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THE MAYOR OF NICOSIA
v.
VASSILIS PAVLICCA.

[STRONGE, C.J., AND THOMAS, J.]

MAYOR, DEPUTY MAYOR, ETC., OF NICOSIA, *Respondents,*

v.

VASSILIS PAVLICCA, *Defendant-Appellant.*

(*Criminal Application No.* 35/35.)

Criminal Law — Summons — Duplicity — Two distinct offences alleged in one count — Adjudication of guilty generally where more than one offence charged — Period of several years assigned as date on which offence was committed—Conviction quashed.

The appellant was convicted on a summons which charged that he exercised from July, 1930, till December 31st, 1934, the occupation of a cart-driver for profit within the municipal limits of Nicosia without having obtained a licence or without having renewed his licence contrary to section 171 of the Municipal Corporations Law, 1930.

Held, the count was bad in that it charged two offences in the alternative, and held also, that the general finding of guilty there being more than one offence charged was bad for uncertainty.

Held, further, that the period—four and a half years—assigned as the date of commission of the offence was bad being both unreasonable and oppressive.

Application under Law 12 of 1929, section 20, to inquire into and quash a conviction of the Magistrate's Court, Nicosia, dated the 13th April, 1935. The facts so far as material are set out in the judgment of the Chief Justice.

Evangelides (with him *Djevahirdjian*) for applicant:

Summons states no offence, because it merely states the legal result of facts in saying that appellant carried on the occupation of a carter. It should have specified the facts themselves, to wit, the acts being done by appellant, so that the Court could decide whether they amounted to the offence: Paley Summary Convictions (9th Ed.) p. 495. The date assigned as that on which offence was committed is a period of four and a half years.

G. Chrysafinis for respondents:

As to specifying four and a half years as the date of the offence, in criminal application No. 49/1934 the charge was framed in exactly the same way, and the Supreme Court in that case said that, though it was of opinion the charge left much to be desired, it was unable to interfere with the decision. In case of a continuing offence over a long period it is unnecessary to specify a particular date as that of the commission of the offence.

Cur. adv. vult.

The Chief Justice read the following judgment with which Thomas, J., expressed his concurrence.

STRONGE, C.J.: This is an application under section 20 of Law 12 of 1929 to enquire into a judgment of the Magisterial Court of Nicosia of the 13th April, 1935, whereby the applicant was convicted upon a summons consisting of a single count charging him with exercising during the period from the 1st July, 1930, till the 31st December, 1934, the occupation of a cart-driver for profit within the municipal limits of Nicosia without having obtained a licence so to do from the Municipality of Nicosia or without having renewed his licence in contravention of section 171 of the Municipal Corporations Law No. 26 of 1930. That section makes it an offence for any person to exercise within the municipal limits any business or calling unless such person has (*a*) within a month of his beginning to exercise that business or calling obtained a licence so to do, or unless such person has (*b*) renewed within one month from its expiration a licence authorizing him to carry on such business or calling.

Two distinct offences are, as I read it, contemplated by the section—the one is the carrying on a business without having obtained within a month from beginning to do so a licence to carry on that business; the other offence created by the section is that of carrying on a business without having renewed a licence to do so which has expired. The proofs to establish each of these two offences will manifestly differ. The penalty imposed by the section for either offence is a fine not exceeding £5.

The summons in the present case charges both these offences in a single count and is consequently, in my opinion, bad for duplicity. On this point Paley on Summary Convictions (9th Ed., 1926 at p. 188) says—

> " Where a statute creates an alternative offence and the same penalty is imposed in either case it is indispensable that the information should state which offence is intended to be charged ".

The learned editor cites in support of this statement the case of *Cotterill* v. *Lempriere*, 1890, 24 Q.B.D., 634. In that case a bye-law provided that no smoke. . . . . should be emitted from tram-car engines so as to constitute reasonable ground of complaint to the passengers or public; and it was held that an information stating merely that the appellant permitted smoke to escape from his engine contrary to the bye-law was insufficient as failing to show whether the emission of smoke constituted a reasonable ground of complaint to the passengers or to a member of the public. Lord Esher, M.R., in the course of his judgment says at p. 639—

> " If the cases which have been referred to did not exist I should still be of opinion that the offence in the present case was not properly charged. Take the information. It may be that the smoke annoyed the

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passengers; whether it did or did not is a question of evidence; or on the other hand it may be that it annoyed the public. It is important that the defendant should know which of these two offences is intended to be proved against him."

