

1946

Present : Soertsz S.P.J.

KATHIRAVELU, Appellant, and THIAGARAJAH,
Respondent.

1,392—*M. C. Jaffna, 8,724, with application in revision.*

*Village Communities Ordinance (Cap. 198), s. 19 (6)—Penalty for breach of—
Both fine and disqualification compulsory.*

Section 19 (6) of the Village Communities Ordinance enacts that a member of a Village Committee who is found to be interested directly or indirectly in a contract with the Village Committee "shall be punishable by a Police Court with a fine not exceeding one hundred rupees and with disqualification for a period of four years from taking part in any election under the Ordinance".

Held, that the word "punishable" in the enactment means "shall be punished" and not "can be punished" or "liable to be punished". The Magistrate has, except under special circumstances, no alternative but to disqualify a person once he convicts and fines him for a breach of that provision of the law.

A PPEAL, with application in revision, by a complainant against a sentence passed by the Magistrate of Jaffna.

N. Nadarajah, K.C. (with him *H. W. Thambiah*), for the complainant, appellant.

H. V. Perera, K.C. (with him *S. Nadesan* and *N. Nadarasa*), for the accused, respondent.

Cur. adv. vult.

February 12, 1946. SOERTSZ S.P.J.—

It would appear that the respondent to this application has been hoist with his own petard. He is the Chairman of the Village Committee of

Manipay which, among other worthy enterprises of social welfare, conducted a Maternity Home on the premises known as "Sangarapillai House". On May 18, 1942, the owner of those premises served the Chairman, that is the respondent, with a written notice to vacate his premises on the 30th of the following month. Those were the days, not yet departed, when houses were far to seek and these elders of the village confronted with the possibility of being deprived of their local habitation and even of their name, met in solemn conclave and the respondent, as Chairman, rose to the full stature of his public spiritedness and offered "Page House" of which he was a part owner, to the Maternity Home for its new abode "pending permanent arrangements". But, unfortunately there was a fly in this beautiful ointment of generosity. The Maternity Home had to pay a monthly rent of five rupees, later raised to ten rupees. In those days, the present petitioner was an ardent supporter and enthusiastic admirer of the respondent but the respondent, to use the words of the learned magistrate, "had with the passage of time fallen foul of some persons including Dr. Kathiravelu (i.e., the petitioner) who wished to have a new President elected for 1945". They failed to oust the respondent from the Chairmanship in the elections held in 1945, and inflamed with emotions similar to those of Virgil's goddess—*mene incepto desistere victam*—sat down to plot and plan. They soon discovered that the respondent had brought himself liable under section 19 (6) as amended by Ordinance No. 54 of 1942 of the Village Communities Ordinance in that he was directly or indirectly interested in a contract with the Village Committee of Manipay. This prosecution was then launched. The Magistrate found that the respondent was guilty of a violation of the law and convicted him and fined him but refused to disqualify him. The petitioner now contends before me that the Magistrate had no alternative but to disqualify the respondent once he found him guilty of a breach of that provision of the law. The question, then, is one of interpretation of the relevant section. It enacts that a person in the position of the respondent found to be interested directly or indirectly in a contract with the Village Committee "shall be punishable by a Police Court with a fine not exceeding one hundred rupees and with disqualification for a period of four years".

The Magistrate has interpreted this as follows—

"In my opinion, the word 'punishable' must be read as meaning 'can be punished' or 'liable to be punished with' and therefore a person found guilty can be punished (1) with a fine not exceeding Rs. 100 and (2) disqualification for a period of 4 years, or (3) with both in any combination."

I assume that the Magistrate intended to use the word "or" instead of the word "and" before the word "disqualification" and to say (3) "both, in any proportion" when he said "both in any combination". Examining the Magistrate's interpretation as amended by me, I am unable to agree with that interpretation. He has been led to it mainly by the fact that in the preceding section of the Ordinance it is enacted that "shall in addition to the said fine . . . be disqualified by order of Court for a period of four years". It must be conceded that

these words of section 18 are clearer and more forceful than those employed in section 19 but I cannot accede to the submission that it must be presumed that a change of language is an indication of a change of intention on the part of the Legislature. As Blackburn J. observed in the case of *Hadley v. Perks*¹ the Legislature "to improve the graces of style and to avoid using the same words over and over again" employs different words without any intention to change the meaning. In my opinion, this is one such instance. In regard to the observation of the Magistrate that "punishable" means "can be punished" or "liable to be punished" and not "shall be punished" it is true that in the Penal Code, in nearly every instance, the words used are "shall be punished" but it seems to me that the word "punishable" has been substituted here because the purpose of the Legislature was *first of all* to confer jurisdiction on Police Courts to punish with disqualification, jurisdiction that had not antecedently existed and secondly to impose the penalty and for this twofold purpose the word "punishable" was more appropriate. If the Legislature had enacted "shall be punished by a Police Court" the consequence would have been to confer exclusive jurisdiction on the Police Court and presumably that was not the intention of the Legislature. But I do not think it necessary to go into this matter with elaboration for by saying punishable with fine and with disqualification for four years, the Legislature made it imperative that there should be disqualification. The interpretation of the Magistrate would fit a case in which it is enacted "shall be punishable by a Police Court with a fine or with disqualification or with both".

In the view the Magistrate took of the offence, once he found the respondent guilty and fined him he was bound by the law to disqualify the respondent for 4 years. But in my view in the special circumstances of this case Chapter XXVI of the Criminal Procedure Code arises for consideration. The respondent has been a popular and efficient Chairman. His primary motive in letting his premises to the Village Committee for their Maternity Home was to help the people of the village, but his altruism was not altogether satisfactory. He could not resist the lure of the rent offered and so he came to be *interested* in a contract of tenancy with the Village Committee. For that reason this is not a case for discharging him with a warning. I would, therefore, under section 325 (2) impose a nominal punishment and direct the respondent to pay five rupees by way of a fine. Under section 325 (3), I direct the respondent to pay as Crown costs Rs. 250. In this way, all the rent recovered by the respondent will return to the Public Revenue. Under section 325 (2) I direct the respondent to enter into a recognizance binding himself to terminate the tenancy of "Page House" within three months, that is to say on or before May 31, 1946.

If the respondent fails to comply with these requirements on or before the 31st May the Magistrate will call the case on the first of June and amend the sentence imposed by him by adding to the sentence, disqualification of the respondent for four years.

Sentence varied.

¹ (1866) L. R., 1 Q. B. 444 at 447.