub growth over practically the whole area in which I could see a large number of small wild trees growing. The land could and would be tilled by a working farmer and therefore would yield tithe.

Now having heard the evidence I retain the same opinion which disposes of the small piece known as lot 4 and about half of the piece known as lot 3.

As to the second issue:

I find that none of the land confiscated has been cultivated.

As to the third issue as amended—

As to lots 1 and 2.

Whilst not necessarily accepting the order of the Registrar General published in *Gazette* No. 1159 dated 26th February, 1915, p. 8814 as a definition of cultivation as between private citizens, I can only hold that Government is not justified in the confiscation of these pieces in view of this declaration of their intention; therefore, as far as these two lots 1 and 2, I find the confiscation is not justified.

As to lot 3 (the cultivable part)—

This piece was registered in Plaintiff's name in January, 1880. *Vide* the Land Registry Office records seen by me.

By Sec. 68 Land Code this land was confiscatable on January, 1883, *i.e.*, two years prior to the passing of Law 14 of 1885.

From January, 1883, to April 1921, is over 38 years. Now the law 14 of 1885 is imperative in its language and *vide* the finding in *Loizo v. Principal Forest Officer*, Vol. II., p. 107 C.L.R. the Government *must* observe the formalities of that law. Even though the Government had failed to confiscate the land in 1883 under the Land Code, it was *imperative* that they did so in 1895. The law 14 of 1885 does not say " land which is left uncultivated for ten years *is liable* to confiscation, " but *shall* be confiscated."

I am of opinion that the confiscation should have taken place within a reasonable time of 1895 if not during that year. This was not done. Plaintiff continued his permission for the cows attached to the Hospital to graze on this area. Public officials saw this done, and knew of it and I consider that the inaction of the Government and their acquiescence in this state of affairs between 1895 and 1921 amounts to such a waiver of their rights as to estop them from putting forward these rights in 1921.

I do not express an opinion as to whether prescription runs against the Government after 36 years or not, but it would seem that the Mejellé Committee which sat to consider this question in 1300 A.H., *i.e.*, 1298 F.Y., approximately 1882 A.D. held that prescription did so run after 36 years according to the law at that date, and further this has since been enacted by Art. 15 of a new law affecting land passed in 1913 in Turkey.

Vide Fisher's Land Code, p. 80.

In view of my above findings I am of opinion that the Plaintiff has proved his case. Accordingly I would submit that Plaintiff's petition for restitution should be allowed with costs.

From this judgment the Defendant (The King's Advocate) appeals.

Appellant, the *King's Advocate* in person.

For Plaintiff *Christis*.

Judgment: CHIEF JUSTICE: In this case the Plaintiff bought the properties, which are the subject matter of this action, in 1880, and therefore at the time when the notice, which gave rise to this action was given, had been in possession of them for a little over 40 years. During the whole of that time they have been treated by him, as regards cultivation, in precisely the same way.

At the time of the purchase of the land by the Plaintiff Art. 68 of the Land Code was in force, which provided that " Arazi-Mirié which was " not cultivated and remained uncultivated for three years consecutively " (except for certain reasons not material to this case) should become " subject to the right of Tapou " *i.e.* should be offered to the person

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who had owned them at their " Tapou value " or put up to auction if he did not claim them.

Since the purchase the Law regarding cultivation of land has three times at least received the attention of the legislature.

In 1879 an Ordinance was passed entitled " to promote the cultivation " of land " which provided (*inter alia*) for the imposition of a fallow-tax on land " capable of cultivation " left uncultivated, and gave power to the High Commissioner in Council to exempt land from the tax by publication of a notice in the *Gazette*. It did not repeal Art. 68 of the Land Code. That Ordinance was repealed in the year 1900. The Plaintiff's land was never gazetted as exempt under this Ordinance, nor was he ever required to pay the fallow-tax.

