kind which would bind the syndics as much as it did the bankrupt himself, more particularly as by their conduct they acknowledged its existence and must be taken to have ratified it.

Lodging the proof of debt did not prejudice the appellant's position. He filed his claim before the crops were harvested. They might be a total failure, and he must provide for the possible objection to verification of his debt, the amount of which was uncertain and contingent upon the value of the crops, that the proof had not been lodged in time.

As to costs, the appellant chose to set up a defence (that of pledge) which he must have known to be baseless, and in the circumstances we think he should be left to pay his own costs. In allowing the appeal, therefore, we make no order as to costs.

Appeal allowed without costs.

[BELCHER, C.J., THOMAS AND FUAD, JJ.]

POLICE

v.

MUSTAFA SALIH.

Criminal Procedure—Magisterial Court—Conviction of offence not charged—Powers of Supreme Court—Law 12 *of* 1929, *Sections* 14 *and* 20: *C.C.J.O.*, 1927, *Clause* 101.

Accused was charged before a Magisterial Court with theft from the person (C.C. Code, Article 256 (*a*)) but was convicted of simple theft (Article 252) which offence was disclosed by the evidence but not charged.

Held, that the conviction was illegal within the meaning of Law 12 of 1929, Section 20 (1), and must be set aside: but that the Supreme Court had power under Section 20 (4) *ib.* to find accused guilty of simple theft.

Held, further, that a convicted person who is entitled to appeal under C.C.J.O., 1927, Clause 101, is not debarred thereby from applying to have the judgment enquired into under Section 20 (1).

Application to enquire into judgment of Magisterial Court (Nicosia No. 8717/29).

Behaeddin for applicant.

Pavlides, Crown Counsel, for the Crown.

The judgment of the Court was delivered by the Chief Justice.

1929.
Jan. 3.

POLICE
v.
SALIH.

JUDGMENT :—

BELCHER, C.J.: Accused was charged with stealing from the person, a charge not sustained by the evidence, and convicted of simple theft which was the offence disclosed, if any. The Magisterial Court has no power to convict of what is not charged even though the offence is a lesser one of the same general character as that specifically charged, and we must set aside the conviction. But Section 20 of Law 12 of 1929 gives us in such a case the same powers as by reason of Section 14 we should have on appeal, and " to make such further or other order as seems to the Court just." What order justice requires is clear enough from the evidence : it is a finding of guilty of simple theft. I think we can do this under Section 14 without resorting to the " drag-net " in Section 20 as quoted above, for although the word " other " in Section 14 seems at first sight to prevent us so finding, the absurdity which would at once arise forces us to look for some wider interpretation. The meaning of Section 14 seems to us to be that we are empowered by it so to supplement the restricted powers of the Magisterial Court as to ensure justice being done without need (except in certain cases not here relevant) for any further trial. The Crown has suggested that applications to this Court to inquire into convictions by Magisterial Courts are only open to those convicted persons who for one reason or another are debarred from appealing under C.C.J.O., 1927, Clause 101. We see no reason in Section 20 or elsewhere to limit the very wide expression " any person " in such a way. The application is allowed and the finding of the Magisterial Court set aside as being outside that Court's powers, and we substitute for it our own finding of guilty of simple theft : and we pass the same sentence as the Magisterial Court did, except that the fine is reduced from £10 to £5.

Finding of Magisterial Court set aside : finding of Supreme Court substituted therefor. Sentence reduced.