

## SUVA CITY COUNCIL

A

v.

## RAJ BALI

[SUPREME COURT, 1964 (Hammett Ag. C.J.), 17th April, 1st May]

B

## Appellate Jurisdiction

*Criminal law—failure to comply with notice to provide proper and sufficient supply of water—Public Health Ordinance (Cap. 124) ss.122, 123, 125—Criminal Procedure Code (Cap. 9) s.340(1).*

*Local government—proper and sufficient supply of water—notice to owner of premises to provide—owner's private arrangement with tenants to pay water rates—primary liability of owner—Public Health Ordinance (Cap. 124) ss.122, 123, 125.*

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The respondent was charged with failing to comply with a notice served on him by the appellant corporation under sections 123 and 125 of the Public Health Ordinance requiring him to provide a proper and sufficient supply of wholesome water for the domestic use of the inhabitants of premises of which the respondent was owner. The premises were occupied by tenants of the respondent. A Public Works Department water main was connected to the premises, the water meter being registered in the name of the respondent who had a private arrangement with his tenants that they would pay for the water consumed on the premises. The water was not paid for by anyone and the water supply was cut off by the Public Works Department. The respondent did nothing to comply with the notice served upon him by the Suva City Council. The magistrate held that obligation to supply water was discharged by the respondent's supplying water at the meter and did not include an obligation to pay the water rate.

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*Held:* The water meter being registered in the name of the respondent it was to him that the suppliers of the water looked for payment. His failure to pay resulted in the cutting off of the water supply as effectively as if he had removed the water pipes. The respondent's private arrangement with the tenants did not absolve him from his primary duty of paying the water rate himself. Determination of the Magistrate's Court reversed.

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Case referred to: *Attorney-General v. Leicester Corporation* [1910] 2 Ch. 359; 103 L.T. 214.

Appeal by case stated from decision of Magistrate's Court.

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*D. M. N. McFarlane* for the appellant corporation.

*T. J. McNally* for the respondent.

HAMMETT Ag. C.J.: [1st May, 1964]—

This is an appeal by the Suva City Council by way of Case Stated.

**A** The Respondent was summoned on the complaint of the Suva City Council to answer the following charge:

“ *Statement of Offence*

**B** Fail to comply with the Suva City Council's notice served under Section 123 of the Public Health Ordinance, Cap. 124.

*Particulars of Offence*

**C** Raj Bali s/o Saran Dass being the owner of premises at Nailuva Road occupied by sundry tenants did on the 4th day of November 1963 fail to comply with the Suva City Council notice served under Sections 123 and 125 of the Public Health Ordinance, Cap. 124, requiring him to provide a proper and sufficient supply of wholesome water for the domestic use of the inhabitants to the satisfaction of the Suva City Council.”

The facts were held by the learned trial Magistrate to be as follows.

**D** The Respondent is the owner of premises in Nailuva Road, Samabula, which are occupied by several different tenants. A piped water system is laid on to the premises connected with the water main owned by the Public Works Department. The water meter is registered in the name of the Respondent, the landlord.

**E** The Respondent had a private arrangement with his tenants that they would pay for the water consumed on the premises. In fact, however, they did not do so and nor did the Respondent as a result of which the Public Works Department cut off the water supply at the main.

**F** The Suva City Council served notice on the Respondent as the owner of the premises under the Public Health Ordinance requiring him to provide a proper and sufficient supply of wholesome water for the domestic use of the occupants of his premises.

The relevant sections of the Public Health Ordinance are as follows:

**G** “122. Every building intended for human habitation shall be provided with a proper and sufficient supply of wholesome water for the domestic use of the inhabitants to the satisfaction of the local authority.

**H** 123. If a building intended for human habitation within the district of a local authority appears to that authority by the report of a medical officer of health or sanitary inspector to be without a proper and sufficient supply of wholesome water, the local authority shall by written notice require the owner or occupier of the building within a reasonable time therein specified to provide a proper and sufficient supply of wholesome water.

125. Notwithstanding anything contained in section 124 of this Ordinance, whosoever fails to comply with a written notice under section 123 of this Ordinance shall be guilty of an offence and shall be liable to a fine not exceeding five pounds and in the case of a continuing offence to a further fine not exceeding forty shillings for each day during which the offence continues after a conviction under the section.”

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The Respondent did nothing to comply with the notice served on him and the Suva City Council therefore issued the summons in this case.