Meanwhile the confiscation of Public Lands Law, 1885, was passed. That Law, which repealed Art. 68 of the Land Code, is applicable to cultivable Arazi-Mirié and provides that such land which has been left uncultivated for ten years, subject to exemptions which do not apply in this case, " shall be confiscated by Government."

It is to be noted that this Law was drawn attention to in the Messaoria State Lands Delimitation Law, 1899, which, however, did not refer to the Kyrenia District where it is provided (Sec. 2) that, in that Law, " lands registered in the name of any person which are not liable to be confiscated by the Government under the provisions of the confiscation of Public Lands Law, 1885, are not to be included in the expression " State Lands."

With the intention of putting the Law of 1885 into force against the Plaintiff notice was given to him that his land was confiscated under the Law, and, ultimately, the land having meanwhile been registered in the name of the Government leave was given to the Plaintiff, under the Cyprus Courts of Justice Amendment Order, 1910, to bring an action to test the question whether the confiscation was justifiable.

Having regard to the nature of this Law the onus of proving that the land became liable to confiscation should, in my opinion, have been originally laid upon the Defendant, but in the view I take of the case I do not think it is necessary for me to do more than mention this point.

As to the land in question:—

For the purpose of being put up for sale it was divided into 4 lots. Lot 4 was withdrawn by the King's Advocate from our consideration during the course of the argument; and certain other portions were also withdrawn during the hearing in the District Court. To that extent, therefore, the Plaintiff must succeed in his action.

We have to consider the position as regards the rest of the land. What is meant by " uncultivated."

In respect of this the Government published a notice containing a negative interpretation of the word indicating the policy they propose to adopt as regards confiscation. That notice was published in the *Cyprus Gazette* of the 26th February, 1915, and is as follows:—

" When an owner of land plants and allows to grow trees and shrubs " on his land, the Government consider that such acts constitute " cultivation and the land so cultivated will not be liable to be con- " fiscated on the ground that it is uncultivated. The fee on the regis- " tration of such land will continue to be the same as heretofore."

It is, in my opinion, clear that in so far as any of the land in question was held in compliance with this notice it cannot be said to have been left uncultivated within the meaning of the Law.

It was argued by the King's Advocate that the notice only applies to those who both planted and suffered to grow. This would involve its application only to those who planted after the notice was published, a view upon which an argument might be founded that the notice gave an opportunity, open for ten years, to all who had previously left their land uncultivated within the meaning of the Law, to save it from confiscation by complying with the notice.

In my view the notice must be taken to have been addressed both to those who were at the time owners of land with trees and shrubs on it, informing them that by continuing to allow trees and shrubs to grow there they would be considered as cultivating the land, as well as to owners of land who might thereafter adopt the mode of cultivation mentioned in the notice. That notice was found by the learned President to affect lots 1 and 2, and from that finding I am quite unable to dissent.

As to lot 3 the evidence is that it is not cultivated though some part of it is said to be cultivable, but has been used ever since its purchase formerly as a Public Park and afterwards as a Grazing Ground for the cows attached to Kyrenia Hospital.

I referred in the course of the argument to half-yearly accounts published in the *Cyprus Gazette* indicating that the animals which had used the place for grazing were in fact kept for the benefit of an institution, which was managed under Regulations approved by Government by a Board on which Government had representatives. (See Kyrenia Hospital Regulations in Civil List). But apart from the use to which

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the land has been put, the question as to this lot especially is whether the Law as to confiscation (even if applicable) can now be enforced against the Plaintiff.

It is admitted that the Plaintiff has duly paid taxes every year in respect of all his land; he was never taxed or given exemption under the Land Cultivation Ordinance, 1879; the state of the land is and always has been obvious and patent to all; within the last few years it has all been subjected to an official survey under the Immoveable Property Registration and Valuation Law, 1907, and during the whole of the period legislation has been in force expressly dealing with promoting the cultivation of land.

