1934.
Sept. 20.

REX
v.
TOFFI.

[SERTSIOS, ACTING C.J., FUAD AND COX, JJ.]

REX

v.

VASSILIS TOFFI.

Criminal Law—"Suffering" or "allowing" animals to graze in a tree planting area—The Tree Planting Village Areas Law, 1930, Section 18 (1)—Trial—Failure to inform accused of his right to make a statement or give evidence on oath—Cyprus Courts of Justice Order, 1927, Clause 88.

Animals belonging to appellant were found grazing in a Tree Planting Area in charge of his shepherd. Appellant had no knowledge that his shepherd was grazing his animals in a reserved area. He was charged under Section 18 of the Tree Planting Village Areas Law, 1930, with having allowed or suffered ten pigs belonging to him to be grazed, driven, led or taken into a reserved area. At the hearing of the summons, on the close of the case for the prosecution the Magistrate omitted to inform the accused that he might make any statement he pleases as to the charge against him, or give evidence upon oath.

Held: (1) that in order to be guilty of "allowing" or "suffering" animals to be grazed, driven, led or taken into a reserved area a person must be in charge of, or entrusted with the custody of, or having control over such an area; (2) the omission to inform the accused of his right to make a statement or give evidence on oath vitiated the conviction.

Appeal from conviction by Magisterial Court, Morphou.

The facts appear sufficiently from the judgment.

Zenon Kleovoulou for appellant.

The Crown was not represented.

1934.
Sept. 27.

Sertsios, Ag. C.J.

JUDGMENT:—

SERTSIOS, Ag. C.J.: This is an appeal from a conviction by the Magisterial Court of Morphou. The appellant was charged before the Court mentioned under Section 18, sub-section 1, of Law 28 of 1930, with having allowed or suffered ten pigs belonging to him to be grazed, driven, led or taken to locality "Tomazou," in the vicinity of Morphou, which has been declared to be as the Tree Planting Area of the village under the Tree Planting Village Areas Law, 1930.

This appeal was fixed for hearing on the 20th September, 1934. It was then noticed that no grounds of appeal had been filed as required by Section 10 of the Criminal Evidence and Procedure Law, 1929. This Court, however, considered then that such non-compliance on the part of the appellant with the requirements of this section was not wilful but it was simply due to some carelessness and indifference on the part of appellant's counsel, to say the least of it, for

which we thought that it was not fair that the appellant, his client, should suffer in case there might perhaps be some good ground for appealing. It was for this reason therefore that this Court, exercising their discretion, directed the appellant to file the grounds of appeal on the very same day and adjourned the hearing of this appeal to the present date, *i.e.*, the 27th September, 1934.

Now the grounds of appeal are, firstly, that the facts as appearing in the evidence adduced for the prosecution do not constitute an offence within the meaning of Section 18 of Law 28 of 1930; secondly, that the punishment in any event is excessive.

There is, however, another point, apparently not having attracted appellant's attention, with which I should like first to deal. Reading from p. 3 of the Record, I noticed that after the case for prosecution was closed, counsel for appellant, having in view apparently Clause 88 of the Cyprus Courts of Justice Order, 1927, submitted to the Court that appellant under Law 28 of 1930, Section 18 (1), was not responsible, meaning thereby that the evidence given in support of the charge was not sufficient to justify a conviction, and asked that he should be discharged. The Court below being clearly satisfied that the submission of the appellant was unsustainable and that consequently the case should proceed against him, did not call upon the prosecuting officer to say anything in reply. The next step the Court below should have taken was to inform accused (appellant) that he might make any statement he pleased to as to the charge against him, or that he might give evidence upon oath, etc., the relative part of the said clause running as follows:—

> "If the Court be satisfied the case should proceed, then the Court shall inform the accused, whether he is defended by an advocate or not, that he may make any statement he pleases as to the charge against him, or that he may give evidence upon oath, etc., etc.".

