

KYRIACOS SAVVA,

*Appellant,*

v.

KYRIACOS  
SAVVA  
v.  
THE POLICE

THE POLICE,

*Respondents.*

(Criminal Appeal No. 3515).

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*Bona fide claim of right—Defence of—Section 8 of the Criminal Code, Cap. 154—The test is not whether such a claim is valid in law or in fact—But merely whether the accused was acting under the honest belief that he had such right to the property concerned—Conviction quashed in view of the fact that the trial Judge approached erroneously the accused's (Appellant's) defence of a bona fide claim of right under the section.*

*Malicious injury to property—Section 324 (2) of the Criminal Code Cap. 154—Defence of bona fide claim of right under section 8 of the Criminal Code—Proper approach to such a defence—Test applicable—See supra.*

The Supreme Court held in this case that the proper test regarding the defence of a *bona fide* claim of right under section 8 of the Criminal Code (*infra*), is not whether such a claim is valid in law or in fact, but merely whether the accused was acting under the honest belief that he had such a claim to the property concerned.

The Appellant was convicted by the District Court of Limassol of the offence of malicious injury to property contrary to section 324 (2) of the Criminal Code, Cap. 154 and sentenced to pay a fine of £70.— as well as £30.— compensation to the complainants. It was a common ground that the Appellant damaged vegetable crops, grown on property cultivated by the complainant, who is a niece of the Appellant. This property was the subject matter of a family dispute between the Appellant and the complainant, concerning the entitlement to it both as regards ownership and possession. Right from the outset of the present case the Appellant put forward what was, in essence, a defence under section 8 of the Criminal Code, Cap. 154, which reads as follows:

“ 8. A person is not criminally responsible in respect of an offence relating to property, if the said act done or omitted to be done by him with respect to the property was done in the exercise of an honest claim of right and without intention to defraud”.

The Supreme Court, allowing the appeal and quashing the conviction:

*Held*, (1) (a). The learned trial Judge proceeded to examine the question of whether the claim of right of the Appellant was valid in law and he decided that it was not.

(b) In our view this was not the proper way to deal with a defence of this kind; all that mattered was whether the Appellant, in putting up such a defence was *honestly asserting what he believed to be a lawful claim*, even though it might eventually be found to be invalid in law or on the facts (see *R. v. Bernhard* [1938] 2 K.B. 264, at p. 270).

(2) It emerges from the reasoning of the judgment appealed from that the trial Judge formed the opinion that the Appellant's claim was not an honest one on the sole ground that he found it to be unsustainable in law and not because of any material which warranted the view that such claim had not been put forward in good faith. It is clear, therefore, that the approach of the trial Judge to the defence under section 8 of the Criminal Code (*supra*) was erroneous; and so we have to allow this appeal and set aside the Appellant's conviction.

*Appeal allowed. Conviction quashed.*

Cases referred to:

*R. v. Bernhard* [1938] 2 K.B. 264, at p. 270.

### **Appeal against conviction and sentence.**

Appeal against conviction and sentence by Kyriacos Savva who was convicted on the 29th September, 1973 at the District Court of Limassol (Criminal Case No. 10670/73) on one count of the offence of malicious injury to property contrary to section 324(2) of the Criminal Code, Cap. 154 and was sentenced by Pitsillides, S.D.J. to pay a fine of £70.- and £30.- compensation to the complainant.

A. Neocleous with G. Nicolaou, for the Appellant.

C. Kypridemos, Counsel of the Republic, for the Respondents.

The judgment of the Court was delivered by:-

TRIANTAFYLIDIS, P.: The Appellant was convicted, by a District Court Judge in Limassol, of the offence of malicious injury to property, contrary to section 324(2) of the Criminal Code, Cap. 154. He was sentenced to pay a fine of £70 as well as £30 compensation to the complainant.

The salient facts on which the charge was based were that on the 6th of June, 1973, at a locality in the area of Kalon Chorion village, in the Limassol District, the Appellant damaged vegetable crops, grown on property cultivated by the complainant, who is a niece of the Appellant.

There is ample material on record which shows that this property, which was admittedly cultivated by the complainant, was the subject matter of a family dispute between the Appellant and the complainant, concerning the entitlement to it both as regards ownership and possession; and right from the outset of the present case the Appellant put forward what was, in essence, a defence under section 8 of the Criminal Code, Cap. 154, which reads as follows:-

“ A person is not criminally responsible in respect of an offence relating to property, if the act done or omitted to be done by him with respect to the property was done in the exercise of an honest claim of right and without intention to defraud”.

The learned trial Judge proceeded to examine the question of whether the claim of right of the Appellant was valid in law and he decided that it was not. In our view this was not the proper way in which to deal with a defence of this kind; all that mattered was whether the Appellant, in putting up such a defence, was honestly asserting what he believed to be a lawful claim, even though it might eventually be found to be invalid in law or on the facts (see *R. v. Bernhard* [1938] 2 K.B. 264, at p. 270).

It emerges from the reasoning contained in the judgment before us that the trial Judge formed the opinion that the Appellant's claim was not an honest one on the sole ground

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that he found it to be unsustainable in law and not because of any material which warranted the view that such claim had not been put forward in good faith. It is clear, in the light of what has been stated earlier on in our judgment, that the approach of the trial Judge to the defence under section 8 of Cap. 154 was erroneous and so we have to allow this appeal and set aside the Appellant's conviction. By doing so we are not pronouncing, in any way, on the question of the validity of the claim of the Appellant; nor is the complainant prevented from seeking, by means of civil proceedings, any redress to which she may be found to be entitled.

*Appeal allowed.*