

[HALLINAN, C.J., AND ZEKIA, J.]

(January 30, 1953)

THE POLICE, *Appellants,*

v.

NICOS NAHIKIAN, OF NICOSIA, *Respondent.*

(*Case Stated No. 85.*)

Shop Assistants Law (Cap. 159)—Premises open for "repair and servicing motor vehicles"—Expression includes repair of cushions.

R., a motor car upholsterer, kept his shop open for the repair of motor car cushions at a time when the Shop Assistants Law, (Cap. 159) section 5, prescribes that shops must close. The trade of repairing and servicing of motor vehicles is exempted from this law under the 1st Schedule, item 4.

Upon a case stated, *Held* : the words "repair and servicing" in the 1st Schedule, item 4, were disjunctive, and that the trade of repairing car cushions was an exempted trade.

L. Loizou, Crown Counsel, for the appellants.

A. Emilianides for the respondent.

The judgment of the Court was delivered by :

HALLINAN, C.J. : In this case the respondent was acquitted of an offence under section 5 of the Shop Assistants Law, (Cap. 159). He is a motor car upholsterer and he repaired some cushions of a motor car after the hour at which under section 5 shops should close. His defence was that he was exempted from the provisions of section 5 by virtue of the proviso to that section and item 4 of the 1st Schedule to the Law.

The learned Magistrate held that the repair of the cushion in a motor car came within the provisions of item 4, namely the repair and servicing of motor vehicles. At the request of the Crown he has stated a case as to whether his determination on this point was correct.

It has been urged on behalf of the Crown that the words "repair and servicing" must be read conjunctively; that the repair must be such as to make the motor car serviceable and is of such a kind that it is essential that it should be done in order that the vehicle may be kept on the road.

As the word "and" is clearly used disjunctively in the other items of the 1st Schedule, it is quite clear that "and" must be read disjunctively in construing item 4.

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We are further of opinion that it would be very difficult to distinguish what repair is essential within the purpose and scope of the legislation, and any attempt to define what is essential and what is not would throw the law into confusion and result in grave inconvenience to the public. It is conceivable that certain luxury fittings in a motor car might not come within the word "repair" as used in the schedule, but we are certainly of opinion that a cushion is not in this category; the word "cushion" in a motor car means a seat and is not a luxury fitting.

In our opinion the learned Magistrate was correct in his determination of the law. *For these reasons we consider that the respondent was rightly acquitted.*

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(HALLINAN, C.J., AND GRIFFITH WILLIAMS, J.)

(February 6, 1953)

AGNI KONTOU OF NICOSIA, *Appellant,*

v.

MARIA V. PAROUTI OF NICOSIA, *Respondent.*

(*Civil Appeal No. 3976.*)

Contract—Uncertainty of duration—"Up to death of lessee" not uncertain—Destruction of premises by lessor—Repudiation of the Agreement—Damages must be lump sum.

In 1947 P. sold her house to K. at less than the market value. The parties made an agreement headed "Document of Lease" whereby K. "transferred" the house to P. "from to-day up to the death of the lessee" at 1s. a month rent, K. "to make all necessary repairs for supporting the premises." The Municipal Authority ordered demolition of a certain part of the premises and K. by excessive demolition caused such destruction of the premises that P. had on 1st November, 1953, to find accommodation elsewhere.

The trial Court held that K. had broken the agreement and awarded damages of £18 per month as from 1st November, 1950, till the plaintiff's death. K. appealed.

Held: (1) The agreement was not void for uncertainty even if it is expressed to be "from to-day up to the death of the lessee". Man is mortal and the date of his death easily ascertained.

(2) The destruction caused by K's excessive demolition was a repudiation of the whole agreement.