

{ BOURKE, C.J. and ZEKIA, J. }

ELENI MICHAEL THEODOROU AND OTHERS of Limassol
Appellants

v.

THE POLICE

Respondents.
(Case Stated No. 125)

1958
June 2, 11

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MICHAEL
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*Idle and disorderly persons; Criminal Code, Cap. 13, Section 182 (d)—
Conduct likely to cause a breach of the peace—Need not be in itself
unlawful.*

The seven applicants, who were women, were convicted of the offence of being idle and disorderly persons in that, in a public place, they conducted themselves in a manner likely to cause a breach of the peace, contrary to section 182 (d) of the Criminal Code. The applicants were walking in single file in a street each carrying a banner with inscriptions relating to the political situation. About 150—200 persons gathered as a result and were apparently excited and displeased.

It was contended on behalf of the applicants that since their conduct was not in itself unlawful the fact that it might cause others to commit a breach of the peace could not operate against them.

Held : The conduct to which the section refers need not in itself be an unlawful one provided that it is of a reprehensible character. If then the Court is satisfied that under the circumstances, it was likely to cause a breach of the peace, the offence is proved.

Beatty v. Gillbanks (1882) 9 Q.B.D. 308, *distinguished*.

Decision of the trial judge confirmed.

Case referred to :

Beatty v. Gillbanks (1882) 9 Q.B.D. 308.

Case stated.

Case Stated (No. 125) by Ellison, Justice of the Special Court, pursuant to an Order of the Supreme Court on the application of Eleni Michael Theodorou, of Limassol, Despina Stylianou, of Limassol, Androulla Symeou Constantinou, of Limassol, Thomaeda Onesiforou Vryonides, of Limassol, Kyriacou Haralambous *alias* Koulla, of Kapsalos, Theofyla Nicou Moustoukka, of Limassol and Antigoni Agathangelou, of Limassol, in respect of his decision. The above applicants

were convicted by the Special Court sitting in Limassol (Case No. 866/57) on the 27th November, 1957, of conducting themselves, in a public place, in a manner likely to cause a breach of the peace, contrary to Section 182 (d) of the Criminal Code, Cap. 13, even though their conduct was not unlawful in itself, and were sentenced to a fine of £5 each.

Chr. Demetriades for the appellants.

J. Ballard for the respondents.

The judgment of the Court was delivered by :

BOURKE, C.J.: This is a case stated by the Justice of the Special Court of Limassol. The seven women who are the applicants were convicted of an offence contrary to section 182 (d) of the Penal Code, the particulars of which were that on the 18th November, 1957, at Limassol, in a public place, to wit, in George VI Street, they did conduct themselves in a manner likely to cause a breach of the peace. Section 182 is concerned with idle and disorderly persons and reads as follows :-

“ 182. The following persons —

- (a) every common prostitute behaving in a disorderly or indecent manner in any public place;
- (b) every person wandering or placing himself in any public place to beg or gather alms, or causing or procuring or encouraging any child or children so to do;
- (c) every male person who, in any public place solicits or importunes for immoral purposes;
- (d) every person who, in any public place, conducts himself in a manner likely to cause a breach of the peace; and
- (e) every person who without lawful excuse does any indecent act in any public place;

shall be deemed idle and disorderly persons, and are liable on conviction to imprisonment for one month or to a fine not exceeding five pounds or to both.”

The facts as recited in the case are that “at about 4.30 on

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the afternoon of 18th November, 1957, the 7 applicants, all women, were walking in single file in George VI street. Each had a banner round her neck which bore a different inscription relating to the political situation. About 150—200 persons were in a radius of 50 yards who would not have gathered there if these women and banners had not been there. An Inspector of Police and a Sergeant saw the situation at a time when traffic in the street was quite heavy, and it appeared to them that at any time a breach of the peace might occur, since those around, who were largely British, were excited and not pleased, and there was also obstruction of the traffic.”. Unfortunately the wording of the inscriptions on the banners is not given in the case, but rather than send it back for amendment we have taken the course, with the consent of counsel on each side, of looking to the judgment of the Lower Court which is upon the record of this Court in the proceedings taken under section 146 (3) of the Criminal Procedure Law, Cap. 14 by which the applicants obtained a rule directing the stating of this case. The slogans, to employ the now familiar description, call for the lifting of certain measures taken for the maintenance of public security in a time of Emergency and one demands the return of “the Archbishop and co-exiles.”.

The learned Justice found as a fact on the evidence “that the conduct of the accused in that place, time and circumstances was likely to cause a breach of the peace”; the applicants were therefore to be deemed idle and disorderly persons and liable on conviction to penalty.

It is submitted on behalf of the applicants that they were doing nothing intrinsically unlawful and the fact that their behaviour might cause others to do an unlawful act and commit a breach of the peace could not operate in their disfavour. Reliance was placed on *Beatty v. Gillbanks* (1882) 9 Q.B.D. 308. But that was a case where the offence charged was unlawful assembly. What happened there was “that an unlawful organisation’ (had) assumed to itself the right to prevent the appellants from lawfully assembling together” (*per* Field, J. p. 314). The appellants, members of the Salvation Army, assembled with others for a lawful purpose, and with no intention of carrying it out unlawfully, but with the knowledge that their assembly would be

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opposed, and with good reason to suppose that a breach of the peace would be committed by those who opposed it. It was held that they could not rightly be convicted of an unlawful assembly and the well-known principle was laid down that there is no authority for the proposition that a man may be convicted for doing a lawful act if he knows that his doing it may cause another to do an unlawful act.

In the instant matter we are concerned with a very different offence and the main question goes to the nature or manner of the conduct of the applicants themselves. Their conduct in proceeding along a crowded street in procession bearing these slogans may at that date have been not unlawful in itself; but to anyone who reflects for a moment upon the inflammable feelings of sections of the populace in this time of Emergency, it is perhaps too mild a castigation of their conduct to describe it as blameworthy. To any rational person with a knowledge of local conditions and who is not blind to the realities of the situation in the Colony, nothing would be more likely to cause a breach of the peace than the manner in which the applicants conducted themselves. Such was the finding of the Justice and he came to the conclusion on the point of law that was raised that the applicants in the circumstances, and having regard to the nature of the particular offence charged, could not find shelter behind *Beatty v. Gillbanks*. In that, having heard the arguments of learned Counsel, we think he was right. There is nothing in section 182 (d) to stipulate that the manner of conduct it is sought to control must in itself be contrary to law and constitute some offence; it would naturally be of a reprehensible character if it satisfied the test required by the section as to whether in itself it is such as is likely to cause a breach of the peace. Then the section goes on to provide that any person conducting himself in such a manner *shall be deemed to be* an idle and disorderly person. No such provision of law governed the circumstances in *Beatty v. Gillbanks*.

The decision of the learned Justice is confirmed.

Decision of the trial Court confirmed.