

[HALLINAN, C.J., AND GRIFFITH WILLIAMS, J.]

(April 30, 1952)

IBRAHIM HUSSEIN TOPJOU OF KOPHINOU,

*Appellant,*

*v.*

THE COLLECTOR OF CUSTOMS, LARNACA,

*Respondent.*

(*Criminal Appeal No. 1910.*)

*The Intoxicating Liquor (Manufacture) Licensing Law, 1950 s. 28 (1)—*  
*“ Keeping ” a village still—mere possession not “ keeping ” within*  
*the section.*

Section 28 (1) of the Intoxicating Liquor (Manufacture) Licensing Law, 1950, provides that “ No person shall keep or use a village still save under and in accordance with the terms of a permit . . . ” The trial Court found that the accused had been found in possession of a village still and convicted him under this section.

*Held* : in the special context of the Law under which the accused was convicted the word “ keep ” means something more than mere possession ; it means actual user for manufacturing intoxicating liquor, or keeping with an intention so to do.

Appeal allowed and conviction set aside.

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Appeal by accused from the judgment of the District Court of Larnaca (Case No. 6379/51).

*G. Nicolaidis*, for the appellant.

*R. R. Denktash*, Junior Crown Counsel, for the respondent.

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

HALLINAN, C.J. : In this case the appellant was charged with “ being in possession of a village still, capacity about 100 okes, without a licence from the Comptroller of Customs ” contrary to sections 28 and 30 of Law 24 of 1950.

Section 28 (1) provides :

“ No person shall keep or use a village still save under and in accordance with the terms of a permit issued by the Comptroller of Customs . . . . ”

The evidence showed that the appellant was found in possession of a boiler and another receptacle. There was no evidence that these appliances had been used for the manufacture of liquor. The appellant had no permit to keep or use a village still.

1952  
April 30

IBRAHIM  
HUSSEIN  
TOPJOU  
v.  
COLLECTOR  
OF  
CUSTOMS

The learned District Judge held that the boiler and the container came within the meaning and definition of a village still contained in section 2 of Law No. 24 of 1950, and that since the appellant was in possession of these appliances he was guilty of keeping a village still without a permit.

It is submitted by counsel for the appellant that the word "keep" in section 28 (1) means something more than merely being in possession. It is a curious error in the charge that the appellant is accused of "being in possession of a village still", for it begs the very question we are now called upon to decide. However, the case was tried as if the word "keep" had been used instead of the words "being in possession"; and counsel has rightly not relied on this error.

Counsel has referred us to section 3 (5) of Law 24 of 1950 which provides:—

"Any person not being the holder of a licence who

.....  
(b) has in his possession or keeps or makes use of any still, vessels, utensils, apparatus or materials in such circumstances as to indicate that they are kept or used for the manufacture of intoxicating liquor, is guilty of an offence....."

It is significant in sub-section (5) that reference is made to possession, whereas no such reference is made in section 28(1).

The word "keep" in its ordinary meaning of course can include possession, but in two cases to which we have been referred its meaning has been restricted. In the case of *Biggs v. Mitchell* (121 E.R. 1167) the "keeping" of gunpowder was held not to include temporary possession as opposed to the storing of gunpowder; and in the case of *London County Council v. Fairbank* (1911 2 K.B. 32) a cab proprietor was held not to "keep" spare cabs which he had put in his yard but had not in fact used. The latter case concerned a licence for a hackney carriage, and the Court considered that a hackney carriage was in its nature one which was used "by causing it to stand or ply for hire". I think these cases show that the main consideration in interpreting the word "keep" should be the use of that word in the statute which is being construed.

In section 3 (5) the legislature does, I think, distinguish between "possession" on the one hand and "keeping or making use of a village still" on the other. In order to "keep" appliances for the manufacture of intoxicating liquor there must, in my view, be some evidence of actual user for that purpose, or of an intention to do so; mere proof of possession is not enough. If then the word "keep" has this meaning in section 3 (5) I cannot see how it can have a different meaning in section 28 (1).

*This appeal must therefore be allowed and the conviction set aside.*

GRIFFITH WILLIAMS, J. : I concur.