Were this therefore an action between landlord and tenant, a relationship to which that between Government and the registered occupier of Arazi-Mirié bears a strong resemblance, and a question of rent being received after an alleged breach of covenant, it cannot be doubted that the landlord would be held to have had full knowledge of the breach, and to have acknowledged the continuance of the tenancy.

In my view all the facts with regard to this land constitute a consistent and sustained attitude and course of conduct, unbroken until the letter dated 1st June, 1921, intimating that the Law was to be enforced against him, which amounts to acquiescence in the continuation of the land in the state in which it has always been since the Plaintiff bought it. That state of things may of itself be some evidence of the non-cultivability of the land. At all events, in my opinion, it entitled the Plaintiff to assume either that the Law did not apply, or would not be applied to it, and amounted to such a recognition of his attitude as occupier of the land as precludes the enforcement of confiscation against him.

I do not think that the wording of the Law in any way prevents that conclusion. The words used, which may be regarded as minatory, do not, in my opinion, impose such an obligation on Government as excludes the exercise of discretion in the matter nor preclude the acquiescence proved from operating in favour of Plaintiff.

It may be that (apart from the question of the notice in 1915) the acquiescence has now terminated but, though invited by the King's Advocate to give an opinion as to this, I do not feel that under the circumstances I should be justified in doing so. For these reasons I think that the judgment of the District Court must be upheld and the appeal dismissed with costs.

I have not dealt with the question whether the evidence proved that the land is " cultivable " within the meaning of the Law, but I must

not for that reason be taken to dissent from the learned Puisne Judge on that point. I agree that the word does not bear the limited meaning apparently attached to it in the District Court.

The 2nd day of December, 1922.

STUART, P.J.: The King's Advocate attaches importance to this case, but the actual matters for decision do not involve particular difficulty.

Claiming to act under the powers given by the Confiscation of Public Lands Law, 1885 (No. XIV.), the " Government "—the term used in the Law to denote the confiscating authority—proceeded to " confiscate " the " public lands " that had been acquired by the Respondent in 1880 on the ground that these lands had been left uncultivated for ten years. Under Sec. 1 " land " means " cultivable " land, and therefore a condition precedent to confiscation is that the lands should be " cultivable."

A further question arose whether assuming the lands were cultivable and had not been cultivated the Government was precluded from exercising its powers at the date it did. This Law replaces Clause 68 of the Ottoman Land Code (7 Ramazan, 1274—21st April, 1868, under which lands (Arazi-Mirié) left uncultivated for three years without any of the valid excuses allowed by the Law became the right of Tapou, *i.e.*, devolved by operation of the Law to the State. Doubtless the Legislature thought that this devolution by mere operation of Law worked harshly and so (when altering periods of time and provisions relating to valid excuses and enacting exceptions) completely changed the mode by which land was to be forfeited on non-cultivation. The land was no longer to devolve upon the State by operation of Law after the efflux of the prescribed time, but the forfeiture was to depend upon an act to be done by the Government. Presumably it was to emphasize this change that the term " confiscate " was introduced into the Law—a strange term otherwise to have used. Until this act was done no change occurred in the tessaruf. The use of the words " shall be confiscated " has led the Court below to hold that the Government is obliged to do this act of confiscation but it is clear that " shall " is necessarily used here in an enabling sense, since no sanction is provided if the act be not done, nor can a Mandamus be issued against the Government, should the latter refuse to confiscate. The Government may do its act of confiscation under the prescribed conditions, but here it has not done so (assuming the existence of the prescribed conditions) at the time the right to do the act legally arose. The Court below—obviously interpreting " cultivation " to mean " cereal cultivation "

