

Present ; Lyall Grant J.

1928.

DUCKWORTH v. ABDUL AZIZ.

718—P. C. Avissawella, 14,574.

Small Towns Sanitary Ordinance—Failing to repair well—Continuing offence—Conviction on the same charge several times.

Where a person is charged under the Small Towns Sanitary Ordinance with failing to carry out repairs to a well and convicted, it is not open to the Court to convict him again on the same charge as for a continuing offence.

A PPEAL from a conviction by the Police Magistrate of Avissawella

Rajakarier, for accused, appellant.

November 8, 1928. LYALL GRANT J.—

The accused in this case was charged on the complaint of the Sanitary Inspector of Eheliyagoda, inasmuch as that he did, on or about September 17, 1927, at Eheliyagoda, within the jurisdiction of the Police Court of Eheliyagoda, fail to carry out the repairs to his well situated at premises bearing assessment Nos. 47-48 in Eheliyagoda town aforesaid, as required by notice in writing dated June 1, 1927, issued by the Chairman of the Sanitary Board, Ratnapura, under rule 13 in chapter 15 of the rules framed under section 9E (2) (i) of Ordinance No. 18 of 1892, as amended by Ordinance No. 30 of 1914, and served upon him on September 1, 1927. Rule 13 provides that the Chairman may "cause notice to be given in writing to the owner or lessee or occupant of any compound in which there is a well used for drinking or domestic purposes . . . to execute such repairs as the Chairman may consider to be necessary and if such notice is not complied with within 14 days such person shall be guilty of an offence."

Apparently the case was called on several occasions, and there was no return to the summons, but on September 1, 1928, the accused was present, the charge was explained from the summons, and the accused then stated that he was prepared to repair the well as required. The learned Magistrate adjourned the case to September 8, presumably in order to give the accused time to effect the repairs. On September 8 the case was called again, when the accused was present and it appeared that the work was not completed. Thereupon the Magistrate fined the accused Rs. 10 and

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proceeded to make further order for the completion of the work by September 22. On September 22 no charge was framed, but the Sanitary Inspector was present and gave evidence and stated that the accused had not done all that he was required to do by the notice. The accused also gave evidence and admitted that he had not done anything more since the 18th. The accused was thereupon found guilty and fined Rs. 25, and in default 3 weeks' rigorous imprisonment. The Magistrate then said that the case was to be called again on October 6, for the accused to finish the drain and other repairs as required.

The learned Magistrate has evidently treated the failure to complete the work as a continuing offence, and apparently takes up the attitude that upon the original charge he can bring the accused up and fine him from time to time until the work is completed. There was no appearance for the Sanitary Inspector in appeal, and I have not had the benefit of any argument on his behalf. I find it difficult, however, to discover what justification the Magistrate has for pursuing this course against the accused. The penal section of the Local Sanitary Rates Ordinance, No. 18 of 1892, under which accused is punishable, is section 9 κ. That section reads that "if any person without lawful authority or excuse (proof whereof shall be on him) contravenes any regulations made under the Ordinance, or does or omits to do anything which under the provisions of this Ordinance or of any regulation made thereunder he ought not to do or omit, he shall be guilty of an offence and punishable with fine which may extend to Rs. 50, or in default of payment of such fine with imprisonment, simple or rigorous, which may extend to one month." In the absence of any citation of authority to support the line of action which has been taken by the Magistrate, I am of opinion that this section only justifies the Court in proceeding against the accused once upon any one charge, and that when the Court has found the accused guilty on a charge and has sentenced him the case is at an end, and that the Court cannot bring him up subsequently upon the same charge and inflict a further penalty.

Any subsequent failure to complete the work must be the subject of a fresh charge.

The proceedings of the Court after September 8 are set aside.

Set aside.