

CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL
FROM THE ASSIZE COURTS, DISTRICT COURTS
AND TURKISH FAMILY COURTS.

[JACKSON, C. J. and GRIFFITH WILLIAMS, J.]
(February 13, 1951.)

THE MAYOR, DEPUTY MAYOR,
COUNCILLORS and TOWNSMEN
of the town of Limassol, *Appellants.*

v.

CHRISTOFOROS MALAKASAS of Limassol, *Respondent.*
(*Case Stated No. 64*)

Municipal Bye-law—Entertainment duty—Meaning of "Payments for admission"—Municipal Corporation (Limassol) Bye-laws, 1945, para. 161B.

The proprietor of a cinema was charged with having sold tickets without their having affixed the appropriate stamps representing the amount of entertainment duty payable in accordance with the rates duly fixed by the Municipal Bye-laws. Two days before the date of the offence the rates having just been raised, the manager of the cinema published a notice increasing the prices for admission on account of the increase in the amount of duty payable to the Municipality. The notice declared that the entrance fee would be a shilling plus a duty of 2 piastres. The stamps affixed to the tickets, and intended to represent the duty payable, were of 2 piastres on each ticket. The new schedule to the Municipal Bye-laws stated that on each ticket the total price of which exceeds 6 piastres but does not exceed one shilling the duty payable is 2 piastres.

The Municipality argued that the payment for admission to the cinema was 11 piastres and not a shilling and that the duty payable was therefore 4 piastres and not 2 piastres.

Held: That the total price of a ticket was the price a person had to pay to be admitted to the cinema. That price was 11 piastres and the duty payable was 4 piastres and not 2 piastres.

Appeal allowed.

J. Potamitis with *Chr. Demetriades* for the appellants.
Sir Panayiotis Cacoyannis with *M. Houry* for the respondent.

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The facts sufficiently appear from the judgment of the Court which was delivered by:

JACKSON, C. J.: This is a case stated by the Magistrate of Limassol at the request of the Mayor, Deputy Mayor, Council and townsmen of that town, raising certain points of law in connection with a decision of the Magistrate acquitting the proprietor of a cinema in Limassol who was charged with contravention of paragraph 161 B of the Municipal Corporation (Limassol) Bye-laws, 1945, which relates to the payment of entertainment duty.

The proprietor of the cinema has been charged with having sold a number of tickets for his cinema without having affixed the appropriate stamps representing the amount of entertainment duty payable in accordance with the rates set out in a schedule which appears in the Gazette of the 2nd of February, 1950.

The schedule increased the rate of entertainment duty and, about two days after its publication, the manager of the cinema published a notice saying that on account of the increase in duty he had been compelled to fix "the following prices" which would be in force as from the day of the publication of his notice. For the particular cinema with which the case was concerned the manager's notice declared that the entrance fee would be a shilling plus a duty of 2 piastres. The stamps which he affixed to the tickets mentioned in the charges, and which were intended to represent the duty payable to the Municipality, were stamps of 2 piastres on each ticket.

The new schedule to the bye-laws stated that on each ticket the total price of which exceeds 6 piastres but does not exceed a shilling, the duty payable is 2 piastres and that on each ticket the total price of which exceeds a shilling but does not exceed two shillings, the duty is 4 piastres.

The Municipality argued that the duty was imposed by paragraph 161 B of the bye-laws "on all payments made for admission to any public entertainment", and that the payment for admission to the "Rialto" cinema on this particular occasion was 11 piastres and not 9, as the manager contended, and that the duty payable on each ticket under the new schedule was therefore 4 piastres and not 2 piastres.

In explanation of his decision to acquit the manager on the two charges against him, the Magistrate said that in his opinion "the relative law is not clear as to who is burdened with the payment of the entertainment duty" and that the bye-law merely regulates the manner in which the payment of the duty to the Municipality must be taken.

The law says nothing about the person on whom the burden of the entertainment duty is to fall because the law has no concern with that matter. It must be

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assumed that if the manager of a place of entertainment thinks that the public can be persuaded to pay as much, he will charge them a price for admission which will give him the return which he thinks he ought to receive as well as the duty which he has to pay to the Municipal Council. If he charges less, he will have to pay part of the duty himself and his own receipts will be reduced to that extent.

It seems to us that the Magistrate was possibly misled in arriving at his conclusion by the introduction into the case of the question of the person on whom the burden of the entertainment duty should ultimately fall. That is a question which has nothing to do with the question in this case.

The Magistrate went on to say "there is nothing in the law prohibiting the manager from charging the public with the payment to him of the price of each special stamp so affixed on each ticket". The Magistrate is clearly right on that point and that is no doubt what the manager intended to do. But the Magistrate found that "the payment for admission and the total price of each ticket sold was 9 piastres" and not 11, and consequently that the manager had paid the correct duty and must be acquitted.

It has been agreed by the respondents in this case that a person could not obtain admission to the cinema on payment of 9 piastres but only on payment of 11; and we are unable to see how a duty which is imposed "on all payments for admission to any public entertainment" can mean anything else than a duty on the sum which a member of the public has to pay to be admitted. What a member of the public has to pay to be admitted in this particular case was 11 piastres and not 9. We think, therefore, that the Magistrate was wrong in that particular finding.

According to the schedule of 1950, the entertainment duty payable on each ticket the total price of which exceeds one shilling, but does not exceed two shillings, is 4 piastres. We hold that the total price of a ticket in this particular case was the price which a person had to pay in order to be admitted to the cinema. That price was 11 piastres and therefore the duty payable on each ticket was 4 piastres and not 2.

We must therefore send the case back to the Magistrate with a direction that he should convict the accused on both charges on which he acquitted him and that he should impose what sentence he considers that the circumstances require.