

a person, even though he is an independent contractor, and even though he acts in excess or disregard of his authority, the occupier is vicariously liable. But what shall be said of persons lawfully upon the defendant's land with his permission, but without authority to bring upon it, or to deal with, dangerous things—for example, the members of his family, his servants, his guests, or licensees permitted to use the land? It is submitted that for the acts of all such persons in bringing or keeping dangerous things on the premises, or in meddling with such things already on the premises, the occupier is liable under the rule in *Rylands v. Fletcher*."

Winfield (6th Edition, 600) refers to this passage in Salmond and doubts whether the owner or occupier should in all cases be responsible for guests or licensees on his land and states:

"It would be harsh to hold a person liable for the act of every casual visitor who has bare permission to enter his land and of whose propensities to evil he may know nothing; e.g. an afternoon caller who leaves the garden gate open or a tramp who asks for a can of water and leaves the tap on."

Whatever may be the position with regard to guests or licensees, we have no doubt that the defendant in this case must be held responsible for the acts of his children in starting a fire in the month of June on open land in the defendant's occupation.

The appeal is, therefore, dismissed.

[HALLINAN, C. J. and ZANNETIDES, J.]
(September 25, 1956)

1. LEONIDHAS DEMOSTHENOUS,
2. ANDREAS ZENONOS, both of Limassol, *Appellants*.

v.

THE QUEEN, *Respondent*.
(*Criminal Appeal No. 2064*)

Criminal Law—Possession of incendiary article—Regulation 53 (a) of Emergency Powers (Public Safety and Order) Regulations, 1955 — Purpose of article must be unambiguously aggressive — Defence of reasonable excuse.

The accused was convicted under Regulation 53 (a) of the Emergency Powers (Public Safety and Order) Regulations, 1955, of being in possession of "an incendiary article, substance or liquid". The article consisted of a coca-cola bottle filled with petrol with hemp stuffed in the top.

Upon appeal,

1956
Sept. 18
MUSTAFA
HAMZA
v.
KYRIACOS
VLACHOS

1956
Sept. 25
LEONIDHAS
DEMOSTHENOUS
AND ANOTHER
v.
THE QUEEN

1956
Sept. 25

LEONIDHAS
DEMOSTHENOUS
AND ANOTHER

v.
THE QUEEN

Held: The purpose and use of incendiary article under Regulation 53 (a) must be unambiguously aggressive and are intended to do damage or injury to the person or to property; a person charged under para. (a) cannot plead reasonable excuse or innocent possession. The bottle in this case was not in the category of objects enumerated in para. (a) not being the kind of article whose possession should preclude an accused person from raising the defence of innocent possession.

Conviction and sentence quashed.

Appeal allowed.

Appeal by accused from the judgment of the Special Court of Nicosia (Case No. 1340/56).

Chr. Demetriades for the appellants.

D. Griffith-Jones, Crown Counsel, for the respondent.

The judgment of the Court was delivered by:

HALLINAN, C. J.: In this case the appellants were charged under Regulation 53 of the Emergency Powers (Public Safety and Order) Regulations, 1955. That Regulation is as follows:—

“Any person who shall without lawful authority, the burden of proof of which shall lie upon him—

- (a) be in possession of any bomb, grenade or incendiary article, substance or liquid;
 - (b) without reasonable excuse, the burden of proof of which shall lie upon him, be in possession of any firearm or ammunition or any explosive article, substance or liquid, other than a bomb, grenade or incendiary article, substance or liquid,
- shall be guilty of an offence and shall be liable on conviction to imprisonment for life or for such lesser term as the Court may see fit to impose.”

In our view paragraph (a) of Regulation 53 only refers to incendiary articles or substance or liquid whose purpose quite unambiguously is aggressive and which are intended to do damage to the person or property. It is not open to anyone charged with being in possession of such an article to say that he did not intend to act unlawfully but that he had it in his possession for an innocent purpose. The only defence open to him is to show that he had lawful authority for having it in his possession. On the other hand if a person is charged with being in possession of a firearm or an article, substance or liquid under paragraph (b), it is open to him to satisfy the Court that his possession was innocent.

In the present case the appellants were charged under para. (a) with being in possession of what is being described as a petrol bomb. It consisted in this case of

a coca-cola bottle with petrol in it and some hemp stuffed in the top. In our view that is not an article or substance or liquid which falls within paragraph (a) of Regulation 53. It is not the kind of article whose possession would preclude an accused person from raising the defence of innocent possession and innocent purpose. It is quite clear from the judgment that the learned trial Judge thought that the bottle in this case was an article which fell within the purview of paragraph (a) and he, therefore, considered to be irrelevant the appellants' defence that their possession was innocent.

Since then we are of opinion that the bottle in this case is not an article, liquid or substance within the purview of paragraph (a) we consider that this conviction and sentence must be quashed and the appellants discharged.

[HALLINAN, C. J. and ZEKIA, J.]
(October 11, 1956)

MICHALAKIS CHRISTODOULOU, *Appellant,*

v.

OLYMPIA EROTOKRITOU, *Respondent.*

(*Civil Appeal No. 4190.*)

1956
Sept. 25
LEONIDHAS
DEMOSTHENOUS
AND ANOTHER
v.
THE QUEEN

1956
October 11
MICHALAKIS
CHRISTODOULOU
v.
OLYMPIA
EROTOKRITOU

Practice — Application for summary judgment — Civil Procedure Rules, Order 18—Calling of plaintiff's evidence disapproved — Cross-examination of defendant — Mala fides established.

Plaintiff applied for summary judgment under Order 18. The application was opposed and the Court heard the evidence of the plaintiff and a witness and then the defendant was cross-examined on his evidence. The application was granted.

Upon appeal,

Held: The evidence of the plaintiff and his witness should not have been heard. However the affidavit of defendant was sufficiently suspect to warrant the Court allowing cross-examination thereon. This revealed the *mala fides* of his defence.

Appeal dismissed.

Appeal by defendant from the judgment of the District Court of Limassol (Action No. 743/56).

K. C. Talarides for the appellant.

G. Cacoyannis for the respondent.

The facts sufficiently appear in the judgment of this Court which was delivered by: