

1964  
Nov. 27

[ZEKIA, P., TRIANTAFYLIDIS AND JOSEPHIDES, JJ.]

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IOANNA  
PAPAPROKOPIOU  
v.  
THE DISTRICT  
OFFICER  
NICOSIA AND  
KYRENIA

IOANNA PAPAPROKOPIOU,

*Appellant,*

v.

THE DISTRICT OFFICER, NICOSIA AND KYRENIA

*Respondent.*

(*Criminal Appeal No. 2748*)

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*Evidence in Criminal Trials—Wells Law, Cap. 351—Drilling a borehole without a permit, contrary to sections 3 (1) and 13—Registered ownership of field only evidence against appellant—No other evidence connecting appellant with the actual drilling—Insufficient to convict—Presumptions and inferences.*

*Criminal Procedure—Criminal Procedure Law, Cap. 155, section 145 (1) (c)—Not a case warranting the exercise of the powers thereby conferred on the Court of Appeal.*

The appellant in the instant appeal, was convicted of drilling a borehole without a permit from the District Officer, contrary to the provisions of section 3, sub-section (1), and section 13 of the Wells Law, Cap. 351 (as amended by Laws 47 of 1961 and 19 of 1962). The only evidence adduced against her was the fact that she was the owner of the field in question. It was argued on appeal that such evidence was not sufficient to warrant a conviction as charged.

*Held*, (1) as to the conviction :

(a) The only evidence against the appellant is the ownership of the field on which a borehole was drilled in June, 1964 ; but there is no evidence as to who drilled it.

(b) From the very wording of the proviso to section 3 (1) of the Wells Law, Cap. 351 (as amended *v. supra*) it is apparent that the legislature envisages cases where a well may be sunk by a person who is not himself the owner of the land.

(c) It is true that inferences may be drawn from primary facts but we do not think that from the facts as found by the trial Judge, namely, that the appellant was the registered owner of the field, without any other evidence, the inference could legitimately be drawn in a criminal case “that the borehole was drilled by her or on her behalf”.

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(d) In the present case from the *prima facie* evidence given by the prosecution no presumption could reasonably be raised upon which the court would be justified in finding the appellant guilty.

(e) We are, therefore, of the view that, having regard to the evidence adduced, the conviction was unreasonable, and we, accordingly, set it aside.

*Held*, (2) as to the exercise of the powers vested in the Supreme Court under section 145 (1) (c) of the Criminal Procedure Law, Cap. 155 :

(a) The question which this court had to consider was whether there was sufficient evidence before the trial Court warranting a conviction under section 13, sub-section (1), of the Wells Law, Cap. 351, that is to say, that the appellant possessed a well sunk in contravention of section 3 of the Law.

(b) As already stated, the only evidence against her is the registration in her name of the field in question. As against that, there is the evidence of the ploughman who stated that he had cultivated this field on the instructions of the son-in-law who paid him for it. This, coupled with the appellant's statement from the dock that she gifted the field to her daughter twelve years ago, weakens the case for the prosecution against her, and we do not feel justified in this case in substituting a new charge against her.

*Appeal allowed. Conviction  
and sentence set aside.*

#### Appeal.

The appellant was convicted on the 21st October, 1964, at the District Court of Kyrenia (Cr. Case No. 147/64) on one count of the offence of drilling a borehole without a permit from the District Officer, contrary to sections 3 (1) and 13 of the Wells Law, Cap. 351 (as amended by Laws 47 of 1961 and 19 of 1962) and was sentenced by Savvides, D.J., to pay a fine of £15 and £8,400 mils costs and she was further ordered to fill in the unauthorized borehole within two months from the date of the order, unless she obtained a permit from that appropriate authority within that period.

*L. Demetriades*, for appellant.

*L. G. Loucaides*, Counsel of the Republic, for the respondent.

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The facts sufficiently appear in the judgment of the court.

ZEKIA, P.: The judgment of the court will be given by Mr. Justice Josephides.

JOSEPHIDES, J.: In this case the appellant was convicted of drilling a borehole without a permit from the District Officer, contrary to the provisions of section 3, sub-section (1), and section 13 of the Wells Law, Cap. 351 (as amended by Laws 47 of 1961 and 19 of 1962), and she was sentenced to pay a fine of £15 and £8.400 mils costs ; in addition, she was ordered to fill in the unauthorized borehole within two months from the date of the order, unless she obtained a permit from the appropriate authority within that period. She now appeals both against the conviction and sentence.

