[HALLINAN, C.J., AND ZEKIA, J.]
(October 9, 1954)

IOANNIS SOLOMOU AKRITAS OF KATO ZODIA, *Appellant*,

v.

REGINA, *Respondent*.

(*Criminal Appeal No.* 1977)

Criminal Procedure Law, section 30 paragraph (i)—Form and length of information—Fraudulent falsification of accounts—When separate counts necessary—Separate judgment and sentence on each count.

The information contained two counts: one for falsification of accounts and one for embezzlement. A schedule to the first count gave particulars of 20 different items on occasions upon which the accounts were falsified. The trial Court in its findings specified the items upon which they found the accused guilty. The Court imposed one sentence of four years on the whole of those particulars of the information on which he was found guilty.

No objection to the form of the information was taken in the notice of appeal, but an application was made to the Supreme Court to add as another ground of appeal that the information was bad for duplicity. The Supreme Court refused the application, being of opinion that no substantial miscarriage of justice has occurred because of the form of the information.

However, the Supreme Court observed that:

(1) Each of the 20 occasions was a separate offence and should have been charged in a separate count;

(2) it is desirable that judgment and sentence be entered separately on each count; and

(3) it is undesirable that a large number of counts be contained in one indictment.

Appeal by accused from the conviction and sentence by the Assize Court of Nicosia (Case No. 5413/54).

A. Myrianthis with *M. A. Triantafyllides* for the appellant.

R. R. Denktash, Crown Counsel, for the respondent.

The judgment of the Court was delivered by:

HALLINAN, C.J.: No objection was taken in the notice of appeal to the form of the information. At the hearing an application was made to add an additional ground of appeal that the counts on the information were bad for duplicity. The Court refused this application under section 141 of the Criminal Procedure Law (Cap. 14) as they were of opinion that no substantial miscarriage of justice had occurred as a result of the form in which the information was laid.

However, we think it desirable to make some observations on the form of the information. The appellant is in substance charged with falsifying accounts with intent to defraud, on twenty different occasions. The information only contains two counts: the first charges him with falsifying accounts and appends a schedule containing twenty items each giving particulars of a separate falsification; the second charges him with embezzling the total sum fraudulently omitted from the accounts, being the total of the several amounts fraudulently omitted from the accounts and particulars of which are given in the schedule to the 1st count.

When including all twenty occasions in one count, the prosecution were apparently relying on section 30 paragraph (i) of the Criminal Procedure Law which states that: "Where the accused is charged with ..... fraudulent falsification of accounts ....., it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed". In our view, where it is possible to trace the individual items which were falsified, each item is a separate offence and (as provided in section 38 para. (*a*)) each offence must be set out in a separate count. If the prosecution had merely specified the gross sum and not given particulars of each item in the schedule, the information would undoubtedly offend against two cardinal principles of procedure in criminal cases: the accused would be embarrassed in making his defence for lack of particulars; and at the conclusion of the trial he would not know precisely for what matters he had been convicted and for what acquitted—he would be unable properly to plead "*autrefois convict*" or "*autrefois acquit*". The prosecution by attaching the schedule to the first count have prevented a miscarriage of justice, for the appellant knew the particulars of each occasion on which he was alleged to have falsified the accounts; and the Court in its findings specified the offences on which it found him guilty and not guilty.

Nevertheless we consider that this form of the information is undesirable and should not be followed in future cases. Each separate offence should be charged as a separate count. Probably as a result of the form on which the information was laid, the trial Court passed sentence on the whole information. This is contrary to the usual practice and is undesirable for the reason given in the following passage from Archbold, 33rd Edition, at page 223:

> "It is now the usual practice to enter up judgment and sentence separately on each count on which the prisoner has been convicted, and not generally on the whole indictment, so that if on appeal the conviction on one or more counts is quashed, the judgment on good convictions on other counts may stand. *Castro* v. *R.*,

