

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

CHRISTOS S. TARAPOULOUZIS,

Appellant.

v.

THE DISTRICT OFFICER, NICOSIA

Respondent.

(*Criminal Appeal No. 2486*).

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Wells—Sinking a well without a permit contrary to sections 3, 13(1) and (2) of the Wells Law, Cap. 351—No permit required if new well is sunk within 20 feet from an old abandoned and filled in well—Section 15 of the Wells Law—Old well must have been lawfully sunk—Placing of planks and soil not abandonment and filling in—Law in existence before 1946—Whether or not land within the Arazi-Mirie category—Matter peculiarly known to the appellant.

Evidence in criminal cases—Matter within the peculiar knowledge of the accused.

Sentence—Discretion.

The accused (appellant) was found guilty (*inter alia*) of sinking a well without a permit contrary to sections 3, 13(1) and (2) of the Wells Law, Cap. 351 and sentenced to £25 fine. He was also ordered to fill up the well.

The appellant admitted sinking the well in question without a permit but he put up a defence under the provisions of section 15 of the Wells Law, Cap. 351 which reads as follows :

"Nothing in this Law shall apply to the repair of any well lawfully sunk or constructed, whether before or after the commencement of this law, or to the sinking or construction of any new well sunk or constructed on the land of the owner or with such owner's permission, within a distance not exceeding twenty feet from another well belonging to the same person which has been abandoned and filled in".

The appellant set out to prove that the aforesaid well in question (the new well) was within twenty feet from an old well in his plot sunk by him in 1943 and which was later abandoned and filled in by him. He admitted that he did not obtain a permit for the sinking of the old well in 1943, but he contended that :—

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(a) It was not necessary for him to prove that the old well had been lawfully sunk, and further in the alternative, (b) there was no evidence before the trial judge that the land in question belonged to the *Arazi Mirie* category, in which case only a permit was then (in 1943) required under the law in force at the time, i.e. The Construction of Buildings Streets and Wells on *Arazi Mirie* Land Laws, 1927 to 1938, section 9(1), (repealed on September, 1, 1946, by the Streets and Buildings Regulation Law, Cap.96).

Held : (1) On the true construction of section 15 of the Wells Law, Cap. 351, the abandoned and filled in well mentioned therein must have been lawfully sunk.

(2). Although the point that the appellant's land was not of the *Arazi Mirie* category, (in which case no permit would have been required for the sinking of the old well under the law then in force (*supra*), was not taken before the trial Judge, still on the evidence before him and considering that the matter was peculiarly within the appellant's knowledge, he was entitled to draw the inference that this land was then of the *Arazi Mirie* category and that, therefore in the absence of any permit, the old well was unlawfully sunk.

(3) The mere placing of a few planks and soil on top of the well without actually filling in the well itself does not amount to abandonment and filling in of the well as required by section 15 of Cap..351.

(4) As to sentence : The real complaint is not against the amount of the fine imposed but against the order of the trial Judge directing the filling in of the well. Taking into consideration all the circumstances of the case, we are satisfied that he exercised properly his discretion in ordering the filling in of the well.

Appeal dismissed.

Appeal against conviction and sentence.

The appellant was convicted on the 19/2/62 at the District Court of Nicosia sitting at Morphou (Cr. Case No. 1197/61) on 2 counts of the offences of (1) Sinking a well without permit contrary to ss. 3 and 13(1)(2) of the Wells Law, Cap. 351, and (2) taking measures to obtain water without the permission of the District Officer, contrary to ss. 3 and 28(4) and 28(6) of the Government Water Works Law Cap. 341 and was sentenced by Papaioannou, D.J. to pay a fine of £25

on count 1 and £10 on count 2. The Court further ordered that the well sunk by appellant be filled in within two months and furthermore all measures taken by him to obtain or utilize water be removed or extinguished at his expense.

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E. Odysseos for the appellant.

