

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

POLICE

v.

SOFOLLI G. PATICHARIS AND OTHERS.

GOATS LAW—GRAZING IN PRESCRIBED AREA—NEW SURVEY—INCLUSION OF LAND
PREVIOUSLY ATTACHED TO UNPRESCRIBED VILLAGE TO PRESCRIBED VILLAGE—NO
PETITION OR BALLOT AS TO INCLUDED AREA.

NETTLE-
TON,
C.J.
&
GRIM-
SHAW,
P.J.
1925
1925

December 10

This is a case stated by the Magisterial Court of Limassol.

In this case questions of law are reserved for this Court in the following circumstances :

The accused, who belong to Limassol, are charged with bringing and grazing goats on or about the 6th May, 1925, at the locality "Karakalsi," near Ayios Athanassios, a prescribed village under the Goats Law, 1913, contrary to section 8 of the said Law.

Ayios Athanassios was declared a prescribed village by an order in Council, No. 569 of the 18th April, 1914, published in the Cyprus Gazette at page 8502 of the 24th April, 1914, within the meaning of the Goats Law, 1913.

At the time of its declaration as a prescribed village, the land upon which the accused are charged with grazing goats and which they admit doing, did not form part of the village of Ayios Athanassios, but of the adjoining village of Messayitonia, which is not a prescribed village.

On the 1st October, 1915, under a notice of survey, dated the 26th February, 1915, and published in the Cyprus Gazette at page 8814 of the 26th February, 1915, this land, by agreement between the villages of Messayitonia and Ayios Athanassios under section 2 of the Revenue Survey Law, 1880, was detached from Messayitonia and allotted to Ayios Athanassios, and the boundary between the two villages was marked off by the Director of Survey so as to include this land within the village of Ayios Athanassios.

The questions of law reserved are as follows :—

1. *Has the survey a legal effect as regards the lands of Messayitonia, which were allotted to Ayios Athanassios, though not re-registered in the books of the Land Registry Office as belonging to the latter village?*
2. *Can such lands be considered as being legally included within the prescribed area of Ayios Athanassios in the absence of a petition and a ballot as regards the owners of such lands, and also in the absence of an Order in Council to this effect?*

For Police the Assistant Attorney-General.

For Accused Paschalis.

Judgment : Mr. Paschalis in his argument on behalf of the accused did not seek in any way to rely on the point raised in the first question as to the lands of Messayitonia, which were allotted to Ayios Athanassios, not having been re-registered in the books of the Land Registry Office as belonging to the latter village. He confined himself to the contention that inasmuch as the owners of these lands and the owners of goats therein had not been given an opportunity of voting under section 3 of the Goats Law, 1913, on the question of the exclusion of goats there-

from, these lands could not be held to be included within the prescribed area. He further submitted that a new Order in Council would be necessary in the event of any addition of land being made to a prescribed village under the Revenue Survey Law.

Mr. Sertsios maintained that lands added to a village after it has been declared a prescribed village must be held to be covered by the provisions of the law excluding goats therefrom as though it had formed part of the prescribed village at the time it was so declared.

In the first place it is to be observed that as the law is one which affects the liberty of the subject and is of a penal character it must be construed strictly.

By the definition section "a prescribed village" means a village declared a prescribed village under the provisions of section 3, and reading the law as a whole, and looking to its intention as expressed by the language it contains, it is evident that section 3 must be regarded as a governing clause.

It makes elaborate and exact provision for ascertaining by ballot the views of all owners of immoveable property and of goats and sheep in a village who are over eighteen years of age on the question of the exclusion of goats therefrom. A condition precedent to this ballot is a petition by not less than a certain number of property owners of the village to the Governor, or a recommendation from the Commissioner as to the desirability of excluding goats therefrom. A special list of all persons entitled to vote is to be prepared and posted in a conspicuous place in the village, and persons, whose names do not appear in the list are allowed a period of one month from the posting thereof to apply to the Commissioner for their inclusion therein.

Not less than fifteen days clear notice must be given by public announcement of the day appointed for the ballot. If the ballot, over which the Commissioner presides, shows that the majority of the voters on the list are in favour of the exclusion of goats, the village is declared to be a prescribed village by the Governor in Council.

These provisions, which are of a very special character, indicate clearly that before goats can be excluded from a village under the law, the owners of property and goats therein must be given the fullest opportunity of expressing their opinion aye or no, upon a question which is obviously one which may seriously affect their pockets and interest.

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Section 6 provides, subject to certain exceptions, that after the expiration of twelve months from the date of publication in the Gazette of an Order in Council declaring a village to be a prescribed village, it shall be unlawful for any person to keep or suffer any goat to graze within the boundaries of such village, and penalties for so doing are prescribed by section 8.

We have in effect been invited to construe the words "within the boundaries of such village" as including any area, it may possibly be a square mile in extent, which may be added to a village after it has been declared "prescribed," notwithstanding that the owners of property and of goats and sheep in such added area have had no opportunity given them of expressing their opinion on the question of the exclusion of goats therefrom as provided by section 3.

So to hold would in our view be against both the language and the spirit of the law with which we can only deal as it stands.

The answer to the questions submitted to the Court is in the negative so far as this summons under section 8 of the law is concerned, and we hold that on the facts before us it must be dismissed.

Action No. 613/24.

NETTLE-
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1925

December 17

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

KYPRIAKON TAMIEFTIRION BY ITS EXECUTIVE COUNCIL
CONSISTING OF A. ARTEMIS AND SEVEN OTHERS

v.

MICHAEL G. LEPTOS.

GUARANTOR—BOND—EXECUTION—"UNTIL FINAL PAYMENT"—LIABILITY—
BANKERS CUSTOM—MEJELLE ARTS. 624 AND 639—INTEREST IN ADVANCE ON
EXTENSIONS—NO NOTICE TO GUARANTOR.

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

Judgment : This action is based on a bond dated the 30th May, 1922, whereby the defendant as guarantor undertook certain liabilities.

On the strength of this plaintiffs lent £2,000 to N. Ch. Tavernaris & Bros.