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which killed the deceased. It is clear from this statement that the proposition that the Assize Court were really rejecting was the proposition that the shots which killed the deceased were simultaneous or almost simultaneous, that is to say, a proposition advanced by Dr. Rose. Mr. Viveash's evidence had no bearing on that proposition and consequently, though wrongly admitted, could not have affected the Assize Court's verdict. Its wrongful admission accordingly affords no reason why that verdict should be disturbed.

It only remains for us to say that we are fully satisfied that there has been no miscarriage of justice in this case and that this appeal must be dismissed.

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[JACKSON, C.J., AND HALID, J.]

(Nov. 23, 30, 1946)

ALEXANDROS TOFI KAMILARIS AND ANOTHER,

.. *Appellants,*

v.

THE POLICE, *Respondents.*

(*Criminal Appeal No.* 1827.)

Criminal Law—Identification of stolen property—Cyprus Criminal Code, sec. 297—Possession of property reasonably suspected of being stolen—Reasonable suspicion.

Section 297 of the Cyprus Criminal Code provides: "Any person who has in his possession any chattel . . . or other property whatsoever, which is reasonably suspected of being stolen property, is, unless he establishes to the satisfaction of a Court that he acquired the possession of it lawfully, guilty of a misdemeanour . . ."

To support a charge under this section, a reasonable suspicion that the property is stolen must be conceived by somebody while the property is still in the possession of the accused.

Appeal from a conviction by the District Court of Famagusta (Case No. 4932/46).

F. Markides for the appellants.

C. Severis for the respondents.

The facts of the case are fully set out in the judgment of the Court which was delivered by:

JACKSON, C.J.: This is an appeal from the decision of the Magistrate at Famagusta convicting the two appellants, under section 294 of the Criminal Code, of having taken upon themselves the control of a certain quantity of potatoes, the property of a named complainant, knowing them to have been feloniously stolen.

The appellants were also charged, under section 252 of the Code, with having stolen the potatoes and, in the alternative, under section 297, with having in their possession potatoes which were reasonably suspected of being stolen property.

On convicting the appellants under section 294, the Magistrate discharged them on both the other charges.

The facts are as follows. The complainant is a potato grower and, having uprooted his crop in June or July last, he kept the unsold quantity in his garden, covered with earth. These potatoes were of the variety known as " up-to-date." On the 30th July he noticed that a part of that stock, about 300 okes, was missing and informed the police. On the 9th August, the police found four sacks containing about 225 okes of potatoes of " up-to-date " variety in the house of a man named Costas Papa Haralambous who was a witness. This witness said he had bought them from a man named Rousso, to whom he had returned about 30 okes which were of inferior quality. Rousso's house was also searched on the same day and in it was found a corresponding quantity of inferior potatoes. Rousso said he had bought all these potatoes from the appellants. He is the brother of the first appellant, Kamilari. On being questioned by the police on the same day, both the appellants denied that they had ever sold potatoes to Rousso.

The police took possession of these potatoes and on the 13th August the complainant was shown them at the Famagusta police station. In his evidence at the trial he said, " I saw my potatoes at the police station ", adding, in apparent explanation, that they were similar to his.

Next day, the 14th August, both the appellants were charged with the larceny of these potatoes, the property of the complainant. The first appellant, Kamilari, who is a carter, then said that he had got the potatoes from a man called Arestis, a grower, who had told him to take them to Rousso, and that he had done so. The second appellant, Georghiou, simply said, on being charged, that he knew nothing about the matter and added, " Let them produce witnesses to have me convicted."

The man Arestis, called as a witness, said he had been offered potatoes by the first appellant, Kamilari, who had them in a cart, while the second appellant was standing by, but that he, Arestis, had refused to buy them. He also said that he had never sold potatoes to Rousso and that the first appellant had never carted potatoes for him.

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At the trial the first appellant, Kamilari, repeated his statement that he had got the potatoes from Arestis who had told him to take them to Rousso. The second appellant, Georghiou, gave evidence to the same effect.

Upon that evidence the Magistrate, having rejected both the appellants' stories of how they came into possession of the potatoes, convicted them on the second charge, under section 294 of the Code. This charge, as already mentioned, alleged that they took upon themselves the control of the potatoes, the property of the complainant, knowing them to have been stolen.

