1934.
May 30.

PIERIDES
v.
MAYOR OF
FAMAGUSTA.

[STRONGE, C.J., THOMAS AND FUAD, JJ.]

PETROS G. PIERIDES *Appellant,*

v.

MAYOR, ETC., OF FAMAGUSTA *Respondents.*

Criminal Law—The Municipal Corporations Law, 1930, *Section* 193 (*f*) (iii)—*Obstruction on pavement—Several offences charged in one Count—Uncertainty of finding.*

In the centre of the market in Famagusta the appellant occupied a shop under lease from the owner, his father-in-law. In front of the shop was a portico supported on pillars with a footpath underneath along which the public passed. Three years ago the owner with permission of the Municipality removed the portico and set back the building to the extent of the portico demolished. He further made certain alterations to his premises, whereupon he obtained new title-deeds, which included the portion of ground previously under the portico. The owner of the shop had always used about half the width of the space under the portico, *i.e.*, about 3 feet, for displaying his goods, and the appellant continued to do the same after the portico was removed.

He was charged under Section 193 (*f*) (iii) of the Municipal Corporations Law, 1930, with placing goods " on the pavement of his shop, or beyond the line of his shop, so as to obstruct or incommode the passage of any person along the road or footway." The finding of the Magisterial Court was: " The charge has, therefore, been proved and the accused is guilty as charged."

Held: (1) Several offences being charged in one count the charge was bad for duplicity;

(2) A general finding of guilty without saying of which of the offences charged is bad for uncertainty.

(3) That there was no evidence that the owner had made any dedication to the public of the strip of ground outside his shop left by the removal of the portico.

(4) That approval by the Committee of the removal of the portico did not amount to acquisition of the space left by its removal.

Application under the Criminal Evidence and Procedure Law, 1929, to quash the conviction of the Magisterial Court, Famagusta (Mavromatis, D.J.), on the ground of illegality.

Santis: The application is founded on Section 20 of Law 12 of 1929 to inquire into the conviction on the ground that it is illegal as being contrary to Section 9 of the Criminal Code providing that nobody is criminally liable if his act or omission was done *bona fide* in the exercise of a right he had, and also on the ground that the facts established by the evidence do not disclose any offence.

The applicant is a lessee of the premises, and the space on which he placed his goods is included in the title-deed of the owner. The facts proved do not constitute an offence.

Two elements are required : (1) exposing goods in a manner to obstruct or incommode, and (2) exposing goods on a street. Did he expose his goods on a street? Three years before the space in front of applicant's shop was covered by a roofed portico, and the public used to pass along underneath, but there is no evidence that the public had any right to pass.

I submit that the pavement in Section 193 must be a pavement on which the public has a right to pass. The use of this space by the public for three years is not enough to prove dedication. If the space has become part of the street, then this is a confiscation of private property without compensation.

There is the case of *Hitchman* v. *Watt* (1). The head-note is as follows :—

" W. had a drapers shop which, on re-building, was set back to the extent of 4½ feet to suit the line of building. The space thus added to the pavement had been open to the street for two years and W. put goods for sale on this space, and was charged under the local Act with exposing goods outside his shop :—

Held : the Justices were right in holding that the intervening space so used was not part of the street, and W. had a right to use it as he did."

The Chief Justice referred to *Wilson* v. *Cunliffe* (2).

I submit that the facts before the Magisterial Court do not show that the space on which the goods were exposed is a pavement within the meaning of the Municipal Corporations Law, 1930.

Clerides : " Street " is defined in Section 2 of Law 25 of 1927. The owner can only alter buildings and do repairs with a permit of the Municipality. By Section 8 (6) pavement is part of the street. By asking for a permit it must be presumed that the owner made a gift of the land under the portico to the Municipality. He left the space there for the use of the public.

JUDGMENT :—

STRONGE, C.J. : This is an application under Section 20 of the Criminal Evidence and Procedure Law, 1929, to inquire into a conviction of the Magisterial Court, Famagusta, on the ground of illegality.

The applicant was charged on a single count under Section 193 (*f*) (iii) of the Municipal Corporations Law, 1930, with placing goods on the pavement of his shop at Varosha, or beyond the line of his shop, so as to obstruct or incommode

(1) (1894) 58 J.P. 720, cited in the *English & Empire Digest*, Vol. 26, p. 444, and also in Stone's *Justices' Manual* (58th Edn.), p. 1577.

(2) (1874) 29 L.T. 913, cited in the *English & Empire Digest*, Vol. 26, p. 565.

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the passage of any person along the road or footway. The Magistrate found the charge proved and that " the accused is guilty as charged."

