

[WILSON, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

SAVVAS K. CHRISTOFIDES,

Appellant.

DISTRICT OFFICER, NICOSIA AND KYRENIA

Respondent.

(Criminal Appeal No. 2468).

1962
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SAVVAS K.
CHRISTOFIDES
v.
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AND
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Wells—Deepening a well—The Wells Law, Cap. 351, sections 3(1), 5 and 13 as the latter stood prior to the amending Law No. 47 of 1961—Deepening a well without permit was not then an offence.

The relevant sections of the Wells Law, Cap. 351, provide :

Section 3(1): "No well shall be sunk or constructed in or upon any land unless the person proposing to sink or construct the well applies for, and obtains, a permit from the Commissioner of the district in which such well is to be sunk or constructed:

Provided that, where the applicant is not the owner of the land on which the well is to be sunk or constructed, no permit shall be granted by the Commissioner unless the applicant obtains therefor the written permission of the owner of the land, duly certified by a certifying officer."

Section 5: "For the purposes of this Law, widening, deepening or otherwise extending any existing well shall be deemed to be an operation in respect of which a permit must be obtained under the provisions of this Law."

Section 13: (1) "Any person who fails to comply with the provisions of section 3 or 12 of this Law or with any conditions and restrictions imposed in any permit granted under section 3 of this Law or who uses or possesses a well sunk or constructed in contravention of section 3 of this Law shall be guilty of an offence and shall, on conviction, be liable to imprisonment not exceeding three months or to fine not exceeding twenty-five pounds or to both.

(2) Upon the conviction of a person for an offence under section 3 of this Law, the Court shall order any well sunk or constructed without a permit, or in deviation from the conditions and restrictions imposed in the permit, to be filled in or closed at the expense of the person convicted within such

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time as shall be specified therein but in no case exceeding two months, unless the permit or consent in writing of the Commissioner of the district is, in the meantime, granted or obtained :

Provided that the Commissioner may, in granting such permit or giving such consent, impose such terms and conditions as to him may seem necessary or desirable."

(Note : Section 13 has now been amended by Law 47 of 1961 to provide penalty for an offence against section 5).

On January 12, 1962, the District Court of Kyrenia convicted the appellant for deepening his well without permit contrary to sections 3(1), 5 and 13 of the Wells Law, Cap. 351, as the latter stood prior to its amendment by Law No.47 of 1961. The trial judge imposed a fine and directed the filling in of the well unless a permit was obtained within two months of the date of conviction. The facts were that the appellant deepened an old and existing well and did not construct a new well. On appeal the conviction, penalty and the order for filling, in the well were set aside.

Held : (1) Section 13 being a penalizing section should be construed strictly and as at the time of the offence section 13 did not provide for any penalty for infringing section 5, therefore none could be imposed.

(2) Sub-section (2) of section 13, does not give to the Court power to order the filling in of the deepened portion of a well.

(3) Therefore the appeal is allowed, the conviction, penalty, and the order for filling in the well set aside and the penalty will be refunded.

Appeal allowed.

Appeal Against Conviction.

The appellant was convicted on the 12/1/62 at the District Court of Kyrenia (Cr. Case No. 1099/61) on one count of the offence of deepening his well contrary to ss. 3(1) 5 and 13 of the Wells Law Cap. 351 and was sentenced by Evangelides D.J. to pay a fine of £1.—and £2.900 mils costs and the well to be filled in unless a permit be obtained within two months.

A. Christofides for the appellant.

A. Frangos for the respondent.

The judgment of the Court was delivered by :

WILSON, P. : This is an appeal from a conviction and sentence by the District Court of Kyrenia on January 12, 1962, for deepening a well contrary to sections 3(1), 5 and 13 of the Wells Law, Cap. 351.

The learned trial judge imposed a fine and directed the filling in of the well unless a permit was obtained within two months from the date of conviction. No such permit has been granted.

It is our opinion that upon the basis of the Statement of Offence in the Charge, namely, on the 1st-count : "Did deepen his well", and in the Particulars of Offence : "Did deepen his well", and of the reasons for judgment, that the Court was dealing here with the deepening of an old and existing well. It was not the construction of a new well which, in our opinion, would come within the provisions of section 3(1) of the statute to which I have just referred.

It is our view that the trial proceeded and the conviction was really imposed upon the finding that the accused failed to comply with the provisions of section 5 of the statute which required a permit to be obtained for widening, deepening, or otherwise, extending an existing well.

Section 3 on the other hand requires a permit to be granted for the sinking or construction of wells. The word "proposing" seems to relate to new wells and not to existing wells. Therefore, the penalty was imposed for deepening the well.

We must now consider section 13 which is a penalizing section and must be construed strictly. The offence must come fairly within its wording as at the date of the offence. On that date neither it nor any other section provided any penalty for this infringement of the act. Therefore, none may be imposed. Since the date of the offence section 13 (1) has been amended to provide penalty for an offence against section 5. I would point out, however, sub-section (2) of section 13 has not given the Court power to order the filling in of the deepened portion of a well.

The appeal, therefore, must be allowed. The conviction and penalty will be set aside as well as the order made by the learned trial judge for the closing of the well. The penalty will be refunded.

Appeal allowed.

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