Now over and above the fact of two offences being charged in a single count, there is the further fact that the learned magistrate in announcing his decision contented himself with a general finding of guilty, instead of an explicit finding of guilty in respect of one or other of the two offences charged; and, as decided by this Court in *Pierides* v. *Mayor of Famagusta*, 14 C.L.R., 138, and also in *Rex* v. *Pavli*, 14 C.L.R., 89, a conviction in this general form where several offences are charged is bad for uncertainty. In my opinion, therefore, the proceedings before the trial judge should, for the foregoing reasons be quashed on the ground of illegality.

The decision at which I have thus arrived is of course in itself sufficient to dispose of this application; and any reference to the further objections regarding the form of the charge relied upon by Mr. Evangelides as fatal to its validity is in all strictness superfluous. The importance, however, of one of these further points in relation to the charge makes it desirable, in my opinion, to state for the guidance of the legal profession the conclusion to which I have come concerning it.

The summons, instead of specifying a definite day and date as that on which the offence was committed, *e.g.* " that the accused on or about the day of , 19 , did exercise, etc.", charges the accused with exercising the occupation of . . . etc. " on or about the period from 1st July, 1930, till 31st Dec., 1934 "—that is to say, during an unbroken period of four and a half years. This form of statement, charging an offence as extending over four and a half years, instead of alleging it in the usual form as having been committed on a particular day and date in a given year, was defended by Mr. Chrysafinis, on the ground that where the offence is a continuing one over a long period, it is unnecessary to specify any single date as is done in the case of non-continuous offences. Mr. Chrysafinis cited no authority in support of his contention, nor did he refer us by way of illustration to any case in any of the various reports in which the offence charged is set out as having been committed between the first and last days of even a single year, a period much shorter than that specified in the summons in the present case.

In criminal application No. 49 of 1934, heard by this Court on the 18th July, 1934, the offence charged was similar to that in the present case, and the commission thereof was, as in the present case, laid as having been

over a period of considerable duration, the beginning and ending dates of which were specified. The Court expressed the view that the case left much to be desired. This appears to me to have been somewhat in the nature of an understatement because I have arrived at the conclusion that the argument of Mr. Chrysafinis is unsustainable and that a charge expressed in such a form as regards the date of its commission is bad for the following reasons:—

The argument of Mr. Chrysafinis that this is a continuous offence amounts, as I understand it, to this: that as the licence is a licence for the whole year, the offence is a continuing one for the whole of that year: in other words, a person once convicted and fined in any given year for trading without having obtained a licence cannot during the same year be again convicted and fined for so trading since that would be to punish him twice for the same offence. Now in *Flack* v. *Church*, 26 Cox C.C., 110, the facts were shortly that the respondent was convicted on the 18th April, 1917, for keeping a dog on the 28th March without a licence. He was subsequently summoned for keeping a dog on the 30th May without a licence. The magistrates were of opinion that, having been already convicted for keeping a dog without a licence for the year 1917, he could not again be convicted during the same year, and dismissed the charge. Section 5 of the Dogs Licences Act, 1867—the Act under which the prosecution was brought—provides that every dog licence shall commence on the day on which it is granted and terminate on the 31st day of December following. Darling and Avory, JJ., both concurred that the second summons was not an attempt to punish the respondent twice for the same offence, and Darling, J., pointed out that, while it was true that if the respondent had taken out a licence, it would have been good till the 31st December, 1917, yet the respondent was without a licence on the 28th March and was equally without a licence on the 30th May, and in each case the offence was keeping the dog without a licence on the particular day in respect of which he was summoned; though offences of the same kind, they were different offences. It appears to me reasonably clear from the reasoning in *Flack* v. *Church* that each day a person trades or carries on business without the licence required by Law No. 26 of 1930 he commits a separate and distinct offence.

