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In such a case the evidence would not be sufficient to convict of larceny, because in order to prove larceny you must prove the ownership of the property stolen. It was to this circumstance that the judgment of this Court was alluding in *R. v. Togli Nicola* (1908) 8 C.L.R., 4, when it was observed that there was a difference between the evidence required for a conviction on a charge of larceny, and that required for a conviction under this section.

In this case can any one suppose that if we had been trying this case on an ordinary charge of larceny, we should have felt justified in convicting the accused on this evidence. The most that can be said is that the explanations given by the accused still leave a certain suspicion on the mind. We do not think that the evidence was such as to justify a conviction on a charge of larceny, and we think therefore that it was not sufficient to justify a conviction on a charge under this section.

Appeal allowed.

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[TYSER, C.J. AND BERTRAM, J.]

MICHAEL SKOUPHARIDES AND OTHERS

v.

THE DISTRICT EDUCATION COMMITTEE OF NICOSIA.

EDUCATION—APPORTIONMENT OF SCHOOL FEES AMONG TAX-PAYING INHABITANTS—DUTY OF DISTRICT COMMITTEE—EDUCATION LAW, 1905—INTERPRETATION OF LAWS—PRESUMPTION AGAINST INTENTION TO OUST JURISDICTION OF COURTS.

The Education Law, 1905, *does not impose upon the Education Committee of a District the duty of apportioning the "school fees" of a village among the tax-paying inhabitants of a village, where the Village Education Committee fails to do so.*

SEMBLE: *It was not the intention of the law that the Boards of Education should have exclusive authority to decide all questions arising under the law and that the jurisdiction of the Courts of Justice should be ousted.*

A law will not be construed as ousting the jurisdiction of the Courts unless such an intention plainly appears.

If a Village Education Committee in purporting to apportion the school fees of a village among the tax-paying inhabitants take upon themselves to exclude certain classes of tax-paying inhabitants a Mandamus will lie to compel them to make the apportionment according to law.

This was an appeal against a decision of the District Court of Nicosia.

The action was a claim that a Mandamus should issue against the District Education Committee of Nicosia to include certain persons in the "List of School Fees for the years 1908 and 1909" as being "tax-paying inhabitants."

At the trial before the District Court the Defendants took the objection that a claim for a Mandamus would not lie, on the ground that under the Education Law, 1905, the proper remedy of the persons aggrieved was an appeal to the Board of Education, and that consequently the remedy by Mandamus was barred.

The District Court decided against this contention, and by consent a preliminary appeal was lodged against this decision.

It appeared that the District Education Committee of Nicosia had drawn up a "List of School Fees" for the town of Nicosia, purporting to act under Sec. 34 of the Education Law, 1905, upon the default of the Town Committee.

Theodotou, *Kyriakides*, *Severes* and *Sertzios* for the Appellants. No action for a Mandamus lies. Rightly or wrongly the Legislature desired by the Law of 1905 to remove the subject of education from the sphere of both the Government and the Courts. By Sec. 3 of the Law, in order to give effect to this desire, they declared that the Boards of Education "shall regulate and decide definitely upon all matters "with education." These words were intended to oust the jurisdiction of the Courts, and they effectively oust it. The only exception is that expressly specified in Sec. 8 Sub-sec. 4. The ground of this exception is that the Board of Education is not an appropriate tribunal for awarding damages. But this express exception indicates that the general intention was to oust the jurisdiction of the Courts.

(The Court drew attention to Sec. 37 Sub-sec. 2, which declares that a particular decision of the Board "shall be final," as indicating that its other decisions were not necessarily to be final, and on the general question referred to *Jacobs v. Brett* (1875) L.R., 20, Eq. 1 per Jessel, M.R.: "I think nothing is better settled than that an Act of "Parliament which takes away the jurisdiction of a superior Court of "Law must be expressed in clear terms. I do not mean to say it "may not be done by necessary implication as well as by express words, "but at all events it must be done clearly. It is not to be assumed that "the Legislature intends to destroy the jurisdiction of a superior "Court.")

Even if the jurisdiction of the Courts is not excluded, then we say that Sec. 37 Sub-sec. 3 provides an effective alternative remedy, and that consequently a Mandamus does not lie.

(At this point the Chief Justice drew attention to the fact that the law nowhere imposes on the District Committee the duty of apportioning the school fees among the tax-paying inhabitants of a village.

Theodotou was accordingly stopped.)

