

ASSIZE  
COURT  
OF  
LIMASSOL

REX  
v.  
MICHAEL  
HAJI NICOLA  
KOKINOFTA

The case of *R. v. Cabbage* shows that it is not essential to the crime of larceny in English law. Our colleague Atta Bey is of opinion that the term *sirgat* in Turkish law does not imply a taking *lucri causa*. We are all of opinion (with the exception of our colleague Oikonomides, J.) that it is not an essential element of the crime that the object of the person taking the thing in question should be to obtain some material benefit for himself. What is essential is that he should intend to deprive the owner of the property in it.

*Sentence: Three years hard labour.*

ASSIZE  
COURT  
OF  
PAPHOS  
1908

Jan. 31

(ASSIZE COURT OF PAPHOS.)

[TYSER, C.J., BERTRAM, J., STUART, P.D.C., SAMI EFFENDI, AND  
DEMETRIADES, JJ.]

REX

v.

TEVFIK OMER.

CRIMINAL LAW—LARCENY WITH VIOLENCE—OTTOMAN PENAL CODE,  
ART. 221.

A person may be convicted of larceny with violence under Art. 221 of the Ottoman Penal Code (which refers to "violence where no traces of wounds are left") even although the violence in question leaves traces of wounds.

A prosecution does not fail because the Crown proves circumstances of greater aggravation than those charged.

The accused was charged under Art. 221 of the Ottoman Penal Code with the crime of larceny with violence committed on one Haji Hassan Mustafa. It was proved that he attacked the complainant, who was sleeping in a mosque at Poli, wounded him with a knife and robbed him of 14s. 6*cp.* in money.

The Ottoman Penal Code recognises the following degrees of larceny with violence:—

1. Larceny with violence, and four other aggravating circumstances (Art. 217);
2. Larceny with violence, not leaving traces of wounds, and two other aggravating circumstances (Art. 218);
3. Larceny with violence, leaving traces of wounds, and two other aggravating circumstances (Art. 218);
4. Simple larceny with violence, leaving no traces of wounds (Art. 221).

This scheme seems not to provide specifically for the case of simple larceny with violence leaving traces of wounds.

*Bucknill, K.A.*, for the Crown, submitted that the words in Art. 221, "where no trace of wounds is left" were not intended to exclude cases where the violence used left traces of wounds. They must be taken to mean, "even though no traces of wounds are left."

TYSER, C.J.: The words in the Turkish text do not seem to bear the sense suggested by the King's Advocate. It is sufficient to say that where a person is accused of a crime the prosecution does not fail because the Crown proves circumstances of greater aggravation than those charged.

The other members of the Court concurred.

*Sentence: Three years hard labour.*

ASSIZE  
COURT  
OF  
PAPHOS  
}  
} REX  
} P.  
} TEVFIK  
} OMER  
} \_\_\_\_\_

[TYSER, C.J. AND BERTRAM, J.]

K. DIANELLO AND ANOTHER,

v.

THE KING'S ADVOCATE,

*Plaintiffs,*

*Defendant.*

TYSER, C.J.  
&  
BERTRAM,  
J.  
1908  
}  
} Feb. 17  
} \_\_\_\_\_

INTERPRETATION OF STATUTES—ENACTMENT IMPOSING TAXATION—LIMITATION OF ENACTMENT BY GENERAL SCOPE OF STATUTE—EXERCISE OF STATUTORY DISCRETION—LAW OF 29 SAFER, 1292, ART. 35—TOBACCO LAW, 1897 (NO. 18 OF 1897), SEC. 8—TOBACCO REGULATIONS, 1898.

By Art. 35 of the Law of 29 Safer, 1292, it was declared that licenses to establish manufactories of tobacco would be granted to persons complying with the conditions of the article.

By Sec. 8 of a temporary law entitled "A Law to facilitate the Cultivation of Tobacco in Cyprus" (the Tobacco Law, 1897, No. 18 of 1897) the High Commissioner was authorised to revoke all existing tobacco licenses and on the issue or re-issue of licenses to make conditions for the cutting of native tobacco by the manufacturers "and generally to vary as he may think fit the provisions of the said Tobacco Regulations governing the issue of such licenses."

By the Tobacco Regulations, 1898, issued under the authority of the Tobacco Law, 1897, it was declared that Art. 35 of the Law of 29 Safer was repealed, and that the issue of licenses was in the discretion of the High Commissioner, and subject to the payment of a license duty.

Acting under Sec. 8 of the Tobacco Law, 1897, the Government revoked the licenses of the Plaintiffs issued under the Law of 29 Safer, 1292, and declined to issue fresh licenses except on terms of the payment of license duty.

**Held:** That the Government had no authority, either under the powers given to it by Sec. 8 of the Tobacco Law, 1897, or under the discretionary power vested in the High Commissioner by the Tobacco Regulations, 1898, or under its general prerogatives, to make the issue of licenses subject to the payment of a license duty.

A law will not be interpreted as conferring powers to impose taxation unless such an intention appears by express words.

Per TYSER, C.J.: The power generally to vary the provisions of the Law of 29 Safer, 1292, governing the issue of licenses conferred upon the High Commissioner by Sec. 8 of the Tobacco Law, 1897, must be confined to variations of the same character as the provisions authorised to be varied.

Per BERTRAM, J.: The power must be controlled by the general scope of the law conferring it, and must be confined to such variations as might be necessary for the purpose of imposing the particular conditions mentioned in the immediate context.

This was an appeal from a judgment of the District Court of Nicosia given on the 29th December, 1902, dismissing a claim by the Plaintiffs for the return of the sum of £385 paid by them under protest to the Government as "license duty" on certain tobacco manufactories.