I have examined in several volumes of Cox's Criminal Cases the cases of prosecutions for doing various acts without having obtained licences. If Mr. Chrysafinis's contention were well-founded one would expect to find, in some one or other of these cases, the commission of the offence charged laid as extending over a period. My investigation has failed

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to reveal a single case which would support Mr. Chrysafinis's contention. For instance, a charge for keeping a man-servant without taking out a licence is one which on the strength of his argument would naturally be expected to be laid as extending over a period of some duration, but in *Jones* v. *Wilson*, 1918, 26 Cox C.C., 265, a case of this nature, a definite day and date is specified. Similarly a charge for carrying on the trade of a dairyman without first having been registered is in *Easington R. D. C.* v. *Gilson*, 29 Cox C.C., 86, laid, not as extending over a period but as on a single date. In *Simmonds* v. *Pond*, 1918, 26 Cox C.C., 365, the respondent, it is true, was charged that between the 1st and 12th day of August, 1918, he, being a person who had been convicted on the 1st August, 1918, of an offence relating to the driving of a motor car and holding a car licence, did fail to produce such licence for the purpose of endorsement. This case, however, affords no support for Mr. Chrysafinis's argument; for the Act under which the prosecution was brought makes failure on the part of the convicted person to produce his licence for endorsement within a reasonable time after conviction an offence, and it is clear that the period from the 1st to the 12th August mentioned in the summons was selected by the prosecutor as being a reasonable time after the conviction on the 1st August.

Precedents are to be found in Archbold's Criminal Practice of indictments for keeping brothels and gaming houses. In these, as in the magisterial case of *Onley* v. *Gee*, (1861, 30 L.J.M.C., 222) the commission of the offence is charged as having been on the day of and on other days between that date and the day of . Reference to *Onley* v. *Gee supra* shows, however, that the latest date specified, *i.e.* November the 16th, was less than six weeks from the date first mentioned, the 5th October, a marked difference from the four and a half years mentioned in the summons we are now considering; and even as to *Onley* v. *Gee* the learned editor of Paley on Summary Convictions says at p. 475 that, though the conviction was supported, it is more regular to fix the charge to a certain day where it can be done. In addition to the foregoing considerations the course adopted in this case of specifying a period of four and a half years as the time of the commission of the offence is open to the further and, in my opinion, weighty objection that if at the hearing of the charge a similar vague and uncertain description of the time is admitted in the evidence, as in the present case where no allegation as to any specific day was made, then as pointed out in note (*e*) to Paley on Summary Convictions, 9th Ed., p. 320, "the defendant cannot have the benefit of proving his innocence without being driven to the hardship of accounting for every day

within the time specified, which, as the interval chosen may be of indefinite latitude, might be very difficult for him to do."

I expressly omit from consideration and except from this portion of my judgment such cases as *Onley* v. *Gee*. The decision as to the validity of the charge in that case and of the conviction thereon has no bearing on this application. I confine myself to saying that to charge a defendant with an offence which imposes on him the hardship of accounting for no less a period of time than four and a half years is unreasonable and oppressive, and so far as I am aware without authoritative sanction.

Conviction quashed.

[STRONGE, C.J., AND FUAD, J.]

PERICLIS GEORGHIOU, *Plaintiff-Respondent,*

v.

1. PAROUSIA MINA
3. EFTHYMIA KYPRI } *Defendant-Appellants.*

(*Civil Appeal No.* 3548.)

Water — Owned as mulk — Right of other persons to take such water for purpose of sale.

A claim of right to take water for the purpose of sale from water, the mulk property of another, is unsustainable.

This was an appeal by defendants 1 and 3 from a judgment of the Larnaca District Court (Dervish, D.J.) dated 3rd January, 1936. The plaintiff-respondent claimed to be by registration the owner of certain running water at Alethriko village and sought an injunction restraining the defendants from taking water therefrom for purposes of sale in Larnaca. The appellants alleged that the only water to which the respondent was entitled was the overflow from a tank in Alethriko village after the wants of the inhabitants and public had been supplied, and they claimed a right to take water from the spring at Alethriko village as had, they alleged, been done by the inhabitants of that village and the public at large from time immemorial. The appellants also counterclaimed that the respondent's registration be amended, if necessary, so as to limit the rights of the respondent to the overflow from the said tank. The trial judge granted the injunction asked for against defendants 1, 2 and 3 without costs. The judgment was silent as to the counterclaim. Defendants 1, 2 and 3 appealed and there was a cross appeal by the plaintiff to vary the judgment by dismissing the counterclaim and allowing plaintiff the costs of the trial.