FISHER, C.J. & GRIMSHAW, P.J.
1923
November 10

[FISHER, C.J. AND GRIMSHAW, P.J.]

REX
v.
THEODOROS PAPA YORGHI.

TITHE LAW, 1881, SECS. 5 (*d*), 14—ORDER IN COUNCIL OF 1ST JUNE, 1882.

The appellant was convicted of moving barley from his threshing floor before it had been assessed by the tithe officer in breach of the provisions of an Order in Council dated the 1st of June, 1882. The evidence was to the effect that the barley was moved from one part of the threshing floor to another under circumstances which indicated an intention to conceal it from the tithe officer.

HELD: *That the conviction should have been for an offence under Section 14 of the Tithe Law,* 1881.

SEMBLE: *That when a Law gives power to make rules by Order in Council and to provide penalties for any breach of the rules without specifying the amount of the penalties, the imposition of a penalty of £100 is in excess of the power conferred by the Law, which for an analogous offence imposes a maximum penalty of £10.*

This was an appeal from a District Court who convicted the appellant under a count in an information which charged him with removing " from his threshing floor nineteen and two-tenths kiles of barley " before the quantity thereof had been assessed by the proper tithe " officer."

The charge was laid under clause 1 of an Order in Council dated the 1st of June, 1882. The Court sentenced the appellant to pay a fine of £50 or to go to prison for six months in default of payment, and ordered the forfeiture of the barley removed. The facts were as follows:—

Permission to winnow was given to the appellant and the Memour, who came to assess, found that thirty-two kiles had been winnowed and assessed and took tithe on that amount. Later on the same day some Treasury officials, who came to inspect the threshing floor, found some nineteen additional kiles concealed under kondila on the threshing floor.

S. Pavlides for the appellant contended that there had been no removal from " place to place " within the meaning of sec. 5 (*d*), of the Tithe Law, 1881, under which the rules embodied in the Order in Council were made. He further contended that the penalty imposed by the Order in Council was *ultra vires*, and referred to section 7 and 14 of the Law.

The King's Advocate for the Crown admitted that there had been no removal from the threshing floor.

Judgment : Under section 5 (*d*) of the Tithe Law, 1881, the Governor in Council may " make rules for prohibiting the moving from place to " place of any titheable produce . . . and may provide penalties for any " breach of the provisions of any such rule."

By clause 1 of an Order in Council dated the 1st of June, 1882, and made in exercise of the above-mentioned power it is provided that:—

"If any person shall, without written permission from the Commissioner of the District or from the Tithe Superintendent, remove any titheable produce before the quantity thereof shall have been duly assessed, from the place at which, in accordance with custom and with the Law for the time being in force, the assessment should be made, he shall be liable for each such removal to a penalty not exceeding £100, and the produce so removed shall be forfeited and may be seized by the Tithe Superintendent wherever the same may be found."

The appellant by some manipulation of the titheable produce on his threshing floor separated some of it from the rest and concealed it under *kondila*. It is admitted that he did not remove it from the floor. The District Court convicted him of an offence against the clause of the Order in Council which is quoted above, and sentenced him to pay a fine of £50 or to go to prison for six months in default, and the Court also ordered the barley in question to be confiscated.

In our opinion that conviction cannot be upheld. We think that the evidence clearly brings the case within section 14 of the Tithe Law 1881, which enacts that "Every person who shall wilfully and fraudulently do or permit to be done anything whereby any person charged with the assessment or collection of tithe is hindered in or prevented from assessing the quantity of any titheable produce belonging to such person, or from collecting the money payable in respect of the tithe thereon, shall for every such offence be liable to a fine of not less than two pounds or more than ten pounds."

If the appellant has committed an offence under section 14 he certainly cannot be convicted on the same facts of committing an offence under the Order in Council as the legislature cannot be taken to have given power to the High Commissioner in Council to deal with an offence already provided for in the substantive enactment. Moreover there was no removal from "place to place" within the meaning of section 5 (*d*) inasmuch as the titheable produce was not removed from the floor. The conviction therefore should have been for an offence under section 14.

There is another point which was raised by the appellant's advocate, which, although it is not necessary to give judgment upon it, calls for remark. That is as to the penalty imposed by the Order in Council. In the absence of any express limitation by the section creating the power to make the Order in Council it must be read as conferring a

power to provide penalties of a reasonable amount (Maxwell's Interpretation of Statutes, 3rd. Edn. p. 417.) What precisely would be the extent of that power it would be difficult to say, but a penalty which is ten times as great as the maximum penalty provided by section 14, which provides for cases in which fraud is of the essence of the offence, would certainly seem to be in excess of the power conferred by the Law. The conviction therefore will be altered to a conviction of an offence under section 14, and the appellant must pay a fine of £10 or suffer three months imprisonment in default. The order for forfeiture is of course cancelled, no provision for forfeiture being made by section 14.

FISHER, C.J. & GRIMSHAW, P.J.
1923
November 13

[FISHER, C.J. AND GRIMSHAW, P.J.]

MICHAEL G. NICOLAIDES

v.

MARIKKOU LOIZOU.

BOND—MORTGAGE—COLLATERAL AGREEMENT—PREMATURITY.

Appeal of plaintiff from the judgment of a District Court dismissing the claim of plaintiff.

The facts appear sufficiently from the judgment of the District Court which runs as follows:—

Judgment: In this case the plaintiff claims the sum of £160 on a mortgage bond dated the 11th April, 1922, and payable on the 11th April, 1923. This bond was made under the following circumstances:—

A certain Costi Louroudjati—the son of the defendant—was in financial difficulties and applied to the plaintiff for help. The plaintiff obtained for Costi Louroudjati a loan from Mr. Selim Sassin of £450. This loan was repayable by Costi Louroudjati in two years from the 11th April, 1922, and was guaranteed by the plaintiff and others. It was a condition of the bond that if the interest on this bond was not paid at the end of the first year this bond should become due. In order to cover himself the plaintiff was given by the defendant the mortgage bond which is the subject of this claim. At the end of the first year Costi Louroudjati did not pay the interest on the bond of £450 to Mr. Sassin. On the other hand there is no evidence that he was ever asked to pay. Mr. Sassin admits he never wrote to him. All he says is that he went to his shop three or four times and found it closed and then informed the guarantor. The guarantors paid the interest amounting to £45 on the 21st May, 1923.