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found that this right arose in 1895, yet it is not until 1921 that the Government has done the act of confiscation. What is the interpretation of this inactivity, and do any legal consequences flow from it that would preclude the Government from doing the act in 1921, without previous notice to the possessor that its inactivity would cease in ten years time? This Court cannot inquire why the Government does an act or refrains from doing an act: the Court can only ascertain the fact of certain conduct and deduct the legal consequences that ensue towards persons affected by the conduct. The King's Advocate stated that the reason of inactivity until 1921 was due to negligence of the Department especially entrusted with Government land management in other words he sought to maintain an interpretation of the conduct of the Government by alleging Departmental, *i.e.*, Government misconduct or negligence; one can leave him to settle this allegation with the Department concerned, but the maxim that has come down from the Institutes "*allegans suam turpitudinem non est audiendus*" *turpitudo* being of course mildly translated—is still a guide to the Courts while a constitutional tribunal still holds that *Rex non potest peccare*. Dismissing therefore an interpretation of conduct founded on negligence or inadvertence is there any interpretation to be found in any ignorance of the Government as to its rights due to concealment of facts by the Respondent. Obviously not. These lands had all been registered in the prescribed manner, they lay wide spread practically under the very windows of the Tapou Office, subject to the daily observation of the Tapujis and Treasury Officials, the yearly Kimat was paid, tithe Collectors greedy for their tenths searched annually over them, they had been surveyed under the Immoveable Property Registration and Valuation Law, 1907, a Law passed *inter alia* for fiscal purposes, they lay open every day to the superintending view of the District Commissioner. Three years elapsed after acquirement in 1880 yet these lands did not devolve upon the State under clause 68 of the old Law, there was no confiscation under the present Law in 1895, no act done until 1921. It is not averred that the mode of user as regards cereal cultivation has been changed since 1880. And here one may interpolate a remark that having regard to the evidence the Crown proposed to adduce there should have been an averment that the mode of user had been changed in this respect otherwise the Crown takes the possessor by surprise.

There being therefore no ignorance on the part of the Government and no concealment by the possessor, there could only have been one meaning to the possessor—" who must trust to appearances "—of this inactivity of the Government namely that the Government acquiesced

in the non-cultivation and that this was the proper meaning to attach to this inaction we shall see in a moment. In *Cornish v. Abingdon* 4 Hurlston and Norman Reports p. 549 Ch. Bar. Pollock says (abbreviating slightly) " if any person by a course of conduct so conducts " himself that another may reasonably infer the existence of a licence " whether the party intends that he should do so or not it has the " effect that the party so conducting himself cannot afterwards gainsay " the reasonable inference to be drawn from his conduct," or as Lord Kenyon in *Cave v. Mills* (7 H. and N. p. 913) concisely says " one cannot " blow hot and cold." Many similar authorities can be quoted—and an interesting collection is to be found in Smith's leading cases in a note to the Duchess of Kingston's case to the like effect. Were one to refuse to see here an Estoppel in pais one would infringe the maxim *nullus commodum capere potest de injuria sua propria* by allowing advantage to be taken by the Government of its own misleading conduct. It would reasonably seem to the possessor that the inactivity of the Government was due to an implied admission by the Government that the larger part of the lands were not cereally cultivable; especially as we shall see the Government was unable to prove that the lands were cultivable cereally, which is the kind of cultivation we are speaking of now.

Turning now to the question of cereal cultivation we come at once to the explanation of why these lands did not devolve upon the State in 1883, and were not confiscated under the present Law until 1921, and the further reason that arose in 1915 upon which the Court below properly relied as completely precluding the Government from legally doing an act of confiscation, namely, that within the terms of a Government notice No. 12845 published in the *Gazette* of 26th February, 1915, p. 8814, the possessor did do or has done what the Government announced it would consider as equivalent to cultivation, or rather would consider as cultivation as distinguished from cereal cultivation. Here the Crown appears to be in a dilemma as regards cultivation. If the lands were cultivable cereally in 1880 and for three years after the acquirement of them, why was it not averred that they had already devolved upon the Beit-ul-Mal; if they had already devolved by the operation of the old law no present act of confiscation was necessary; if the act of confiscation was necessary then there is practically an admission that for some years after 1880 the lands were not cereally cultivable, and it would then be interesting to know when they did become cereally cultivable.