The Magistrate was, of course, fully entitled to reject the statements about these potatoes which the appellants had made at different times. But to sustain the particular charge on which the appellants were convicted, it was necessary that the Magistrate should have had evidence before him which entitled him to find, as an essential for conviction, that these particular potatoes had been stolen. The prosecution sought to establish a theft by the evidence of the complainant. The charge alleged that the potatoes were his and he claimed them in his evidence. The Magistrate believed that they were the complainant's for, on convicting the appellants, he awarded compensation to the complainant, as well as the sum realised when the potatoes were sold by the police. There was no suggestion that there had been a theft from anyone else. The question therefore is whether or not there was sufficient evidence to entitle the Magistrate to come to the conclusion that he reached. The appellants allege that there was no such evidence and this is the only ground upon which leave has been given to appeal. What was the evidence on this particular point?

The complainant said that he missed from his stock a quantity of potatoes of the "up-to-date" variety corresponding approximately to the quantity traced to the possession of the appellants. The potatoes which the Magistrate believed to have been traced to the appellants were shown to the complainant at the Famagusta police station and he said, on seeing them, that they were his, adding, as we have already mentioned, that they were similar to his. There was other evidence that these potatoes were in fact of the "up-to-date" variety and there was also evidence that this particular variety was grown at that time by many growers in that area.

In our opinion the complainant's evidence cannot be regarded as a positive identification of the potatoes as his property. Though he said they were his, he gave no

reasons for thinking so except that they were of the same variety, a variety common in the area. However unsatisfactory the appellants' statements may have been they were not sufficient to justify the inference of a theft from the complainant. Nor is there in this case any evidence of the kind that would entitle a Court to infer that these potatoes had been taken from a particular lot, even though their identity could not be precisely established. Examples of evidence from which such an inference could properly be drawn are given in the cases of *Reg.* v. *Burton* (English Reports, 169, p. 728) and *Reg.* v. *Mockford*, 11 Cox 16 (C.C.R.). In those cases the complainants could not even say that any of their property was missing. In this case the complainant did say that he missed a quantity of potatoes approximately the same as the quantity traced to the appellants, but identity cannot be inferred from quantity alone. It is true that in this case there was variety also, but that can add nothing to proof of identity when the variety is common in the area concerned.

We think, therefore, that there was not sufficient evidence in this case to entitle the Magistrate to infer that these potatoes had been stolen from the complainant. We must, therefore, hold that one essential of the charge upon which the appellants were convicted was not established and consequently that the conviction under section 294 of the Code cannot be sustained.

We were asked, however, by counsel for the Crown, if we came to the conclusion that we have now reached, to substitute for the finding of the Magistrate a conviction under section 297 of the Code. This section states, in effect, that any person is guilty of a misdemeanour and liable to six months imprisonment if he has in his possession any property which is reasonably suspected of being stolen property, unless he establishes to the satisfaction of a Court that he acquired the possession of it lawfully.

Section 297 of the Code is by no means easy to construe. Four previous decisions of this Court in cases arising under it and the similar provision which preceded it, indicate some of the difficulties that have been felt. These are the cases of *Rex* v. *Togli Nicola* (C.L.R. VIII, p. 4); *Rex* v. *Kalla* (C.L.R. IX, p. 13); *Police* v. *Haralambous and Yianni* (C.L.R. XIV, p. 109) and *Police* v. *Haralambous* (C.L.R. XVII, p. 76). It seems not unlikely that several further decisions will be necessary to make the operation of the section entirely clear. We shall not attempt, however, to go beyond what we conceive to be its application to the facts of this particular case.

In the first place it is to be observed that at no time while the potatoes were in the possession of the appellants was there any suspicion on the part of any one else that they were stolen property. Nor does the evidence suggest that there was, during that time, any ground upon which such a suspicion could have been reasonably entertained. The appellant was a carter and, according to evidence which the Magistrate seems to have believed, he took around openly in his cart potatoes of a common variety and offered them quite openly, first to a person who refused to buy them and then to the person to whom they were sold. This case is entirely different from the case of *Police* v. *Haralambous* (*supra*) which we ourselves decided. In this case no suspicion arose, or, so far as the evidence goes, could reasonably have arisen until some time, an uncertain time, after the appellants had parted with the possession of the goods which were the subject of the charge.

It was argued by counsel for the Crown that this interval did not matter and that even if, years after a person had parted with the possession of certain goods, a reasonable suspicion arose that they had previously been stolen, he could be called upon, under section 297, to account for his possession of them years earlier. And not only he, but also everyone else through whose possession the goods had passed, though some of these persons might long ago have forgotten how they came into possession of them and might consequently be unable to satisfy a Court that they had obtained them lawfully. We cannot think that the section is meant to go as far as that.

No doubt a charge under section 294, a charge of receiving stolen property knowing it to have been stolen, could be brought, if the evidence justified it, notwithstanding that the facts had not been discovered until some time after the accused had parted with the possession of the property, but section 297 has a different purpose.

