[HUTCHINSON, C.J. AND TYSER, ACTING J.]

HUTCHINSON, C.J. & TYSER, ACTING J. 1900 Dec. 18

HAFIZ SHEFIK EFFENDI, AS AND BEING THE MUTEVELLI OF THE LAPITHOS MOSQUE SAID MEHMED AGHA, *Plaintiff*,

v.

THE QUEEN'S ADVOCATE, *Defendant*.

UNLAWFUL SEIZURE IN EXECUTION—SCHOOL FEES—ASSESSMENT ON A MOSQUE—PRIVATE PROPERTY—MUTEVELLI—MULHAQA MESHROUTA VAQF—AGENT—THE EDUCATION LAW XVIII., 1895, SECS. 16, 24, 26, 27, 28, 30—THE INTERPRETATION ORDINANCE III., 1879, SEC. 2.

Certain school fees having been assessed on a Mosque, and on demand not being paid, the private property of H., the agent of the absent Mutevelli of the Mosque, was seized in execution and H. paid the sum in question under protest. H. sued the Government to recover the amount so paid by him.

HELD (*reversing the decision of the District Court*): *that, whether the assessment of the Mosque was lawful or not, the seizure of H.'s private property was unlawful and that he was entitled to judgment for the amount paid by him.*

SEMBLE, *that in the phrase "Church or Churches or Mosque of the village," in Secs.* 16 *and* 24 *of the Education Law, the word "Mosque" does not mean "Mosque or Mosques."*

SEMBLE ALSO, *that the remedy of a person aggrieved by an alleged illegal assessment of school fees is not confined to the appeal provided by the Law under Secs.* 27, 28, *but may be sought by action in a Court of Law.*

APPEAL from the District Court of Nicosia.

Pascal Constantinides for the Appellant.

Haycraft, Acting Q.A., in person.

The facts and arguments sufficiently appear from the judgment.

1901 Jan. 26

Judgment: This is an appeal by the Plaintiff from an order of the District Court of Nicosia made on the 10th April, 1900, dismissing an appeal of the Plaintiff from a judgment of the Village Judge of Nicosia, dated the 11th January, 1900, dismissing the action.

The claim in the action was for "594 piastres recovered from Plaintiff "unlawfully;" and the Defendant was sued as representing the Government of Cyprus.

The Plaintiff describes himself in the title of his action "as and being "the Mutevelli of the Lapithos Mosque Said Mehmed Agha." On the

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hearing of this appeal he stated, and the Queen's Advocate admitted, that in fact he is not the Mutevelli, but only the agent in Cyprus of the Mutevelli, who lives in Constantinople. So far as we can see, however this fact is of no importance for the decision of the appeal.

The Village Committee of Lapithos, purporting to act under the Education Law No. XVIII of 1895, assessed certain school fees on the Mosque named above, the amount so assessed not having been paid a demand for payment was served on the Plaintiff and afterwards the Plaintiff's private property was seized under a warrant to compel payment, whereupon he paid under protest the sum claimed in this action. He then by leave of the High Commissioner brought this action, contending that there was no power to assess school fees on the Mosque and that even if the assessment was lawful the seizure of his private property to compel payment was unlawful.

The Education Law enacts in Sec. 24 that the District Committee is to call on the Village Committee to apportion certain sums called School Fees among the Church or Churches or Mosque of the village, as the "case may be, and the resident tax paying inhabitants belonging to the "religious community interested in the school of the village or villages "according to the means of each person. By Sec. 26 a list of the "school fees assessed on each person shall be made and certified by the Village Committee and the Mukhtar and "a copy of the list shall be "posted in a conspicuous place in each village interested in the school." By Sec. 27 *and* 28 "*any person who may feel himself aggrieved by any*" School Fee assessed upon him may appeal to the District Committee, which is to "enquire into the justice of the apportionment and into the "appeals, and to settle the list. Then Sec. 30 enacts that on the approval of the list by the District Committee the sum assessed for "School Fees on each person shall be payable by him and his heirs in "such instalments and at such times as the High Commissioner may "from time to time direct and shall be recoverable in the same manner as Government taxes may be recovered.

At the trial before the Village Judge no evidence was given on either side but in answer to us and to enable us to decide the questions which the parties wish us to settle the following statement of facts has been agreed to: that the Plaintiff is the agent of the Mutevelli and lives in Nicosia; that the private property of the Plaintiff was seized; that this Mosque has properties in Cyprus but they are meant for the maintenance of other Mosques included in the same trust and are managed by the same agent of the Mutevelli; that this Mosque is in fact used by the people of Lapithos; that there is another Mosque in

Lapithos used by the people of Lapithos, the repairs and expenses of which are paid from the revenues derived from the property under the direct management of the Evqaf: and that there are Mosques in Cyprus built and maintained by the inhabitants of the village who use them, built with a contribution of the Evqaf but maintained entirely by the inhabitants.