The Court below found that certain portions or parts of the various lots were cultivable—the Court obviously meaning cereally cultivable,

a limitation of meaning suggested by a witness of the Crown and accepted by the King's Advocate in the Court below. It is difficult to accept these findings for from the judgment it is impossible to separate the legal factors that may have operated on the mind of the Court from the non-legal. Rather indeed it would appear that the Court did not base its findings upon the evidence in the case. Before the trial the learned Judge inspected the lands and on his own inspection came to certain conclusions as to their cereal cultivableness. The criterion in his mind was whether "a peasant farmer could have cultivated "these lands regularly with success." Without quarrelling with the criterion one would like to know what is meant by "success." Presumably he means with such result as would not deter or prevent the farmer from cultivating the lands repeatedly with or without a fallow time; that is to say there would be an economic return. Yet the impression left on the mind by the evidence proper is that there could not have been an economic return here. We are left in ignorance as to how the Judge applied the criterion on his inspection: apparently he drew his inference merely by glances of the eye. A Court often inspects the subject of litigation in order to appreciate and understand the evidence that may be given, but it is quite another matter for a Court to give evidence to itself especially upon such a difficult business as agriculture, and the Court could not be cross-examined as to its qualifications for giving evidence to itself, or as to the completeness of that evidence. It is significant that both sides at the beginning of the case declined to accept the inference of the Court. In his judgment the Judge intimates that although he has listened to the evidence proper, his findings are based mainly on his own original inferences, that is as much as to say findings not based upon the evidence. Under these circumstances one must look to the evidence of the witnesses themselves.

I agree with the Plaintiff that the onus of proof lay upon the Crown to show that the lands were capable of cultivation though probably no real difficulty was caused by the Court calling upon the possessor first. How is the onus discharged? I have already remarked that there was no averment that the lands had been cereally cultivated before acquirement by the possessor; and also upon the fact that there is no averment that by reason of non-cultivation the lands had devolved upon the State under the former law, and no averment as to when they became cultivable. Who are the witnesses? None of the experts of the Agricultural Department are produced—neither the Director of Agriculture or any of his experts whether scientific especially or practical especially, *e.g.*, the Manager of the Government Athalassa farm. But we have a shepherd, now a cafeji, Shefket Mehmed Aly, who grazed a flock more than forty years ago in the vicinity and noticed that a

former possessor cultivated parts of Livadhia lands, for how long and with what result he does not say; and it would seem that the land he was to give evidence about had to be pointed out to him by another witness one Mr. Haji Ioannou. Another witness Savas Patsalides who considers that lot 3 was cultivable but admits he is not a farmer and has no lands of his own. One Paraskevas Agathangelou is a practical farmer and giving evidence as to lot 4 states it is cultivable and though the best parts might yield 15 kiles per donum, would yield on an average four kilos of crop per donum only—apparently a result that would not pay expenses of cultivation. The King's Advocate withdrew any claim to this lot 4 before this Court. We have then the evidence of Mulla Husni Ibrahim about sixty years of age and an assessor of tithes but not a farmer. When a lad at school he used to pass by the Livadhia lands and remembers that there was some cultivation long ago by two farmers but for how long and with what result he does not know. But even this witness does not put any average yield higher than four kilos per donum. He was escorted round the land by Mr. Haji Ioannou on the morning of the very day he was to give evidence and Mr. Haji Ioannou pointed out to him the boundaries, etc. One cannot possibly trust to such antique and ambiguous evidence. The case of the Crown really depends on the evidence of the two Tapujis Mr. Costas Haji Ioannou and Mr. Papa Petrou, both intelligent and reliable witnesses no doubt yet neither practical farmers. The former made the excellent plans in the case, yet when they declare that this plot or that plot is cultivable they are content with the use of the word, and not one syllable do we have as regards probable yield except that in regard to the Livadhia lands the whole cultivable area would produce four to five kilos per donum in Mr. Haji Ioannou's opinion. Mr. Papa Petrou does not give any opinion I think as to whether it would pay to cultivate or not; he looks not to ascertain whether agriculture can be carried on at a profit, but whether anything can be grown from which tithe can be taken whether it pays the farmer to grow or not. It would appear a ridiculous interpretation of the law to say that lands are cultivable lands though they can only be cultivated at a loss. One cultivates to gain a livelihood or a profit not to incur economic and domestic disaster. The King's Advocate felt the difficulty I think when he confined ultimately his claims for confiscation to very moderate dimensions.