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At the hearing the Solicitor for the Respondent contended that by the provision of a system of water pipes connecting the premises with the water main the landlord had “provided a proper and sufficient supply of wholesome water” to the premises. He submitted that it was the failure of the tenants to pay for the water they had consumed in the past that was the cause of the water being cut off.

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In his judgment the learned trial Magistrate said:

“I take note of the fact that Part XII of Cap. 124 dealing with water supplies for human use has regard to the fact that such supply may be from well or tank etc.

Whatever decision is given in this case relating to supply of water by pipe must apply to supply by these other means.

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After having carefully considered the matter I have come to the conclusion that the Section 122 of Cap. 124 is complied with in the present case. It is not disputed that the supply of water available through the pipes would be proper and sufficient supply of wholesome water. In my view the payment of water rates for the water consumed is incidental to the use of such a supply. Just as the actual drawing of water from a well would be an incident of the use of such a well supply. In one case there is expenditure of money, in the other of energy before the actual supply may be enjoyed. To hold that the owner must actually pay the rate in case of pipe supply would in the case of a well imply that he must actually draw the water, and this would be absurd.

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In the case of *Attorney-General v. Leicester Corporation* [1910] 2 Ch. 359 dealing with electricity supply Neville J. said: ‘In my opinion ‘supply’ . . . is completed at the consumers terminals. The installation of electricity and provision of fittings is in my opinion a separate business incidental to the use but not to the supply of energy’. By the same analogy the Defendant herein discharged his obligation to supply water at the meter, and if that meter is disconnected through no fault of his, he cannot be held to have committed a breach of Section 122.”

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The question of law which has been stated for the opinion of this Court is as follows:

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“The question on which the opinion of the Court is desired is whether, on the above statement of facts, I came to a correct

determination and decision in point of law, and if not the Court is respectfully requested to reverse or amend my determination or to remit the matter to me with the opinion and direction of the Court thereon."

A I am doubtful if the provision by an owner of a set of pipes connected with the water main alone amounts to compliance with the requirements of Section 123 "to provide a proper and sufficient supply of wholesome water". I do not, however, think this is the point that requires to be decided in the particular circumstances of this case.

B The water meter in this case was registered in the name of the Respondent landlord. It was to him that the suppliers of water i.e. the Public Works Department, looked for payment for the water supplied to and consumed on the premises. The failure or refusal of the Respondent to pay the water rate accounts led to the Public Works Department cutting off the supply of water to the premises and was, in its result, not a whit different from the Respondent himself turning the supply off by means of a tap. The fact that the tenants had not carried out the arrangement, alleged by the Respondent, that they would pay the water rates, did not relieve the Respondent himself from his primary duty, as the person in whose name the water meter was registered, of paying the water rate himself. If he had paid the water rate himself he could have recovered the sum paid from his tenants by lawful means, but he would not have been entitled to cut off their water supply.

C The learned trial Magistrate said: "if that meter is disconnected through no fault of his (i.e. the landlord) he cannot be held to have committed a breach of Section 122". That may be so but the converse is certainly equally true, namely that if the meter was disconnected through the fault of the Respondent he was committing a breach of Section 122.

D In my opinion the water supply in this case was cut off as a direct result of the Respondent failing to pay the water rates due from him in respect of water previously supplied through a meter registered in his name. His private arrangement with other persons to pay these charges did not absolve him from his own duty to pay them. His failure to pay them resulted in the cutting off the supply of water to the premises, which he was under a duty to provide, as effectively as if he himself had removed the pipes through which it should have flowed.

E For these reasons I answer the question of law raised on the case stated as follows:

F In my opinion, on the facts stated, the Court below came to an incorrect determination on the point of law. On the facts stated in the case, the Respondent failed to comply with the notice of the Suva City Council requiring him to provide a proper and sufficient supply of wholesome water to the premises. Under the provisions of Section 340(1) of the Criminal Procedure Code I reverse the determination of the Court below on the question of law in this case stated.

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I remit the case to the Magistrate's Court, Suva, with the direction that a conviction be entered and that after hearing and considering any submissions that the parties may wish to urge on the question of penalty, an appropriate fine be imposed under the provisions of Section 125 of the Public Health Ordinance in accordance with the law.

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I award the Appellant the costs of this appeal which I allow at £15.15.0.

*Appeal allowed; case remitted to Magistrate's Court for penalty.*