

Solicitor-General submitted that in view of the admissions the burden of proof was thrown on accused under section 11 of Law 8 of 1881.

HELD: That clause 75 of the Cyprus Courts of Justice Order in Council, 1882, lays down the procedure to be followed in the event of an accused person pleading not guilty, and that that Order is to be followed in preference to earlier legislation.

Query: Whether this does not also apply to subsequent legislation. See *Police v. Nissiforo Sava*.

Police v. Michael Yorgho Katsiamali, Vol. 10, C.L.R., p. 92, referred to.

Further held that the charge should have been brought under section 28 of Law 22 of 1879, which defines a specific offence by a person holding a permit and not under section 6 which deals with a person not holding such a permit.

Appeal allowed, conviction and sentence set aside on ground of irregularity.

DICKINSON,
ACTING C.J.
&
LUCIE-SMITH,
ACTING P.J.
FOREST
DEPARTMENT
v.
YANNI
LOIZO

[DICKINSON, ACTING C.J. AND LUCIE-SMITH, ACTING P.J.]

POLICE

v.

SALIH ALI BEKTASH, OF PLATANI.

CULTIVATION OF ERAZI MEVAT—OTTOMAN PENAL CODE, ART. 254—LAND CODE, ART. 103—TRANSLATION—NOTIFICATION NO. 7038 OF 23RD FEBRUARY, 1904—NO LEGAL AUTHORITY—STATED CASE—QUESTIONS OF LAW ARISING AT TRIAL—LAW 1 OF 1886, SECTION 47 (1)—OBITER.

DICKINSON,
ACTING C.J.
&
LUCIE-SMITH,
ACTING P.J.
1927
April 6

This is a case stated by the Magisterial Court of Lefkoniko.

The accused was charged before that Court on the following charge:—

That " he, on or about the month of November, 1925, at the locality ' Stiraka,' near " Platani, did encroach on the Hali land by ploughing six donoms of the said Hali " land, thus destroying ten pine trees and caused £2 damage," contrary to Art. 254 of the Ottoman Penal Code and Gazette Notification No. 7038 published in the Cyprus Gazette of the 23rd February, 1904.

It is admitted that the accused in 1925 entered into, ploughed up, and cultivated Erazi Mevat registered in the name of the Government.

The Magistrate states that he is not satisfied that any damage was caused by the accused to the trees on the land in question. He reserves the following questions for this Court:—

1. *Is accused's act punishable?*
2. *If so, can Ottoman Penal Code, Art. 254 and Notice 7038 of the 23rd February, 1904, apply?*
3. *If not, what law can be applied?*
4. *Matters being so, can Law 8 of 1881, apply?*

DICKIN-
SON,
ACTING C.J.

&
LUCIE-
SMITH,
ACTING P.J.

POLICE
v.
SALIH ALI
BEKTASH

For the Accused no appearance.

For Police *Solicitor-General*.

Judgment : The charge is based on Art. 254, Ottoman Penal Code, which enacts, *inter alia*, that any person disobeying the order of the Government shall be liable, etc.

The Solicitor-General complained that the accused disobeyed the order of the Government contained in a Government Notice (No. 7038) and published in the *Cyprus Gazette* No. 784 of the 26th February, 1904 which runs as follows:—

“ HALI LAND.

“ Notice is hereby given that no waste (Hali) lands may be broken up or cultivated or in any manner occupied, unless and until permission in writing has been previously obtained from the Commissioner of the District.

“ Application for permission as aforesaid should be addressed to the Commissioner and should specify the position, extent and boundaries of the land it is desired to acquire.

“ No right of title in Hali land broken up, cultivated or occupied without the previous permission of the Commissioner will be recognized or registered at the Land Registry Office, and any person acting in contravention of this notice is liable to be prosecuted according to law.”

Now the Solicitor-General failed to point out under what legislative authority this notice was issued, and we cannot find any authority ourselves and consequently we are of opinion that it can have no legislative force and most certainly cannot create a new criminal offence.

Art. 103 of the Land Code sets out the ways in which *Erazi Mevat* may be cultivated by a farmer. The first part of this article describes the way in which a farmer may apply for permission to cultivate such lands and if he succeeds in getting such permission the article states he shall hold the land free of any fees. The latter sentence of the article makes provision where a farmer has entered such lands and cultivated them without first obtaining permission, and states as follows:—

“ If a person cultivate this land and turn it into arable land there is taken from him the Tapou value of the land, it is granted to him, and a Tapou Sened given to him.”

The Supreme Court in their judgment in *Sava Haji Kyriako v. Principal Forest Officer* (Vol. III., C.L.R., p. 97), held that these words were not mandatory, and that they were optional only; we presume this finding is based on the rule that a mandamus does not lie against the Crown.

However, this article of the Land Code made no special provision for the ejection of the cultivator of such lands, and it would appear that the remedy of the Crown to effect this would be by means of a civil action for trespass.

Inasmuch as the notice set out above, sought to prevent the cultivation of Erazi Mevat, which the Land Code clearly tended to encourage, we must hold that, as it had no legal force, it is not such an order, the disobedience to which would create an offence.

The Magistrate has, in stating the present case, propounded a series of questions of law, which, however interesting academically, cannot be said to arise directly from the charge on which the accused is being tried. We consider that Magistrates should confine themselves to questions of law strictly arising at a trial. Any decision given by this Court on questions Nos 3 and 4 would only be "obiter"

Further as there is no necessity for the accused to appear or be represented before this Court at the hearing of a case stated, and, as a fact the present accused did not appear, we feel that to give a decision on the points of law raised, after hearing the arguments of one side only, would be unwise and we decline to do so

In reply, generally, to questions Nos 1 and 2, we say that the charge against the accused and the evidence adduced in support thereof does not in our opinion disclose any offence under Art 254 of the Ottoman Penal Code

DICKIN-
SON,
ACTING C J.
&
LUCIE-
SMITH,
ACTING P.J.
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BEKTASH

[NETTLETON, C.J AND DICKINSON, P J.]

THE FIRM A. G. PILAVAKIS, OF LIMASSOL

v.

THE BANK OF ATHENS, LIMASSOL

NETTLE
TON,
C J
&
DICKIN-
SON,
P.J.
1927

February 9

C.I.F CONTRACT—CARGO—PARCEL—SALE OF CARGO—DELIVERY OF PARCEL—EFFECT OF—KNOWLEDGE OF PURCHASER WITHOUT ANY OBJECTION, AMOUNTS TO WAIVER—LIABILITY OF A HOLDER FOR VALUE OF A TRADE BILL—DOCUMENTS ATTACHED—GOOD "TENDER" OF DOCUMENTS—AS TO "TENDER" ON DUE DATE—"ON DOCKING OF STEAMER"—STEAMER DOCKED NOVEMBER 30TH—TENDER NOVEMBER 29TH, BAD—TENDER DECEMBER 3RD, BAD—AS TO TENDER OF NECESSARY DOCUMENTS—BILLS OF LADING AND/OR DELIVERY ORDER—POLICY OF INSURANCE AND/OR LETTER OF GUARANTEE—A "CERTIFICATE" BY HOLDER OF BILL NOT A "LETTER OF GUARANTEE"—A LETTER OF GUARANTEE MUST BE A DOCUMENT UPON WHICH THE GUARANTORS COULD BE SUED—MUST BE ISSUED BY UNDERWRITERS