Having regard to the evidence, the lack of averments and the history of the lands it would not have been possible I think for a Court to have held that the Government had proved that the lands were cereally cultivable. Certainly when confronted with the evidence of the Plaintiff, Respondent here (or as he may more properly be called the possessor) and in view of the history of the land not having been cereally

cultivated even when expenses were quite low, it must be held that the Government case cannot possibly rest on the ground of lack of cereal cultivation of these lands, the view of cultivation on which the Government relied in the Court below. It is quite clear that on the evidence adduced there is no proof that the lands are cultivable lands. It is not amiss in this connection to note the admitted fact that the fallow tax of Ordinance XV. of 1879 was never applied to these lands—in itself an almost conclusive proof that these lands were not regarded as cereally cultivable. I omit here other matters sufficiently dealt with in the judgment of the Chief Justice, though one may remark that it is rather an ironic circumstance in the case that for years past the Government has regularly accepted and included in its public accounts for the Kyrenia Hospital all the advantages derivable from using a part of this land as pasture for kine, the yield of the milk of which has been utilised in various ways for the benefit of the revenue of the Hospital. Following the Court below we have dealt with cultivation so far as meaning cereal cultivation but even though with this meaning the meaning as already stated first attached to the term by the Government case—it would not be possible for the Government to succeed on the evidence before us yet it is an undue restriction of interpretation. Even if we assume that originally cultivation meant that of subjects that produce taxable products, tithe has now been abolished on many subjects that formerly paid tithe without the law also forbidding the continued cultivation of such subjects. *See* in this connection the Customs, Excise and Revenue Law, 1899, Sec. 27. Surely it is not arguable that the continued cultivation of such subjects is in fact non-cultivation rendering the lands confiscable. The Government has settled this matter for itself however by the announcement of 1915, already referred to stating what it includes in cultivation. The King's Advocate has tried to evade the effect of this announcement by placing a strained interpretation on the wording of the notice, arguing that the use of the word " and " implies a double condition; the owner (possessor ought to have been the term) (*a*) must plant and (*b*) allow to grow what he has planted, in other words, that no matter what trees or shrubs are allowed to grow unless they have been planted by the " owner "—or as the King's Advocate suggests his predecessor in title—there is no cultivation under the notice. Without staying to indicate that the mere use of the word " shrubs " in the notice intended for perusal by Cypriot farmers and therefore worded popularly —ousts such an interpretation since shrubs (thrumbia, shinyia, perica—important products) are not planted it would be a decidedly curious method of encouraging the growth of trees and shrubs to confiscate the land on which they grow because they had not been planted. The mere statement is enough

to show that the verbal interpretation that the King's Advocate puts on the notice is incorrect, and that the obvious meaning is to encourage possessors of lands to allow natural growth to proceed as well as to encourage actual planting. It is not disputed that the possessor has acted under this notice; here no exception can be taken to the inference drawn by the Court below on its own inspection because the growth of trees and shrubs was patent to the eye. The Government cannot derogate from its own express notification and the appeal must be dismissed with costs.

The King's Advocate asks what is to be the future effect of the Court's decision in regard to these lands. One must leave future circumstances for future decision.