The above provision, as laid down, makes it clearly imperative upon the Court to inform an accused person on trial that he is entitled to make any statement he pleases or give evidence on oath, and, in my opinion, such being the state of the law, the Court below was bound to inform prisoner of his right to give evidence on oath before determination of the case against him, namely, before verdict is found. This not having been done, the prisoner was deprived of his right to explain on oath or otherwise the facts upon which he based his defence for consideration by the trial Court. Accused probably would have stated in evidence that he himself was not aware at all of the fact that his pigs were led or taken into the tree planting area in question by his shepherd, and in such a case no Court could have found

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him guilty under the Law as existing. That being so, the omission on the part of the Court to inform accused of his rights as imperatively stated in Clause 88 of the Cyprus Courts of Justice Order, 1927, is in the nature of a serious irregularity which should prove fatal to the conviction. In the case *R.* v. *Thomas Graham* (1) it was held that a neglect to inform a defendant on trial that he is entitled to give evidence on oath and to call witnesses may be a ground for quashing a conviction.

The Lord Chief Justice, after reciting the facts, stated in conclusion as follows :—

> " In the present case appellant was not told that he might give evidence himself or call witnesses on his behalf. It is not enough that in a previous case he was so told, if he was not told in this case. The trial was not satisfactory, and the conviction must be quashed."

The case I have quoted is a close parallel to the case of *Frank Villars* (2) in which it was held that the Court is bound to inform the prisoner of his right to give evidence on oath, before verdict found.

Bransom, J., in delivering the judgment of the Court in this case on appeal, after dealing at some length with the facts, states in conclusion the following :—

> " Those were facts which the jury should have had proper opportunity of considering after having heard what the appellant had to say and wished to say, and before they retired to consider their verdict. The result is that in our opinion this conviction cannot stand, the appeal must be allowed and the conviction quashed."

Dealing now with Section 18 (1) of Law 28 of 1930, upon which the prosecution relies regarding the present case, the appellant was charged under the second part thereof, namely, that he, being the owner of ten pigs, allowed or suffered them to be grazed or driven or led or taken into the tree planting area. Now the question arises what the legislators meant by the expressions " allowed " or " suffered ", the animals to be grazed, etc.

In my view, in order that a person may be in a position to " allow " or " suffer, " namely, tolerate animals to be grazed or driven or led or taken into a tree planting area, he must either he himself be a person in charge of, or entrusted with the custody of, or having control over such an area, such as a Rural Constable or other person in authority authorized to do so. There is, however, not a scintilla of evidence that the appellant was a person having such an authority. As a matter of fact the only persons entrusted with the care of the tree planting area in question

(1) 17 Cr. App. R. 40.
(2) 20 Cr. App. R. 150.

were the Rural Constables who gave evidence in the case against the appellant. Moreover, under Section 20 (3) of the Law, villagers may own immovable property situated within a Tree Planting Area, for the cultivation of which are entitled to take in or upon or along a Tree Planting Area their animals. But there is no evidence that the appellant had such immovable property himself situated within such area into which he might, perhaps, have been under the wrong impression that he could allow or tolerate the animals in charge of his shepherd to be driven or led or taken. Apart from this, the evidence shows clearly that the shepherd alone was with the animals, when found within the Tree Planting Area, and that appellant himself was not present, and there is nothing in the evidence to show that he knew that the shepherd had taken the animals into the Tree Planting Area in question.

I may perhaps further add that, had there been a distinct statutory provision making both the owner of the animals and the person in whose charge the animals were at the time of the commission of the offence punishable as offenders, the matter of course would have been quite different. In Section 25, sub-section 1, for instance, of Law 62 of 1932, it is clearly laid down that, if any animal is found trespassing on any sown or cultivated land, etc., both *the owner of the animal and the person in whose charge it was* at the time of committing the trespass shall be guilty of an offence. In the Tree Planting Village Areas Law, 1930, however, there is no such a clear and distinct provision, as the above, and so the owner of the animals found within such area cannot be held responsible and convicted as an offender.

In view of all the above I am clearly of the opinion that this appeal should be allowed and the conviction quashed.

FUAD, J., and COX, J., concurred.

Appeal allowed; conviction quashed.