

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

## POLICE

v.

CHRISTODOULO NICOLA.

1930.  
June 16.  
July 17.POLICE  
v.  
NICOLA.

*Criminal Law—Police Law, 1878, Section 64 (1) and (2)—Trespass—  
Ex post facto consent of owner.*

N. was charged with trespassing with 76 sheep upon the land of L. The entry upon the land was made without permission ; but later L. stated he had no complaint against the accused as no damage was caused.

Case stated for the opinion of the Supreme Court by the Magisterial Court of Nicosia (No. 3400/30) :—" The accused having trespassed on the land of one Eraklis Lambi without having the verbal or written permission of the owner, and the owner of the land subsequently appearing and saying that he has no complaint against the accused, under the circumstances can the accused be liable under the Law and be convicted ? "

*Held*, that the owner's consent given after the act was committed was no defence since the moment the accused entered upon the land without consent the offence was complete.

*Held* further, that the prosecution of persons for acts which cause no damage and are not complained of is an abuse of Court proceedings.

*Pavlidis*, Crown Counsel, for the Police.

## JUDGMENT :—

THOMAS, Acting C.J. : This is a case stated by the Magisterial Court, Nicosia, for the opinion of this Court. The accused was charged under Section 64 (1) and (2) of the Police Law, 1878, with trespassing with 76 sheep and goats upon the field of one Eraklis Lambi and thereby causing damage to the amount of one shilling. The evidence established that the accused entered with animals upon the field of Lambi. The owner of the field gave evidence to the effect that he had given the accused no previous permission to enter upon his lands, but that he had (that is, at the date of the hearing) no complaint against accused as no damage was caused to his crops or grass. The question for determination is whether a person who enters with animals upon the land of another without that other's consent can avail himself of the *ex post facto* consent of the owner as a defence. The answer is undoubtedly "No." The charge relates to a definite time, and the moment the accused enters upon the land without the owner's consent the offence is complete.

It was stated in evidence by the owner that he had no complaint because no damage had been caused to his property. I know of no precedent for a prosecution for

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the infringement of a bare legal right that has caused no damage either to the individual (who does not complain), or to the community at large. It is not a function of the Courts to hear cases for technical breaches of the law that cause no harm to anyone. I have been unable to find any reference to such a case in the English authorities or criminal law and procedure. I am at a loss to know on what principle or in whose interest such prosecutions are set in motion. If the practice were followed, any one plucking a single flower from another's garden, taking a pin from his house, or dipping his pen into another's ink-well, would find himself in the dock to answer a charge of larceny. Fortunately there is in the hands of judges and magistrates a salutary means of checking proceedings brought before the Court without justification, and thus an abuse of process. In all cases which they consider are brought without justification, or are frivolous or vexatious, they have it in their power to impose no punishment.

In my opinion the answer to the question submitted should be in the affirmative.

CREAN, J. : I have had the advantage of reading the replies of the Acting Chief Justice to this case stated and with them I am in complete agreement.

Here we have the allegation that accused entered the lands of another with his sheep and by such entry caused some trifling damage to those lands. There was no assertion by the accused that he had the consent of the owner to this entry by him. Consequently his act of entry without permission is *prima facie* trespass.

Subsequent to this trespass the owner of the land said he had no complaint against the accused because no damage was caused to his crop.

Notwithstanding the attitude of the complainant in Court at the hearing of the case I think it must be held that so soon as a person enters the land of another without the consent or written permission of the owner he has committed an offence under Law 2 of 1878 and may be charged therewith and convicted.

The subsequent attitude of the complainant cannot alter the fact that an offence has been committed ; but, as pointed out very clearly by the Acting Chief Justice, the Court may take into consideration when passing sentence the amount of damage that has been done. The prosecution might also consider, where the damage done is very trifling, the desirability of instituting proceedings in the criminal court.

FUAD, J., concurred.

*Question answered in the affirmative.*