

TYSER, C.J.
&
FISHER, J.
1919
March 29

[TYSER, C.J. AND FISHER, J.]
MUNICIPAL COUNCIL OF NICOSIA

v.

HAFIZ TAYIB EFFENDI.

MUNICIPAL COUNCILS LAW, 1885, SEC. 4—BYE-LAWS—"TRADE RATES."

The Defendant was assessed as an Imam of a mosque and Mutevelli of a vaqf under Bye-laws purporting to be made in exercise of powers conferred by Sec. 4 of the Municipal Councils Law, 1885.

HELD: *That he was not liable to be so assessed.*

This was an appeal from a judgment of the District Court of Nicosia affirming a judgment of the Village Judge of Nicosia.

The facts sufficiently appear from the judgment. The bye-laws under which the Appellant was sought to be charged are published in the *Cyprus Gazette* of 25th August, 1916.

Behueddin for the Appellant.

Chrysafines for the Respondent.

The Court allowed the appeal.

Judgment: The contention of the Plaintiffs is that they are entitled to recover a rate from the Defendant because he receives payment as Imam of a Mosque and as Mutevelli of a vaqf. They base their claim on certain rates imposed by bye-laws which purport to be made under Sec. 4 of the Municipal Councils Law, 1885. That Section, so far as it concerns this action, is in the following terms:—

"The Municipality may fix by bye-laws the rates to be taken in respect of trades and professions carried on within the Municipal area, hitherto known as trade rates."

It is contended for the Plaintiffs by Mr. Chrysafines that any one who does any work for payment within the Municipal limits is liable to be assessed, and the Municipality may fix a rate to be paid by him.

It is said that Government clerks, employees of merchants and servants may be rated under the Law, because they are traders.

It is said that Clergymen and Imams may be taxed because they pursue learned professions.

It is said that a Mutevelli may be taxed because he is paid for his work.

The Law authorises the fixing of rates on trades and professions only, and a further limitation is that they are to be such as prior to 1886 were known as trade rates. There is no authority to rate wages or salaries.

The question is whether a rate fixed for payment by an Imam is a rate in respect of a profession within the meaning of the bye-law. In our opinion it is not. The term "profession" must be construed to mean something of the nature of a trade, *i.e.*, a profession the carrying on of which brings profit in proportion to the work done. A lamplighter would not carry on a profession in this sense nor a policeman, nor a Government clerk.

In the same way a Clergyman or Imam does not come within the class intended to be included as carrying on a profession.

Our view as to this is confirmed by the fact that the rates are to be such as were in 1886 "hitherto known as trade rates." None of the *Gazettes* contain such charges as a charge on the Imam.

As to the charge on the Defendant as Mutevelli, *tevllet* is a mere occupation, not a profession at all. Neither the term "trade" nor "profession" will extend to a mere occupation such as that of Mutevelli or Trustee.

Appeal allowed with costs.

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[FISHER, C.J. AND HOLMES, ACTING J.]

IN RE CLAUSE 213 OF THE CYPRUS COURTS OF JUSTICE
ORDER, 1882.

November 5 CONTEMPT OF COURT—PENDING LITIGATION—NEWSPAPER COMMENT ON CONDUCT
OF LITIGANT.

While an action, claiming probate of a will under Sec. 37 of the Wills and Succession Law, 1895, was pending, a newspaper published a paragraph commenting adversely on the conduct of the Defendants in the action in opposing the claim.

The Defendants applied that the person responsible for the publication of the newspaper might be dealt with under Clause 213 of the Cyprus Courts of Justice Order, 1882.

HELD: *That the publication of the paragraph was calculated to discredit the Defendants in the exercise of their rights as litigants, and was therefore within the provisions of the said Clause.*

This was an application under Clause 213 of the Cyprus Courts of Justice Order, 1882, which provides that "If, while any proceedings, "civil or criminal, are pending in any Court, any person shall publish "any writing . . . in reference to such proceedings calculated to prejudice "the fair trial of such proceedings or to interrupt or delay the course "of justice or to bring into contempt the Court before which such "proceedings are pending the Supreme Court may upon the application "of any party to such proceedings . . . proceed against such person "by way of attachment . . ."

The applicants were the Defendants in an action brought for probate of a will. The Respondent was the publisher of a newspaper. While proceedings in the action were pending an article appeared in the newspaper containing a paragraph of which the following is a translation:—

"The public character of the will and the social position of those "objecting to its validity evoke daily more vividly the interest of the "public which, with a just anxiety, is waiting to see to what extent "the opposing party will go in defiance of the last sacred wish of "their deceased brother and deprive the destitute infants and the "poor beneficiaries of the community of the benefit that the high "and Christian soul of C. E. of the blessed memory with liberality "bequeathed to them."

Russell, K. A. (Chrysafines and Clerides with him) for the Applicant.

Stavriniaki for the Respondent.