

(May 13, 1954)

1954
May 13

COSTAS PARTASSIDES, VASSOS PAPAPOPOULOS,
EMILIOS FRANGOS, STELIOS PAPAPOPOULOS,
ERACLIS MICHAELIDES, NICOS ARGHYRIDES,
CHARALAMBOS SOLOMONIDES, AHMED M.
BERBEROGLU, RAMADAN DJEMIL, ALL OF
LIMASSOL, AS APPROPRIATE AUTHORITY FOR
THE MUNICIPAL AREA OF LIMASSOL, UNDER
THE STREETS AND BUILDINGS REGULATION
LAW, CAP. 165, *Applicants,*

COSTAS
PARTASSIDES
AND OTHERS
v.
VERONICA G.
GEORGALLIDES.

v.

VERONICA G. GEORGALLIDES, *Respondent.*

(Case Stated No. 94)

Mens Rea—Infant prosecuted for acts of guardian—Streets and Buildings Regulation Law, Section 3 (1) (b) and Streets and Buildings Regulations, 1946, regulation 7.

A guardian of an infant under the authority of the Court borrowed money and erected a block of flats on behalf of the infant. Proceedings were brought against the infant for erecting the flats in contravention of regulation 7 of the Streets and Buildings Regulations, 1946, and section 3 (1) (b) of the Streets and Buildings Regulation Law. The infant had no control over her guardian or over the house which the guardian erected. The Magistrate acquitted the defendant.

Upon a case stated to the Supreme Court,

Held: In the case of certain statutory offences, a man is punished for the criminal acts of his servants or even for defects in his business arrangements although those acts are done without his knowledge or consent. In such cases *mens rea* need not be established. But a man should not be punished for the acts of another whom he cannot reasonably be expected to influence or control.

Magistrate's decision upheld.

Reynolds v. Austin & Sons Ltd., 1951, 1 A.E.L.R., 606 applied.

Appeal by the Municipal Council of Limassol from the decision of the District Court of Limassol (Case No. 10163/53).

Chr. Demetriades for the applicants.

G. Cacoyiannis for the respondent.

Judgment was delivered by :

HALLINAN, C.J. : Proceedings were brought against the respondent in this Case Stated by the Municipal Council of Limassol, and there were two counts in the charge against

1954
May 13

COSTAS
| PARTASSIDES
AND OTHERS
v.
VERONICA G.
GEORGALLIDES.

the defendant ; first, that she erected a building without a permit contrary to section 3 (1) (b) of Cap. 165, the Streets and Buildings Regulation Law, and the second count was that she had erected a building contrary to regulation 7 of the Streets and Buildings Regulations, 1946, in that the height of the building relative to the width of the street upon which the building abutted was contrary to the regulations.

The learned Magistrate in his Case Stated found that the defendant was an infant of 16 years of age, that her mother was her legally appointed guardian, and that by an order of the Court her mother had been authorised to borrow certain moneys with which the mother erected a block of flats ; and it was in respect of this building which had been erected by the guardian that these proceedings were brought. The learned Magistrate held that the acts or omissions complained of were done solely and exclusively by the guardian and acquitted the defendant.

It was contended by the Municipal Council that these statutory offences, the subject-matter of the charges, were of the kind where it is unnecessary for the prosecution to prove *mens' rea*, and that the defendant being the owner of the buildings which had been erected contrary to law, was responsible ; it is on this point that the Magistrate has stated a case. In our view this point has been decided in substance as long ago as 1835 in the case of the *King v. Manners Sutton* (3 Ad. and El., 596) where an infant was charged with the repair of a bridge, and it was held :

1. That although the infant was actually seised, yet, being so by the possession of his guardian, he was not such owner or occupier of the land, as to be chargeable by indictment for non-repair of the bridge.
2. That the guardian was such an owner and occupier.

Generally speaking, the cases on statutory offences which do not require *mens rea* fall into two classes : first, where the person charged is the person who has actually done the act complained of, and, even though he entertained a belief of the existence of facts which, if true, would have made the act charged against him innocent, nevertheless he can be found guilty. The other class of case is where the act, the subject-matter of the charge, is not done by the person charged but by another. There, the reason for making a man responsible for the acts of another when he was not aware of these acts being done, is stated in the judgment of Devlin, J., in the case of *Reynolds v. Austin & Sons, Ltd.*, 1951, 1, All England Law Reports, 606, at page 611:—

1954
May 13

COSTAS
PARTASSIDES
AND OTHERS
v.
VERONICA G.
GEORGALLIDES.

“ Thus, a man may be made responsible for the acts of his servants or even for defects in his business arrangements, because it can fairly be said that by such sanctions citizens are induced to keep themselves and their organisations up to the mark. Although in one sense the citizen is being punished for the sins of others, it can be said that, if he had been more alert to see that the law was observed, the sin might not have been committed. If a man is punished because of an act done by another, whom he cannot reasonably be expected to influence or control, the law is engaged, not in punishing thoughtlessness or inefficiency and thereby promoting the welfare of the community, but in pouncing on the most convenient victim ”.

The reason why the law dispenses with *mens rea* in certain cases where the act done is committed by a person other than the person charged, is entirely absent in this case, for the defendant had no control over her guardian or over the house which the guardian had erected.

In Reynolds case the Ministry of Transport sought to make Messrs. Austin, the proprietors of a motor-coach, liable for a breach of law in respect of the motor-coach due to the act of a person who was not either their agent or servant. Lord Goddard, at page 609, answered this contention in these words:

“ Unless compelled by the words of the statute so to hold no court should give effect to a proposition which is so repugnant to all the principles of criminal law in this kingdom. This is not to throw any doubt on the well-established principle that, if there is an absolute prohibition and the prohibited act is done, a penalty is incurred, but hitherto that doctrine has never been applied, as far as I know, to a case where the prohibited act is not that of the defendant, but that of some person over whom he had no control and for whom he had no responsibility.”

In the present case the guardian is not either the agent or the servant of the infant respondent. In our view the learned Magistrate was correct in his determination of law, and therefore we see no reason to alter the order which he made in dismissing the charges against the respondent.

The respondent is entitled to the costs of this appeal which we assess at ten guineas.