

MICHAEL GEADIS

Appellant,

v

DISTRICT LABOUR OFFICER

Respondent

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MICHAEL
GEADIS
v.
DISTRICT
LABOUR
OFFICER

(Criminal Appeal No 2990)

Shop—Retail trade or business—Offences contrary to the Shop Assistants Law, Cap 185—Artist photographer's shop or place of business—A 'shop' within section 2—Wherein appellant carries on a "retail trade or business" within the section—Therefore he was rightly convicted in that he failed to comply with the statutory provisions

Words and Phrases—'Shop' and 'retail trade or business' in section 2 of the Shop Assistants Law, Cap 185—The words cover the studio of an artist photographer carrying on therein his profession at a charge—Cfr The Second Schedule to the said Law, which is a schedule under the proviso to section 6 thereof

Photographer—Artist photographer's studio—A "shop" wherein the photographer carries on a 'retail trade or business' within section 2 of the said Law Cap 185 (supra)—See above

"Retail trade or business"—See above.

Criminal Law—Shops—Offences contrary to the Shop Assistants Law Cap 185—See above

The appellant is a photographer who takes photographs at a charge at his usual place of work in Nicosia. He describes himself as a master photographer, specialising in portrait photography. He was prosecuted as a shopkeeper who failed to comply with the statutory provisions referred to in the charge, which apply to all persons within the definition of a shopkeeper in the statute viz the Shop Assistants Law, Cap. 185. He was convicted for failing to close his shop on a Saturday afternoon contrary to the provisions of the said Law, and for failing to exhibit in his shop a list of the names and working hours of his shop assistants contrary to the requirements of section 11 of the same Law. He now appeals against his conviction. Counsel for the

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appellant conceded that an ordinary photographer's shop or place of business is a "shop" within section 2 of the statute ; but submitted that appellant's studio is not a "shop" because he is not carrying on there any trade or business, appellant's work being that of an artist and not that of a shopkeeper.

In dismissing the appeal and affirming the conviction, the Court :—

Held, (1) (a) if the case were to be decided on the definition of the expression "retail trade or business" in section 2 of the Law (*supra*), there might, perhaps, be an arguable case for the appellant ; but if the relevant statutory provisions are construed in the context of the statute taken as a whole, no difficulty arises in their construction.

(b) The second Schedule to the statute, which is a Schedule under the proviso to section 6, and forms part of the statute, contains photography as a trade or business exempted from Sunday closing under the section.

(c) It follows that it cannot be said that the legislator did not intend to include photography as a "retail trade or business" within the provisions of the statute. The legislator expressly put photography within the statute.

(2) Therefore, photography, artistic or not artistic, when practised as a profession is a trade or business within this statute.

(3) The appellant cannot escape the reach of the statutory definitions. They are wide enough to cover his place of business even if that is an artist photographer's studio.

Appeal dismissed.

Appeal against conviction.

Appeal against conviction by Michael Geadis who was convicted on the 5th February, 1968 at the District Court of Nicosia (Criminal Case No. 22903/67) on three counts of offences contrary to the Shop-Assistants Law Cap. 185 and the Children and Young Persons Law Cap. 178 and was sentenced by Vakis, D.J., to pay a total fine of £8.0.0.

A. Paikkos, for the appellant.

S. Georgiades, Counsel of the Republic, for the respondent.

The judgment of the Court was delivered by :

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VASSILIADIS, P. : This is an appeal against conviction by the District Court of Nicosia for failing to close his shop on a Saturday afternoon contrary to the provisions of the Shop Assistants Law (Cap. 185) specified in the charge ; for failing to keep a Register of protected persons, contrary to the relative provisions of the Children and Young Persons Law (Cap. 178) ; and for failing to exhibit in his shop a list of the names and working hours of his shop assistants, contrary to the requirements of section 11 of the Shop Assistants Law, (Cap. 185).

The appellant is a photographer who takes photographs at a charge, at his usual place of work in Nicosia. He describes himself as a master photographer, specialising in portrait photography. He was prosecuted as a shopkeeper who failed to comply with the statutory provisions referred to in the charge, which apply to all persons within the definition of a shopkeeper in the statute.

His defence is that he is beyond the reach of the statute in question because he is not an ordinary photographer but an artist of skill and taste engaged in the pursuit of art, and not engaged in a retail trade or business within the statute.

The trial Judge after hearing evidence, which stands mostly uncontested, came to the conclusion that the artistic element claimed by the appellant for his work could not take his case outside the reach of the statute ; and convicted the appellant on all three counts in the charge.

In arguing the appeal before us learned counsel conceded that an ordinary photographer's shop or place of business is a "shop" within the provisions of the statute ; but submitted, that appellant's studio is not a "shop" because he is not carrying there, any trade or business. Appellant's work, counsel submitted, is that of an artist and not that of a shopkeeper.

Interesting as the submission may be, in our opinion the case presents no difficulty. It turns on the construction of the statutory provisions in question. If the case were to be decided merely on the definition of the expression "retail trade or business" in section 2, there might, perhaps, be an arguable case for the appellant ; but if the relevant statutory provisions are construed in their context in the statute taken

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as a whole, no difficulty arises in their construction. The second schedule to the statute, which is a schedule under the proviso to section 6, and forms part of the statute, contains photography as a trade or business exempted from Sunday closing under the section.

In view of this provision in the enactment, it cannot be said that the legislator did not intend to include photography as a retail trade or business within the provisions of the statute. The legislator expressly put photography within the statute. And photography, artistic or non-artistic, when practised as a profession is a trade or business within this statute.

After arriving at this conclusion, one must inevitably come to the next which is that appellant's premises is a "shop" within the definition of the statute, hurried as such a conclusion may appear to the appellant as an artist.

On the facts of the case as they are on record, the appellant cannot escape the reach of the statutory definitions. They are wide enough to cover his place of business even if that is an artist photographer's studio as he calls it. This is sufficient to dispose of the appeal which must fail and be dismissed. Order accordingly.

Appeal dismissed.