Artemes for the Respondents. The law in fact did intend to impose this duty upon the District Committee. When in Sec. 34 the law says "if the copies of the list are not sent," it means, "if the apportionment "is not made," and when it says "the Committee shall prepare the list" it means "the Committee shall make the apportionment." The remedy given by Sec. 34 was intended to replace that given by Sec. 37, but both were embodied in the consolidating law by an oversight.

The Court allowed the appeal.

Judgment: THE CHIEF JUSTICE: I do not say that this case is clear. Nothing in this Act is clear. It is so drafted as to create surprises in the mind of any one who carefully reads it. What the Legislature meant is one thing. What they have said is another. But we can only find out their meaning from their words.

We are asked to issue a Mandamus to the District Committee to insert certain names in the list of "school fees." The Plaintiffs complain that the District Committee have made an apportionment of the village contributions among the tax-paying inhabitants, improperly omitting their names, and ask in effect that a new apportionment should be ordered to be made and that their names should be included in the list of persons on whom assessments are made.

The first thing we want to know is, what power have the District Committee to apportion the village contribution at all.

No such power is given to the District Committee by Sec. 16. On the other hand express power to do so is given to the Village Committee by Sec. 21.

It is said however that these sections do not contain all the powers of the Committees, and that there are other powers conferred by other sections. We asked Counsel for the Respondents to point out which section gives the power of apportioning school fees to the District Committee, and he referred us to the proviso to Sec. 34 Sub-sec. 2.

If that proviso had said, "if no apportionment is made, the District "Committee may apportion the fees" it would have been clear. Even if it had said, "if no apportionment is made, the District Committee "may prepare the list," the power to apportion might have been implied. All it says is that if the prescribed copies of the list are not sent to the Chairman of the District Committee, the District Committee may prepare the list.

The section seems to me to deal only with the preparation and publication of the list of school fees assessed on each person by the apportionment already made by the Village Committee.

In order to give to this proviso the interpretation contended for we should have to read into it a great many words that are not there. I hold therefore that it does not confer upon the District Committee power to make an apportionment.

I am confirmed in this view by Sec. 37 Sub-sec. 3, which makes express provision for the case of a Village Committee failing to make the apportionment.

The District Committee have no power to make an apportionment. It is impossible to make the list of school fees required by Sec. 14 of the Act until an apportionment is made.

We cannot therefore in this case compel the District Committee to make a list, and consequently no Mandamus can be granted.

But, I do think (though it is not necessary to decide this point), that the Committee which has the duty to perform, must do what the law says, that is to say, it must apportion the amount among the " tax-paying inhabitants " of the village.

If the Village Committee had said, " we have made a list, and " in so doing we have excluded certain classes of persons because " we do not consider they are interested in education, or because " they are zaptiehs, or because they have no property to levy on," if they had made their apportionment in that way, they would not have carried out their duty in the manner prescribed by the law, and (as at present advised) I think the law might intervene by Mandamus to compel them to perform that duty.

This is important as regards costs. The District Committee took upon themselves to make out a list, and to exclude certain persons and they have fought the case upon the basis that they were justified in doing so.

Under the circumstances the appeal is allowed but without costs.

BERTRAM, J.: I agree. It is possible that when the Legislature said " if the copies of the list are not sent to the Chairman of the " District Committee," it really meant, " if no apportionment is made," and that when it said, " the District Committee may itself prepare the list," it really meant, " the District Committee may itself make the " apportionment," but to interpret the section in this way, would be to wrest its words in a manner, which would not be legitimate, particularly in view of the express provision for the case in question made by Sec. 37.

My only reason for hesitating to give to the words their natural meaning was that I at first thought that such an interpretation would

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disorganise the educational machinery of the Island. On closer examination however I find that this is not the case. In the ordinary villages of the Island the existence of a list of school fees is not a condition precedent to an election. The voters at the election are all the tax paying inhabitants, and the Committee can be elected, and the school carried on even though no assessment is made. The only difference is that instead of the necessary money being collected in the usual way, it must be raised in the peculiar manner prescribed by Sec. 37.

In the case of the six principal towns however, under the Law of 1907, no Committee can be elected unless there is first prepared a list of persons assessed for school fees, I imagine that in these cases the High Commissioner would not put into operation the special powers (whatever they may be) conferred upon him by Sec. 37, but that a Mandamus would be applied for to compel the defaulting Committee to prepare the necessary list, nor (as at present advised) do I think that the existence of these special powers would be an obstacle to the issue of the Mandamus.

I concur in everything the Chief Justice has said in his judgment.

Appeal allowed.