6 App. Cas. 229; *Holloway* v. *R.* (1851) 17 Q.B. 317; and see *O'Connell* v. *R.*, 11 Cl. and F., at p. 377".

We may add that the interpretation of section 38 of the Criminal Procedure Law and the procedure which we consider correct as expressed in this judgment conforms with the current practice and procedure in England. The recent case of *R.* v. *Tomplin* (1954) 2, All E.L.R. 272, appears to be authority for the proposition that now, in certain circumstances, an indictment for the embezzlement of a general deficiency can be good. But it is expressly stated in the judgment at page 274 "When separate offences can be charged in separate counts, the Court regards as improper an 'omnibus' count in an indictment charging an aggregate of offences over a long period"; and at page 275: "When it is possible to trace the individual item and to prove a conversion of individual property or money, it is undesirable to include them all in counts alleging a general deficiency".

It is also interesting to note how the Court of Criminal Appeal in England has interpreted the rule 5 (1) in Schedule I of the Indictment Act, 1915, which permits any statutory offence that may (*inter alia*) be done by any one of different acts or different intentions in the alternative, to be laid in the alternative in one count. This rule is reproduced in section 38, para. (*d*) of our Criminal Procedure Law. A series of decisions (notably *R.* v. *Wilmott*, 24 Criminal Appeal Reports, 63) have shown that the Court will not hesitate to restrict the application of this rule if to apply it would embarrass an accused person, either in his defence or in the event of his requiring on a later occasion to plead "*autrefois acquit*" or "*autrefois convict*".

There is one further observation we would make regarding the information. In this case, the information in substance charged the appellant with falsifying accounts on 20 different occasions. We doubt whether it was necessary to make the information so long, or, if it was necessary, the trial might have proceeded on a certain number only.

In the case of Hudson (36 Cr. A.R. 94) the accused was charged on 33 counts most of which related to breaking and entering and larceny, with an alternative count for receiving in each case. The learned Lord Chief Justice at p. 95-96 stated:

> "The Court has on many occasions pointed out how undesirable it is that a large number of counts should be contained in one indictment. Where prisoners are on trial and have a variety of offences alleged against them, the prosecution ought to be put on their election and compelled to proceed on a certain number only. Quite

a reasonable number of counts can be proceeded on, say, three, four, five or six, and then, if there is no conviction on any of those, counsel for the prosecution can consider whether he will proceed with any other counts in the indictment. If there is a conviction, the other counts can remain on the file and need not necessarily be dealt with unless this court should for any reason quash the conviction and order the others to be tried. But it is undesirable that as many counts as were tried together in this case should be tried together ".

It should also be borne in mind that in a case concerning the falsification of accounts, the evidence as to omissions or false entries not the subject-matter of a count may be admissible as tending to show system and to negative the defence of mistake; such omissions or false entries might be included without being the subject-matter of a count. In citing the passage from the judgment in Hudson's case we do not of course wish to fix a specific maximum for the number of counts in any particular information. But in the present case we consider that the trial proceeded on more counts than were necessary.

[HALLINAN, C.J., AND GRIFFITH WILLIAMS, J.]
(October 30, 1954)

ENVER MEHMET CHAKARTO OF KATO POLEMIDHIA, *Appellant*,

v.

HUSSEIN IZZET LIONO OF KATO POLEMIDHIA, *Respondent*.

(*Civil Appeal No.* 4106)

Land—Prescription—Adverse possession by one co-owner against another co-owner.

The defendant-respondent was in possession of the land in dispute for about 9 years prior to 1943 without any registered title. In that year he bought a 4/20th share thereby becoming part owner with other persons who were not in possession and who were strangers to the respondent.

Prior to 1946 when the Immovable Property (Tenure, Registration and Valuation) Law came into operation, the land was "*arazi mirié*": the period of prescription as contained in Article 20 of the Ottoman Land Code was 10 years. The respondent therefore required one year's possession after becoming co-owner in 1943 to complete 10 years possession.

Upon appeal,

Held: Where two co-owners have not derived their title from the former owner by inheritance but each are purchasers and strangers, the consent of the co-owner out of possession cannot be presumed, and therefore the possession of the co-owner who is cultivating the land is adverse to the other co-owner.

Appeal dismissed.