body and so as to bind the assets held by or in trust for them as such body for a sum representing that part of the sum claimed which went to pay teachers' salaries and other lawful debts within the power of the Committee to contract: as to which there will be liberty to apply further if the parties cannot agree on the figures: and the Bank must also have judgment against those members of the Committee who signed the guarantee, for the whole of the amount claimed. We order the Bank's taxed costs to be paid as to half by the schools and to half by the persons who signed as guarantors, and the latter must also pay the taxed costs of Mr. Kakoyannis. All others concerned must bear their own costs.

Appeal allowed.

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

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v.

YANNIS PAVLI

Criminal Law—Procedure—Magisterial Court—Summons charging several offences—General finding of guilty without specifying on which charge.

The appellant was charged before the Magisterial Court with (1) stealing a ewe, (2) taking upon himself the control and disposition of such ewe well knowing it to have been stolen, and (3) with being in possession of such ewe reasonably suspected of being stolen. The Court entered a general finding of " guilty " without specifying of which of the offences charged in the summons, and imposed a sentence of imprisonment and fine.

Held: (1) that several offences of the same nature may be included in one summons;

(2) that, if the conviction was intended to be on one of the three counts, it was bad for uncertainty, and that, if it was intended to be a conviction upon all three counts, it was likewise bad as being a conviction twice for the same offence.

Appeal from the Magisterial Court of Larnaca.

Chacalli for appellant.

Pavlides, Crown Counsel, for the Crown.

Chacalli: The conviction is bad as it does not say on which charge appellant was found guilty. Cites *Police* v. *Yona Christo* (1). This was a case of theft and receiving where the conviction was quashed for uncertainty.

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(1) 10 C.L.R. 128.

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Pavlides: Appellant submits that this is a general verdict and as such should be set aside for uncertainty. It is not correct to say a general verdict is a bad verdict. Clause 82 of the Cyprus Courts of Justice Order, 1927, has never been interpreted to prevent the prosecution from joining several offences in same summons. In the case of trials upon information Clause 166 provides for joinder of counts. In the Order in Council there are no specific provisions permitting or prohibiting the joining of several charges in a summons. Submit that a verdict of guilty is a verdict of guilty of each charge. Archbold's *Criminal Pleading*, 27th Ed., p. 225, on general verdicts, *R.* v. *Benjamin* (1); *R.* v. *Johnston* (2).

The judgment of the Court was delivered by the Chief Justice.

JUDGMENT:—

STRONGE, C.J.: The summons on which the accused was tried contained three complaints or charges, viz.: (1) stealing a ewe, (2) taking upon himself the control and disposition of such ewe well knowing it to have been stolen, and (3) being in possession of such ewe reasonably suspected of being stolen. The punishments provided for these three offences are respectively three years' imprisonment, three months' imprisonment or £10 fine or both, and six months' imprisonment or £10 fine or both (Articles 255, 294 and 297 of the Cyprus Courts of Justice Order, 1927).

The accused pleaded "not guilty" but was convicted and the conviction is thus expressed "Verdict: Guilty," while the adjudication as to punishment is "Order. Accused to go to prison for two months and pay 15*s*. costs or 8 days in default."

On behalf of the appellant it was argued (1) that as the summons contained more than one charge or complaint both it and the proceedings before the trial Court were alike invalid, and (2) that in any event in the case of a summons containing several charges a general conviction of "guilty" without specifying of which offence or offences and an adjudication of punishment without specifying in respect of which offence it is adjudged are bad for uncertainty.

As to the first point—the issue and contents of a summons in the Magisterial Courts is provided for by Articles 69, 72 and 82 of the Cyprus Courts of Justice Order, 1927. In none of these articles is there any express prohibition against the inclusion of several charges or complaints in the same summons such as is contained in Section 10 of the Imperial

(1) 1 Cr. App. R. 78.
(2) 9 Cr. App. R. 263

Act of 1848 (11 & 12 Vict., c. 43). It is certainly the case that Article 69 of the Order mentions "the complaint" or charge while Article 72 provides "the summons shall state the offence" and Article 82 speaks of "the offence," but having regard to the subject matter and tenor of the articles we do not think ourselves justified in holding that the joinder of several offences in the same summons is by implication necessarily excluded or forbidden. We take the position in Cyprus consequently to be the same as that in England prior to the Act 11 and 12 Vict., c. 43, and according to *Oke's Magisterial Formulist* (12th Ed., p. 177) the position in England before that statute was that it was legal to include several offences of the same nature in the same summons. Thus several charges of stealing might be included, these being offences of the same nature—but not a charge of stealing and one of assault or wounding, these being offences of different nature; the reason against such joinder being that it was likely to embarrass the accused in his defence.

In the present case the offences charged were not only of the same nature but were clearly intended to be alternative charges in connection with the same property. In our judgment, therefore, the inclusion of such charges in the one summons was permissible and the appeal so far as the first ground is concerned fails.

