

[JACKSON, C.J., AND MELISSAS, J.]

(December 23, 1949)

THE COMMISSIONER, FAMAGUSTA, *Applicant*,

v.

MEHMED NADJIF IBRAHIM, *Respondent*.*(Case Stated No. 62.)*1949
Dec. 23THE COM-
MISSIONER,
FAMAGUSTA
v.
MEHMED
NADJIF
IBRAHIM.

Public Health—Village Health Commission—Occupiers' rate—Failure to pay—Remedy—Offence—Criminal proceedings—Public Health (Villages) Laws, 1936 to 1948, section 10—Village Health (Karavostassi) Rules, 1938, rules 86, 91 and 98; Village Health (Knodhara) Rules, 1938.

The respondent, having been duly rated by the Village Health Commission of Knodhara for the year 1948, under the Village Health (Knodhara) Rules, 1938, failed to pay the amount of the rate assessed on him on or before the 15th October, 1948, in contravention of rule 91 of the Rules. The trial Judge held that such breach of the Rules did not constitute an offence under section 10 of the Public Health (Villages) Laws, 1936 to 1948, but that it was a wrong of a civil nature for which a remedy was provided under rule 98, viz. the recovery of the amount of the rate assessed by civil proceedings, and he accordingly acquitted the respondent.

Held, that a breach of a rule properly made under the Public Health (Villages) Laws, 1936 to 1948, constituted an offence under section 10 of those Laws.

Decision of District Judge reversed.

Case stated by the District Judge of Famagusta (Case No. 2040/49) on the application of the Attorney-General.

The charge was as follows: "The accused on or before the 15th October, 1948, being an occupier in the village of Knodhara whose name appears in the Occupiers' list did fail to pay to the Chairman of the Village Health Commission of Knodhara the sum of 6s. being the amount of the annual rate assessed on him for the year 1948:

Law 19 of 1936, sections 2, 9 (1) (c) (i), 10 and the Schedule;

Law 29 of 1937, section 5; Law 19 of 1938, section 2;

Law 18 of 1943, section 3; Law 19 of 1949, section 2 (a) (c) (i);

Village Health (Karavostassi) Rules, 1938, rules 86 and 91;

Village Health (Knodhara) Rules, 1938."

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The facts of the case and grounds of decision were stated by the trial judge as follows :

The facts found by me were that the accused having been duly rated under the enactment appearing on the charge with the sum of 6s. for the year 1948 by the Village Health Commission of Knodhara has not paid same on or before the 15th day of October, 1948.

The accused not having appeared and not being represented I called upon the prosecuting officer to address me, *inter alia*, on the following point : " Whether failure to pay on the part of an occupier amounts to an offence within section 10 of the Public Health (Villages) Laws, 1936 to 1948."

It was hereupon contended on the part of the appellant that (i) as in rules 86 and 91 of the Village Health (Knodhara) Rules, 1938, there appears the verb " shall " with reference to the payment by an occupier of the rate assessed on him, default of such payment by any such rated occupier, amounts to an offence within section 10 of the Public Health (Villages) Laws, 1936 to 1948, and (ii) that rules 86 and 91 above referred to are mandatory in view of the verb " shall " appearing therein.

I, being of opinion that the word " shall " in rules 86 and 91 above referred to is directory only and not mandatory, have come to the conclusion that the non-payment by a rated occupier is not to be treated as a criminal matter, but only as a wrong of a civil nature for which a civil remedy is supplied by rule 98 of the said Rules, and I have accordingly dismissed the charge and acquitted the accused. The reasoning for my such conclusion being that the Village Health Commission of Knodhara in exercise of the powers vested in them by the Public Health (Villages) Laws, 1936 to 1948, section 9 (1) (c) proceeded to the making of rules 86 to 92, 97 and 98 and only used the word " shall " appearing therein (and in particular in rules 86 and 91) for the purpose of making the rate imposed thereunder both leviable and payable by a particular date so that thereafter their right of collecting same in the manner provided in rule 98 of the Rules be invoked and exercised.

R. R. *Denktash*, Junior Crown Counsel, for the applicant.

No counsel appeared for the respondent.

JACKSON, C.J. : We feel no doubt that the District Judge was wrong in the view that he took on the particular point of law which has been raised in this case. The form of section 10 of the principal Law (the Public Health (Villages) Law, 1936) by which, among other things, a breach of a rule properly made under the law is declared to be an offence, is a form which frequently appears in legislation,

and there was in this case a breach of a rule properly made under the law and we feel no doubt that it became an offence under section 10 of the principal Law. Having regard to rule 98 of the Village Health (Karavostassi) Rules, 1938, adopted by the Village Health Commission of the particular village to which the respondent belongs, we think that any doubt which could possibly have been created by the considerations which the District Judge had in mind are removed. That rule quite clearly contemplates criminal proceedings for failure to pay a prescribed fee, rate or rent. But apart from that rule, we think that the general principles of construction make it necessary to hold that a breach of a rule properly made under the principal Law exposes the person who commits it to a prosecution under section 10 of that Law.

We think, therefore, that the District Judge was wrong in the conclusion to which he came and that the case should go back to him in order that he may act in accordance with the opinion we have expressed.

Appeal allowed.

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