

TYSER, C.J.  
&  
BERTRAM  
J.  
HAJI THE-  
MISTOGLI  
CONSTANTI  
v.  
PARASKEVA  
HAJI  
STAVRINOU

Under the circumstances it is not necessary for us to give any decision on the other questions mentioned in the argument.

The appeal is allowed and the judgment of the District Court set aside with costs here and below.

*Appeal allowed.*

TYSER, C.J.  
&  
BERTRAM,  
J.  
1908  
March 23

[TYSER, C.J. AND BERTRAM, J.]

REX

v.

YANNI NIKOLA.

CRIMINAL LAW—MALICIOUS INJURY TO PROPERTY—OTTOMAN PENAL CODE,  
ART. 249—"KHARAB."

The malicious breaking or damaging of the shutters or doors of a house constitutes an offence under Art. 249 of the Ottoman Penal Code.

The Turkish word "Kharab" does not necessarily imply the complete destruction or rendering useless of the thing in question.

The accused pleaded guilty to three counts charging him with wilfully breaking and damaging the shutters of two houses and the door of another house to the extent of 10s., 6s. and 8s. respectively. The Court convicted him of offences under Art. 249.

HELD: By the Supreme Court (on a case reserved for the opinion of the Court), that the accused was rightly convicted.

This was a case reserved under Art. 140 of the Cyprus Courts of Justice Order, 1882, by the District Court of Limassol.

On 24th December, 1907, Yanni Nikola of Limassol was charged before the District Court on an information purporting to be laid under Art. 249 of the Ottoman Penal Code. The first count alleged that he wilfully broke and damaged the shutters of the windows of a dwelling house; the second that he wilfully broke and damaged the door of another dwelling house; and the third, that he wilfully broke and damaged the shutters of the windows of a third dwelling house. The damage alleged in the first case was 10s. and in the second 8s. and in the third 6s.

The accused pleaded guilty to these counts, and the Court then proceeded to consider whether the facts admitted constituted an offence under Art. 249. In the result the Court convicted the accused and stated a case for the opinion of the Supreme Court.

The case stated the contention of defence as follows:—

"Concise that argument is (a) that Art. 249 of the Ottoman Penal Code does not contemplate an *injuria* coupled with simple damage, but an *injuria* in which the damage renders useless for its purposes the subject of the damage, and (b) that the complete damage aimed at by the article must be to immovable property and not to movables or fixtures merely adhering to immovable property."

The case reported that the Ottoman Judge of the Court, Atta Bey, was of opinion that on the true interpretation of the Turkish

word "خراب" damage short of destruction or rendering a thing useless for its purpose does not come within the scope of the article, but that the Ottoman Judge of the Papho District Court, Sami Effendi, who had also been consulted, held the contrary view.

No appearance for the accused.

*Amirayan*, for the Crown: The Turkish word "خراب" has a more general sense than that of "to destroy." It means rather "to injure," or "to spoil." The word *καταστρέφω* in the Greek version is not a good translation. If I were asked to suggest a Greek equivalent I should say that the nearest equivalent would be *φθείρω*.

*Judgment*: This case was submitted by the District Court of Limassol under Sec. 140 of the Cyprus Courts of Justice Order, 1882, for the opinion of the Supreme Court under the following circumstances:

Yanni Nicola was charged under Art. 249 of the Ottoman Penal Code.

The accused pleaded guilty and the question for the opinion of the Court is whether the acts charged and admitted by the accused constitute an offence under Art. 249 of the Ottoman Penal Code, that is to say, whether breaking or damaging the shutters of the windows of a house, or the door of a house constitutes an offence under Art. 249.

The article of the Code provides for the punishment for injury done to certain buildings and public constructions, and includes injury to a house which does not belong to the person inflicting the injury.

The nature of the injury which is punishable by the law is described in the law by the words "هدم" *hedm* and "خراب" *kharab*.

It appears that the Turkish Judge of Paphos and the Turkish Judge of Limassol have different opinions as to the meaning of the word خراب (*kharab*), the former holding that any damage whether the rendering the damaged thing useless or not is within the article, the latter holding that damage short of destruction or rendering a thing useless is not within the article.

خراب (*kharab*) is an Arabic legal term and there is frequently a difficult thing to ascertain the exact sense in which those terms are used in the law.

In *Shemseddin Sami's Dictionary* it is said to mean "to ruin" and also "to cause disorder" or "to put out of repair." We have consulted the highest authorities in the Island on the subject and it appears that the word as used in this article would cover partial destruction such as the breaking of a window or door or shutter. We have no doubt that this is the sense in which it is used.

It is not necessary to consider any question as to whether fixtures are included. Any part of the house whether capable of being detached or not is within this section and there is no doubt that the shutters and doors are part of a house.

The Court is of opinion that the facts stated in the information constitute an offence under the Art. 249.

The conviction must be confirmed and the proceedings returned to the District Court for adjudication of sentence.

*Conviction confirmed.*

TYSER, C.J.  
&  
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—