This single count alleges that the applicant has committed several offences and is, therefore, bad on the ground of duplicity and as the conviction merely finds " the accused guilty as charged " it follows that the conviction is bad for uncertainty.

It has been held again and again by this Court that, where there is a charge of several offences, a general finding by the Magisterial Court of " guilty " is bad for uncertainty, in that it cannot be known of which offence the accused has been found guilty. This seriously affects the position of any accused person who is charged again and puts in a plea of *autrefois acquit.*

As, however, the questions raised in this application are of considerable importance to Municipalities generally, we have deemed it advisable instead of resting our decision on these grounds above to consider the other points argued before us. The facts are these: the father-in-law of the present applicant was the owner of certain premises in the market in Famagusta, and had a title-deed showing the extent of his holding. Some three years ago he obtained a permit to effect repairs to the shop on his land. He had to apply under Section 4 of Law 25 of 1927, and his application was to built ten rooms and an arcade. Section 4 provides that no building shall be erected, demolished or reconstructed and no addition, alteration or repair shall be made to any building without a permit from the Building Committee. What followed after the application was submitted is not disclosed on the record, except that the owner received new title-deeds in conformity with his application. As, however, he subsequently carried out these repairs he presumably received the permit referred to in Section 4 of Law 25 of 1927.

Prior to obtaining this permit it is important to see what was the condition of the premises. In front of the shop was a portico, supported on pillars. The public were free to pass along under the portico. Now the owner's proposal to built and the plan accompanying it show that the rooms to be erected were not to be erected at the extreme frontal limit of his property, but were to be set back to the extent of the portico demolished. We are asked by counsel for the respondents to presume from the application and accompanying plan that the owner had approved of the existing space under the portico becoming a street. " Street " is defined in Section 2 of Law 25 of 1927 as follows:

> " ' Street ' means and includes any land or part of land of the Arazi Mirié category which is set aside by or with the approval of a Building Committee for the use

of the public as a street, road . . . , passage, footway, pavement . . . ".

There was no evidence of any setting aside by the owner as equivalent to dedication. The respondent relies on the fact that it must be treated as having been set aside by the Building Committee. It cannot be argued that approval of the Committee that the building should be set back amounts to acquisition by the Municipality as a street. Section 7 of Law 25 of 1927 is as follows :

" No registration of a new building . . . shall be effected by the Land Registry Office unless the applicant produces a permit . . . of the Building Committee concerned for the erection of such new building . . . ".

From the evidence of the Chief Clerk of the L.R.O., Famagusta, it is clear that the pavement on which the applicant is alleged to have committed offences by placing goods is included in his own title-deed. There has been no modification of his title. I think the application should be allowed, and the judgment and conviction set aside. The applicant's costs here and in the Court below to be paid by the prosecutors.

THOMAS, J. : I am of the same opinion.

The applicant is charged under Section 193 (*f*) (iii) of the Municipal Corporations Law, 1930, with placing goods on the pavement of his shop at Varosha or beyond the line of his shop so as to obstruct or incommode the passage of any person along the road or footway.

This single count charges four distinct offences, and this Court has on several occasions held such a charge is bad in law. Upon this charge there was a general finding of " guilty " which, as the Chief Justice has just pointed out, has been frequently held by this Court to be bad for uncertainty.

The question raised in this application is whether the piece of ground outside applicant's shop, on which he admittedly places his goods for sale, is a " pavement " within the meaning of Section 193 of the Municipal Corporations Law, 1930. In my view sub-section (*f*), under which the charge is laid, must be read subject to the opening words of the section : " Any person who, in any street or public place . . " and, therefore, the " road or pavement " in sub-section (*f*) (iii) means a road or pavement of a public street.

After the owner was given a permit to make alterations to his premises a new title was issued to him. Once the Municipality approved of alterations being made and a title being issued showing the extent of the land and buildings as altered, they are, in my opinion, estopped from alleging that any portion included in the title is part of the public street.

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The pavement, the subject of the charge, is a strip which was under the portico until its demolition. It was included in the owner's title before demolition, and in the new title issued after the repairs were carried out. The owner of premises described and defined in a title-deed can only be deprived of any portion of his property in pursuance of some statutory provision or judgment which has the effect of making some one else the owner. In the present proceedings nothing has happened to make any one else the owner of any portion of the premises included in the title, and the owner consequently commits no offence in placing his wares upon his own property.

In my opinion the applicant is clearly entitled to succeed, and I think, therefore, that the application should be allowed with costs and the conviction set aside.

FUAD, J.: I agree with the views expressed in the judgments just delivered.

Application allowed. Judgment and conviction set aside.