The ground of appeal against conviction is that the trial Court erred in convicting the appellant in that (a) the only evidence adduced against her was the fact that she was the owner of the field in question and that such evidence was not sufficient to warrant a conviction as charged, and (b) that the prosecution failed to adduce any evidence to prove positively that the appellant had no permit under the provisions of the Wells Law, Cap. 351 (as amended).

The latter ground was not argued before us and in view of the conclusion we have reached on the first ground, we do not propose to deal with it.

The evidence against the appellant was that at the material time she was the registered owner of the field in which a borehole was drilled, some time in June, 1964. The field in question is plot 19/1/2 at Ayia Irini, and is registered in her name under Registration No. 1545, dated the 26th September, 1960. Apart from this evidence, there was no other evidence connecting the appellant with the actual drilling of the borehole and, furthermore, there was no evidence that she cultivated the said field herself or through any other person. The appellant did not give sworn evidence but she made an unsworn statement from the dock, in which she stated that she gave the said field as dowry to her daughter, some twelve years ago. One of the two defence witnesses, whose evidence was accepted by the trial Judge, stated that he owns a tractor and that he had cultivated this field with his tractor several times during the past 8 years, on the instructions of the appellant's son-in-law, who paid him for the cultivation. He ploughed this field for the last time in February, 1964, on the instructions of the son-in-law who paid him £7 for his services. Neither

the appellant nor her husband ever employed him or paid him for the cultivation of this field. The husband assisted the ploughman with the sowing of the field but the son-in-law, who is a forest guard, did not.

The trial Judge rejected the statement of the appellant from the dock and found her guilty as charged.

In reaching this conclusion the learned trial Judge drew certain inferences from the primary facts proved before him and relied on certain presumptions. This is the relevant extract from his judgment :

“ The prosecution in this case has proved that accused (1) (appellant) is the owner of the field, on which the borehole was drilled, that no borehole existed prior to June, 1964, and that a borehole was drilled in the early days of June, 1964. From these facts an inference may be drawn that accused (1) (appellant) being the registered owner of the property was also in possession of same and that the borehole was drilled by her on her behalf. Furthermore, the circumstances are such as to raise a presumption that the accused (1) (appellant) being the registered owner was also in possession of the field on which the borehole was drilled and that it was drilled by her.”

It will thus be seen that the only evidence against the appellant is the ownership of the field on which a borehole was drilled in June, 1964 ; but there is no evidence as to who drilled it.

Section 3 (1) of the Wells Law, Cap. 351 (as amended) reads as follows :

“ 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 District Officer 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 District Officer unless the applicant obtains therefor the written permission of the owner of the land, duly certified by a certifying officer.”

From the very wording of the proviso it is apparent that the legislature envisages cases where a well may be sunk by a person who is not himself the owner of the land.

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It is true that inferences may be drawn from primary facts, but we do not think that from the facts as found by the trial Judge, namely, that the appellant was the registered owner of the field, without any other evidence, the inference could legitimately be drawn in a criminal case "that the borehole was drilled by her or on her behalf". The general rule is that, apart from any statutory provision to the contrary, the burden of proof of guilt beyond reasonable doubt lies upon the prosecution, and it is not for the defence to prove innocence. In the present case from the *prima facie* evidence given by the prosecution no presumption could reasonably be raised upon which the court would be justified in finding the appellant guilty.

We are, therefore, of the view that, having regard to the evidence adduced, the conviction was unreasonable, and we, accordingly, set it aside

There remains the question whether this court, in exercise of the powers vested in it under the provisions of section 145, sub-section (1) (c), of the Criminal Procedure Law, Cap. 155, should proceed to convict the appellant of any offence of which she might have been convicted by the trial Court on the evidence which has been adduced, and sentence her accordingly. The question which this court had to consider was whether there was sufficient evidence before the trial Court warranting a conviction under section 13, sub-section (1), of the Wells Law, Cap 351, that is to say, that the appellant possessed a well sunk in contravention of section 3 of the Law. As already stated, the only evidence against her is the registration in her name of the field in question. As against that, there is the evidence of the ploughman who stated that he had cultivated this field on the instructions of the son-in-law who paid him for it. This, coupled with the appellant's statement from the dock that she gifted the field to her daughter twelve years ago, weakens the case for the prosecution against her, and we do not feel justified in this case in substituting a new charge against her.

For these reasons, the appeal is allowed and the conviction and sentence of the trial Court (including the order for the filling in of the borehole) are set aside.

*Appeal allowed Conviction and sentence set aside.*