The Vaqfieh relating to this Mosque has been produced before us and we have had it translated. It gives a list of the various properties and funds dedicated: mentions three Mosques in Nicosia and this one at Lapithos and a Tekè at Famagusta which have been built by Said Mehmed Agha: specifies certain sums to be paid out of the income of the properties to certain persons, preachers and others, for the benefit of the Mosques and Tekè: and then states that the surplus of the income, after all the trusts therein mentioned have been satisfied and all expenses of repairs of the buildings have been paid, shall belong to the dedicator and his heirs. The vaqf is therefore a mulhaqa meshrouta vaqf; it is administered by a Mutevelli, who is bound out of the income to pay specified sums to specified persons for the service of the Mosques and Tekè and to keep the buildings in repair, and is entitled to the surplus income for his own benefit.

In the argument before the Village Judge the Plaintiff's Advocate said, " the first notice received by the Mutevelli (meaning the Plaintiff) " was a notice for sequestration on his own private property for non- " payment. He protested, but had to deposit the money to save his pro- " perty from sale: " and he argued that, " 1. there is no right to assess " this Mosque," and, " 2. if there was right, there is no right to levy on " the Mutevelli's private property " The Queen's Advocate argued that the assessment was properly made, and further that the Plaintiff's only remedy was by appeal to the District Committee under Sec. 27; and he also said, " he is liable as far as the property of the Mosque in his " hands," but he did not otherwise refer to the point about the seizure of the Plaintiff's private property.

The Village Judge held that the Mosque was rightly assessed; that the Plaintiff should have appealed under Sec. 27, and, " that not being " done, the Government had no option but to collect the money." He did not refer to the question *how* the money was to be collected, or to the seizure of the Plaintiff's private property.

On the appeal to the District Court the argument for the Plaintiff was, so far as appears from the Judge's notes, confined to the question whether this Mosque is " the Mosque of the village " and could therefore be lawfully assessed under Sec. 24.

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We think that, putting on one side the question whether the assessment was properly made, the seizure of the Plaintiff's property was clearly unlawful. No assessment was made on the Plaintiff; and the Legislature has not enacted, and it is most unlikely that any Legislature would enact, that a sum assessed under this Law on a Mosque should be recovered by seizure of the private property of the Mutevelli,—still less by seizure of the property of the Mutevelli's agent. This is enough to decide this case and to entitle the Plaintiff to judgment.

We cannot therefore give a binding decision on the question to which most of the arguments both in the District Court and in this Court have been addressed, *i.e.*, whether this Mosque could be properly assessed under Sec. 24 of the Education Law,—and the further question whether the only remedy of a person who alleges that he has been unlawfully assessed under that Law is by appeal to the District Committee under Sec. 27. The decision of these questions is not necessary; but as they are really the points upon which both parties wish for a decision, we think we may express an opinion on them. With regard to the first of them, then, we observe that the Legislature in this Law, where it speaks of the assessment of School Fees on Churches and Mosques, uses the words, " the Church or Churches or Mosque of the village." This is the phrase in Sec. 16 and Sec. 24. Clearly the Legislature thought that there might be two Churches of a village, but that there could not be two Mosques of a village. The Interpretation Ordinance enacts that, unless the contrary appears from the context, words importing the singular may be construed as referring to more than one person or thing. But in our opinion in the Education Law the contrary does appear from the context, and " Mosque " here does *not* mean " Mosque or Mosques; " the use of the words " Church or Churches " in the same sentence shows that if the Legislature had meant " Mosque or Mosques " it would have said so. Where, then, we find in the same village one Mosque maintained by the villagers or out of the general revenues of the property of the Mosque, and a second Mosque not so maintained, and there can only be one " Mosque of the village " within the meaning of this Law, we think we must hold that the first is the Mosque of the village. Probably the meaning of the words would not be clear in every case; for instance, in the case of a village (if such a village exists) in which there is a Mosque such as the one now in question, and no other Mosque: the uncertainty is the result of the use of ambiguous words by the Legislature. But upon the facts of the Lapithos case, we think the Mosque of the village means the one maintained by the income of property belonging to the Mosque and under the direct management of the Evqaf, and not the other one.

This opinion is supported by the difficulty of seeing what fund there is out of which the sum assessed on this Mosque could be paid. So far as we know, the only property to which this Mosque is entitled,—or, to word it more precisely, the only money which any person is bound to pay for the benefit of or in connection with this Mosque,—is the small fixed sums payable to the Imams and other officials, and the sum, if any, required for repairs of the building. It is true that the Education Law makes very inadequate provision, or perhaps it makes no provision at all, for the enforcement of payment of the sums assessed on Churches or Mosques. Still it is probable that Churches and most Mosques have some property appropriated for their benefit generally, which is not the case with this Mosque.

As to the remedy of a person aggrieved by an illegal assessment the Defendant has admitted before this Court, and we think he has rightly admitted, that the remedy is not confined to the appeal provided by the Law. If, for instance, the Law only allows an assessment on "the "resident tax-paying inhabitants" of the village, an assessment made on a person who is not an inhabitant would be, as regards that person, of no legal effect whatever, and all proceedings taken to enforce its payment would be illegal and would give the person injured by them a right of action against the person who took them or authorized them.

We rest our judgment on the ground that, whether the assessment of the Mosque was lawful or not, the seizure of the Plaintiff's property was unlawful; and we think the appeal should be allowed, and the judgment of the District Court set aside, and judgment given for the Plaintiff for the amount claimed, with the costs of the action and of the appeals to the District Court and to this Court.

Appeal allowed. Judgment for the Plaintiff.