S. Georghiades for the respondent.

The judgment of the Court was delivered by :

JOSEPHIDES, J. : This is an appeal against the conviction and sentence imposed by the District Court of Nicosia sitting at Morphou, when the appellant was found guilty of (a) sinking a well without a permit contrary to sections 3, 13(1) and (2) of the Wells Law, Cap. 351 and sentenced to pay a fine of £25 in respect of that count, and of (b) taking measures to obtain water without the permission of the District Officer, contrary to sections 3 and 28(4) and (6) of the Government Water Works Law, Cap. 341, and was sentenced to pay a fine of £10. He was also ordered to fill in the well unlawfully sunk and to remove or extinguish all measures taken by him to obtain or utilize any water.

The appellant admitted sinking the well in question without a permit, but he put up a defence under the provisions of section 15 of the Wells Law, Cap. 351, which reads as follows :

“Nothing in this Law shall apply to the repair of any well lawfully sunk or constructed, whether before or after the commencement of this Law, or to the sinking or construction of any new well sunk or constructed on the land of the owner or with such owner’s permission, within a distance not exceeding twenty feet from another well belonging to the same person which has been abandoned and filled in”.

The appellant set out to prove (a) that the new well was within 20 feet from the old well, (b) that an old well existed in his plot and (c) that the old well had been abandoned and filled in by him.

So far as (a) is concerned, counsel for the Republic conceded that the new well is within a distance of 20 feet from the old well. As regards the provisions concerning the old well it was submitted by the learned counsel for the appel-

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lant that it was not necessary for the appellant to prove that the old well had been lawfully sunk ; it was sufficient, he said, to prove that the old well existed there.

From a perusal of section 15 of the Wells Law, Cap.351, we have no doubt in our mind that the appellant had to prove that the well had been lawfully sunk. If that were not so it would mean that persons would be encouraged to sink unlawfully one well first and then, in a comparatively short time, sink a second well nearby thus evading the provisions of the Law.

It was further contended on the part of the appellant that in accordance with the law in force in 1943, when the first well was sunk, no permit was required. Under the provisions of section 9(1) of the Construction of Buildings, Streets and Wells on Arazi Mirie Land Law, 1927, as amended by Law 10 of 1938, no well could be sunk or constructed in or upon any land of the Arazi Mirie category without a permit to that effect first obtained from the Commissioner of the District in which such well was to be sunk or constructed.

It was submitted by appellant's counsel that there was no evidence before the trial Judge that the appellant's land belonged to the Arazi Mirie category. From the official survey plan, which was produced in evidence before the trial Court, it is apparent that the appellant's plot is an open land outside the built-up area of the village ; and, moreover, in the appellant's application to the District Officer, for a permit to sink a well, which is exhibit 1 before the trial court, this land is described by the appellant himself as a field of 50 donums. The point that the appellant's land was not of the Arazi Mirie category, which was a matter peculiarly within his knowledge, was not taken by the defence before the trial Court, but we are satisfied that, on the evidence before him, the trial Judge was entitled to draw the inference that this land was of the Arazi Mirie category, and as the appellant admits that he did not obtain a permit for the sinking of the well in 1943 the Judge rightly found that the well was unlawfully sunk.

The third point taken by appellant's counsel is that the old well was abandoned and filled in. What the appellant did was to place a few planks and soil on top of the well without actually filling in the well itself. On the evidence adduced by the appellant it is apparent that he failed to

prove that he abandoned and filled in the well as required under the provisions of section 15 of the Wells Law.

For these reasons the appeal against conviction is dismissed.

Now, as to the sentence, the real complaint is not against the amount of fine imposed but against the order of the Judge directing the filling in of the well. In exercising his discretion he took into consideration the fact that the appellant applied to the District Officer twice to be allowed to sink a well and that he was refused on both occasions. As late as October, 1960, the appellant stated in his application for a permit to sink a well that his plot had not been planted with trees. It was urged on behalf of the appellant that the nearest water supply is about a mile away and that under the circumstances the order to fill in the well should not be allowed to stand.

We have taken into consideration all the circumstances of the case and, having read the full and comprehensive judgment of the trial court, we are satisfied that the trial Judge exercised his discretion properly in ordering the filling in of the well.

Appeal against conviction and sentence dismissed.

Conviction, sentence and order of District Court affirmed.

Appeal dismissed.

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