[THOMAS, ACTING C.J., CREAN AND SERTSIOS, JJ.]

1931.
Jan. 2.

POLICE

v.

IOSIF KOURRA.

POLICE
v.
KOURRA.

Criminal Law—Two offences charged in one count—Uncertainty of finding—Wrecks Law, 1886, *Sections* 9 *and* 15—" *Wreck* ".

K. was charged under Sections 9 and 15 with being in possession of timber washed ashore and failing to deliver it to the Receiver of Wrecks. Evidence was given by two Forest Guards that they found appellant in possession of two " lattathes " which they believed had been washed ashore. Appellant was found guilty, but under which section was not specified.

Held : that the conviction was bad because (1) two offences were charged in one count, (2) the finding was bad for uncertainty, and (3) the goods were not proved to be wreck.

Liatsos for applicant.

Pavlides, Crown Counsel, for the Crown.

Liatsos : The applicant was charged under Sections 9 and 15 of the Wrecks Law, 1886. He cannot be convicted under Section 9 because there is no evidence to show that a ship was wrecked or that the goods were wreck. I submit that insufficiency of evidence is an illegality within the meaning of Section 20 (1) of the Criminal Evidence and Procedure Law, 1929. The conviction should be set aside as there are no facts supporting the charge.

Pavlides : Applicant was charged under Sections 9 and 15, and the charge should be treated as being of two counts under Sections 9 and 15 respectively. The Court's finding does not say on which count the Court found the applicant guilty, and I submit that the finding is a finding of guilty on both counts. In the case of informations a general finding is valid : Cyprus Courts of Justice Order, 1927, Clause 166.

It is doubtful if it is correct to charge one set of facts as contravening two separate sections. The applicant would not be prejudiced if the Court will treat Section 9 as superfluous and deal with the case as a conviction under Section 15. The Crown does not support the conviction under Section 9.

Definition of " wreck " ; any goods abandoned in sea or on seashore are wreck within the meaning of Section 1 (*d*) of the Law. I submit that there is evidence to bring the facts within Section 15.

Liatsos in reply : In the present case the wood was not found in the sea or on the shore, but 1½ miles from the shore.

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JUDGMENT :—

THOMAS, ACTING C.J. : The applicant was charged before the Magisterial Court of Kyrenia with being in possession of two timbers (lattas) which were washed ashore and failing to deliver them to the Receiver of Wrecks, and thus committing offences under Sections 9 and 15 of the Wrecks Law, 1886.

Two Forest Guards gave evidence that at a spot over a mile distant from the shore they found the applicant in possession of a " latta " which they believed to have been washed ashore. Appellant gave evidence denying that he had possession. The Magistrate found applicant guilty and imposed a fine. The applicant now applies to this Court to set aside the conviction on the ground that there is no evidence to show that a ship was wrecked, which is essential to support a charge under Section 9, or that the goods were " wreck " within the meaning of the Law. Counsel for the Crown does not support the conviction under Section 9, but submits that there is evidence to show that the goods are " wreck " and thus sustain a charge under Section 15.

It is an old established rule of criminal pleading supported by many authorities : see cases cited in Archbold's *Criminal Pleading*; 27th Ed., p. 51, that each count must only allege one offence, and if a count avers more than one offence it is bad for duplicity. The charge in the present case is stated to be in contravention of both Section 9 and Section 15 of the Law. Section 9 makes it an offence punishable by a fine not exceeding £100 for any person who secretes or fails to deliver to the Receiver of Wrecks any " cargo or article belonging to the ship or boat that may be washed ashore, or otherwise be lost or taken from the ship or boat." Section 15 sets out Rules to be observed by any person finding or taking possession of wreck, and imposes a penalty of £20 for their breach. The finding of the Magistrate was " guilty ", without saying whether under Section 9 or Section 15. Such a finding is bad for uncertainty. (*Police* v. *Yona Christo*) (1).

A conviction under Section 15 can only be supported if the goods are proved to be " wreck ". " Wreck " is defined in Section 1 to include four classes of goods, but subject to an important condition, viz.: " when found in the sea or any tidal water or the shores thereof." The evidence in the present case shows that the goods were not found in the sea or on the shores thereof, and, therefore, not within the meaning of " wreck ".

The charge is bad in law as it charges two offences in one count ; the finding is bad in that it does not state of which offence the accused is found guilty, and further the conviction is bad in that there is no evidence to show that the goods

(1) 10 C.L.R. 128.

found are "wreck" within the meaning of the Law. I am, therefore, of opinion that the application should be allowed and the conviction quashed.

CREAN, J.: I agree with the judgment of the Acting Chief Justice in this appeal. It sets out clearly and concisely the reasons why this conviction cannot be supported.

If a statute prescribed proceedings for various offences specified in several sections, a conviction is bad which leaves it uncertain under which section it took place. In this case the appellant was charged under two Sections and the finding of the Court was "guilty". The judgment does not say of which offence he was guilty and leaves it uncertain under which section it took place.

It is clear on the authorities, that when two offences are charged in the same count of an indictment, such indictment is bad on the ground of duplicity (1).

If a person is charged with two offences in the same count, as the appellant in this case, it is unfair to him; because he does not know which offence the prosecution is insisting on against him. He may concentrate his efforts on defending himself against one of the offences charged and be found guilty of the other. If the prosecution join two offences in the same count it obviously hampers and prejudices the accused on his trial, and consequently the accused ought not to be charged with more than one offence in the same count, except where the same facts constitute several felonies or where a statute permits the joinder of counts for distinct felonies.

I agree that the appeal ought to be allowed.

SERTSIOS, J.: I concur in the judgments just read, and agree that the conviction is bad and should be set aside.

Conviction quashed.

(1) *John Molloy*, 15 Cr. App. R. 170.