Mr. Markides argued for the appellants that, to support a charge under section 297, a suspicion, and a reasonable suspicion, that the goods are stolen property must be conceived by somebody while the goods are still in the possession of the accused. In our opinion this argument is very much nearer to the real purpose of the section. It would certainly seem to be true of the corresponding provisions of the English statutes which were discussed in the case of *Hadley* v. *Perks* (1866 1 Q.B. 444), a case considered at length in this Court in the case of *Police* v. *Haralambous and Yianni* (*supra*). In the English case the indictment alleged that the goods found in the possession of the defendants "were then and there and were still reasonably suspected of being stolen and unlawfully obtained."

A recent English case in which the corresponding English statutory provision was considered, was brought to our notice by Mr. Markides. This was the case of *Flatman* v. *Light and others* decided last May (All England Law Reports, 1946, Vol. 2, p. 368). Describing the class of case for which the English section (section 24 of the Metropolitan Police Courts Act, 1839) was intended to provide, Lord Goddard said :—

"A man is found in very suspicious circumstances in possession of property. He can be called upon to give an account of how he got it. If the police, or whoever start the prosecution, are satisfied that it was stolen and could show it was stolen, there is no need to invoke this section. The section is designed to cover cases in which it is impossible to show at the time of the man's arrest that the property is stolen. It is not necessary to show that it is stolen, because the section deals with property which is 'reasonably suspected of being stolen or unlawfully obtained.' If that is so a man can be brought before the Magistrates and dealt with under this section."

It is of course true that the form of section 297 of our Code differs from the form of the English statutory provision and one at any rate of the limitations that the Courts have read into the English provision could not, in our view, be read into section 297 of our Code. We refer to the limitation of the English provision to street offences. There may be other differences as well but it seems to us that we can properly turn to the construction of the English statute for guidance on these points on which there is no reason to think that any intentional difference has been made in the corresponding section of our Code.

As we have already said, we think it is clear that the English provision is only brought into operation when a reasonable suspicion that property is stolen was conceived by somebody while the property was still in the possession of the accused. None of the Cyprus cases to which we have referred appear to us to go further on this particular point. The report of the case of *Police* v. *Haralambous and Yianni* does not, unfortunately, give the facts upon which the judgments were based but there is certainly nothing in the judgments which goes beyond that view. Nor is there anything of the kind in any of the three other Cyprus cases to which we have referred.

We have therefore to ask ourselves whether we ought now, on the facts of this particular case, to go further than this Court has previously gone in any decision on section 297 of which we are aware. Ought we to say, as we are asked to say by counsel for the Crown, that it does not matter if,

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while a person was in possession of property no ground existed for any reasonable suspicion on the part of anybody that the property was stolen, and nobody suspected that it was? Ought we to say that no matter how long after a man has parted with property such a suspicion arises, he can be called upon to account for his possession of it long before and punished if he cannot?

On the facts of this particular case we are not prepared to take that view or to go further, on this particular point, than previous decisions in this Court.

We must therefore decline to substitute a conviction under section 297 of the Code for the conviction under section 294 which we are unable to uphold. This appeal must therefore be allowed and the conviction quashed.

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[JACKSON, C.J., AND GRIFFITH WILLIAMS, J.]
(December 6 and 14, 1946)

THE POLICE, *Appellants*,
v.
MANOLIS CONSTANTINOU, *Respondent*.
(*Case Stated No.* 42.)

Criminal Law—Bigamy—Construction of Cyprus Criminal Code, section 165—Absence of marriage permit—Marriage ceremony performed by unauthorized person.

The accused, having a wife living, went through a form of marriage with another woman according to the rites of the Greek-Orthodox Church. Both the parties were members of that Church. The priest who performed the ceremony had previously been suspended from the exercise of his priestly functions, and the necessary permit for the celebration of a valid marriage had not been obtained from the Bishop, in accordance with the Canon Law of the Greek-Orthodox Church. The trial Judge found that, according to the personal law of the parties, the marriage was invalid because of these defects which were known to the parties, and that either of these defects alone would have invalidated it. The accused was accordingly acquitted of bigamy under section 165 of Cyprus Criminal Code.

Held: (1) Except for certain express provisions which section 165 of the Cyprus Criminal Code contains, the section is to be construed in the same way as section 57 of the Offences Against the Person Act, 1861, notwithstanding the difference in wording between the two provisions.

(2) Though the absence of the marriage permit would not have prevented the second marriage from being a bigamous marriage, the suspension of the priest did, since the ceremony was performed by an unauthorized person and, according to the personal law of the parties, was not capable of producing a valid marriage. Consequently, the accused was not guilty of bigamy.

Judgment of the President, District Court, affirmed.