[JACKSON, C.J., AND MELISSAS, J.]

(Nov. 24 and Dec. 1, 1948)

MEHMED AHMED KAMBILILI, *Appellant,*

v.

THE POLICE, *Respondents.*

(*Case Stated No.* 48.)

Petroleum Law, 1939, section 4—Storage of petrol "Mens rea".

Appellant was convicted of storing a quantity of 192 gallons of petrol contrary to the provisions of section 4 of the Petroleum Law, 1939. He owned 14 motor cars which plied for hire and he kept them in several garages, and in three of these garages the police found quantities of 104, 44 and 80 gallons of petrol. From these was deducted 36 gallons in respect of the permitted quantity of 12 gallons in each of the three garages concerned, and the balance of 192 gallons formed the subject of the charge. It was argued on behalf of the appellant that there was absence of *mens rea*, and that he did not in fact "keep" or "store" petrol in the sense in which those words are used in section 4 (4) of the Law.

Held: (i) That it was clear from the terms of the Petroleum Law, 1939, that it enacted an absolute prohibition of certain acts in the interests of public safety and that it was well established that in these circumstances the absence of *mens rea* was no defence.

(ii) It might well be true that a particular consignment of petrol might be very quickly used up, perhaps in a day or even less, but it by no means followed that there was not normally in the premises a quantity of petrol greater than the permitted amount and it was against that danger that the provisions of the section were intended to guard.

Conviction affirmed.

Case stated by the Acting District Judge of Nicosia (Case No. 4854/48) on the application of the accused.

E. Emilianides for the appellant.

The Solicitor-General (*C. Tornaritis*), for the respondents.

The facts of the case are fully set out in the judgment of the Court which was delivered by:

JACKSON, C.J.: In this case the applicant was convicted in the District Court of Nicosia of storing a quantity of 192 gallons of petrol contrary to the provisions of section 4 of the Petroleum Law, 1939. The applicant was ordered to pay a fine of £7. 10*s*. and the quantity of petrol in respect of which the offence was found to have been committed was forfeited. By the terms of sub-section (4) of the section quoted the forfeiture necessarily followed the conviction and was not within the discretion of the Court.

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The first point of law argued on behalf of the applicant was the absence of *mens rea*. It was said that he did not know that a licence was required to authorize his storage of petrol and that, as soon as he became aware of the fact, he obtained one. It seems clear to us, however, from the terms of the Law quoted, that it enacts an absolute prohibition of certain acts in the interests of public safety and it is well established that in these circumstances the absence of an intention to break the law is no excuse for breaking it.

The applicant's main argument was that he did not in fact "keep" or "store" petrol in the sense in which those words are used in section 4 (4) of the Law.

The statement of the case was extremely meagre but from what it contains and from statements made to us by counsel on both sides on matters which were not in dispute, the relevant facts appear to be as follows :—

The applicant owns 14 motor cars which ply for hire. He keeps these cars in several garages and in three of these garages the police found, on the 7th April last, quantities of 104, 44 and 80 gallons of petrol in metal containers. The total quantity found in the three garages was 228 gallons and from this was deducted 36 gallons in respect of the permitted quantity of 12 gallons in each of the three garages concerned. The balance of 192 gallons formed the subject of the charge.

The applicant's ration of petrol was approximately 800 gallons a month and he could draw it as it was needed. Having regard to the nature of his business it seems almost inevitable that he should have in his garages at any given time a substantial quantity of petrol to keep his cars fully supplied for any demands that might be made on them. It might well be impossible for them to go to some petrol depot to be filled up each time they went out. But that fact, if it is a fact, would not absolve the applicant from the necessity of obtaining a licence. It would show, on the contrary, that he is precisely one of that class of persons to whom the requirement of a licence is especially intended to apply. His business requires that he must normally keep petrol in quantities which greatly increase the danger to the surrounding householders in case of fire. The place where he keeps it must therefore be declared to the authorities and the conditions in which he keeps it must be subject to inspection and control.

But the applicant's contention was that the petrol was not in fact kept or stored within the meaning of the section under which he was charged. He implied that it went

out as quickly as it came in. It was always in motion, so to speak. It may well be true that a particular consignment might be very quickly used up, perhaps in a day or even less, but it by no means follows that there is not normally in the premises a quantity of petrol greater than the permitted amount and it is against this danger that the provisions of the section are intended to guard. It was not suggested that the large quantity of petrol found on the day of the inspection, 228 gallons, had all arrived at the garages on that day. That suggestion was only made in regard to a particular consignment of 60 gallons out of that total. The remainder had previously been there and, as we have already said, the nature of the applicant's business gives strong support to a conclusion that a substantial quantity of petrol is normally kept in his garages for use in his cars.

The charge related only to storage on a particular day but the considerations we have mentioned, together with the large quantity of petrol found, give strong support to the conclusion that there was in fact a "storage" within the meaning of the section and not just a temporary deposit which amounted to something less.

A question arises, however, concerning the quantity of petrol in respect of which the applicant was convicted and which was consequently forfeited. The quantity was 192 gallons and the way in which it was calculated has already been mentioned. It included a consignment of 60 gallons which had arrived in one of the applicant's garages at 10 o'clock on the morning of the 7th April and the charge was based on conditions found at 1 o'clock on that day, when the police inspected the premises. This particular consignment had been in the garage for only three hours and there is nothing to show that it might not have been put into the tanks of cars within some very short time. The probability is, of course, that when used up it would have been replaced, but the history of this particular consignment being known to be as we have stated it, we think it would be reasonable to exclude it from the quantity properly regarded as stored.

At the conclusion of the hearing we expressed our opinion that the conviction of the applicant for an offence against section 4 (4) of the Petroleum Law, 1939, must be affirmed and we have now given our reasons for that opinion. It follows, however, from what we have now said that, in our view, the quantity of petrol in respect of which the applicant was convicted should be reduced from 192 gallons to 132 and that a quantity of 60 gallons should be returned to him.