Coming now to the second point—the validity of the conviction and adjudication of punishment—counsel for the appellant relied on *Police* v. *Yona Christo* (1). In that case the summons contained 2 charges, viz.: theft and possession of property reasonably suspected of being stolen. Accused made a statement which the Magistrate interpreted as a plea of guilty and thereupon sentenced accused to imprisonment. There was no formal conviction and nothing on the record to show on which of the two charges accused had been convicted. The Court set aside the conviction for uncertainty. The report is unfortunately of a meagre nature—the foregoing account being in fact a transcription of it *in toto*—and neither in the report nor in the Court's minute of the case are the reasons for the decision stated. We consequently deem it our duty to state somewhat more explicitly what we take to be the law on the subject.

The judgment of a Magistrate as pointed out at p. 199 of *Paley on Summary Conviction* (7th Ed.) consists of two parts, to wit the adjudication of conviction and the sentence or award of punishment. *Oke's Magisterial Formulist* says at p. 176 that "the requisites of the conviction, therefore, are in addition to those referred to . . . principally as to the mode of stating the judgment in the adjudicating

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portion which must be precise and clear." The passage already quoted from p. 177 of the same work goes on to say that if several offences are inserted (in the same conviction) each must be distinctly charged and the penalties must be properly adjudged. In the present case the offences were undoubtedly each distinctly charged in the summons, but where several offences are so charged and there is a general conviction without specifying the offence or offences of which the accused is convicted or where in such a case there is a general award or sentence of punishment which omits to state in respect of which offence or offences it is adjudged, we do not think it can be said that either of the requirements that the judgment should be clearly and precisely stated, or that the penalties should be properly adjudged, has been complied with. In this particular case the conviction seems to us to be open to the further objection that if it be taken to be a conviction on one of the three counts only it does not specify which one and is, consequently, bad for uncertainty; while if it is to be taken to be a conviction on all three counts, then inasmuch as the accused simultaneously with the stealing of the sheep took upon himself the control and disposition of it knowing it to have been stolen, and the two offences are, therefore, in this case, mutually exclusive, or in other words alternative, it follows that a conviction on both these charges is a conviction twice over for the same offence and contrary to the maxim *nemo debet bis vexari si constat curiae quod sit pro una et eadem causa.*

We may add to this that in our opinion the accused has a right for his own protection to know definitely of what offence he is convicted and the punishment awarded in respect thereof so that should he ever be subsequently brought to trial for the same offence he may use such conviction and punishment as an answer. The case of *R.* v. *Tyrone, JJ.*(1), tends in our opinion to support the conclusion at which we have arrived in regard to this part of the case. No report is available, but references to the case occur on p. 1143 of Vol. I of *Mew's Digest* and on p. 330 of the 1926 Edition of *Stone's Justices' Manual*, from which it appears that the summons charged the accused with unlawfully buying, detaining or receiving from soldiers military property contrary to Section 156, sub-section (*a*), of the Army Act, 1881. It was held that the summons charged only one offence and that a general conviction on such summons was not bad for uncertainty. It seems a reasonable inference to draw that had the charge in the summons been construed to be a charge of not one but several offences, the general conviction would have been bad for uncertainty. To the same effect is the following note of a Canadian case *R.* v.

(1) (1915) 2 Ir.R. 162.

Stevens decided in 1847 to be found at p. 354 of Vol. 33 of the *English and Empire Diyest*: " Several offences charged, general conviction bad for uncertainty." In *R.* v. *Wells* (1) accused was summoned for driving at a speed or in a manner dangerous to the public and was convicted of driving at a speed or in a manner dangerous to the public. Held that the conviction as being drawn up in an alternative form involving two offences was bad.

In *Parker* v. *Sutherland* (2) and of which mention is also made in Vol. 33, *English and Empire Digest*, p. 347, evidence of two separate offences was given and part of the ground on which the conviction was set aside as invalid was that it was impossible to ascertain to which offence the conviction referred.

In our judgment, therefore, and for the reasons we have adduced, the appellant is entitled to succeed on the second ground of appeal and the conviction will, therefore, be set aside.

We deem it advisable to add to our judgment the following observation for the future guidance of the Magistrates in cases such as the present :—

> The three charges in the summons are all connected with the possession by the accused of the same sheep. He is charged (1) with stealing it, (2) taking upon himself the control of it knowing it to have been stolen, and (3) being in possession of it, it being reasonably suspected to be stolen property.

Now if the accused is in fact the thief, it is clear that as from the moment he steals the article he takes upon himself the control and disposition of it knowing it to have been stolen; in other words the stealing and the taking upon himself the disposition are in effect the one transaction and, consequently, charges for both such offences are to be viewed by Magistrates as alternative charges and if the accused is convicted he ought not to be convicted and sentenced on each charge, for to do so would be to punish him twice over for what is one and the same transgression.

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(1) (1904) 20 Cox C.C. 671.
(2) (1917) 25 Cox C.C. 734.