

1984 February 24

[A LOIZOU, DIMITRIADIS AND STYLIANIDIS, JJ]

PANAYIOTIS YEROLEMIDES AND ANOTHER,

*Appellants*

1.

THE MUNICIPALITY OF NICOSIA,

*Respondents*

*(Criminal Appeals Nos 4301-4302).*

*Refuse---Dumping of— Nicosia Municipal Bye-Laws 1965-1980, bye laws 71, 72 and 216—Collection and accumulation of old metals old batteries and other old articles in an open store amounts to “dumping”—Said matter not “refuse” within the meaning of the above Bye-Laws—Holding of a licence under Old Metals (Dealers) Law, Cap 75 and payment of professional tax irrelevant because appellants charged under another enactment—And there is no inherent contradiction in the establishment of separate controls over the same act for different purposes.* 5

*Words and Phrases—“Includes” in the definition of “refuse” by the Nicosia Municipal Bye-Laws, 1965-1980.* 10

The appellants, who were licensed dealers in old metals and owners and occupiers of an open store at Kaimakli in which they collected and dumped all kinds of old metals, old batteries, old boxes, old cars and generally such old articles which were useless to other people and which were bought by the appellants and kept there till a buyer could be found, were convicted of the offence of dumping refuse at a place other than the special place allotted for the dumping of refuse\*, contrary to bye-laws 71, 72 and 216 of the Municipal Bye-Laws of Nicosia, 1965-1980. 15 20

\* Refuse is defined as follows in bye-law No. 2. “‘Refuse’ includes ashes, dung, dust, hay filth, litter, paper, rubbish, shavings, straw sweepings or other waste matter”

Upon appeal against conviction counsel for the appellants contended:

- 5 (a) That the appellants, being licensed dealers in old metals and having been issued with a professional licence by the municipality, could not have been criminally liable for the accumulation of the said material;
- (b) That the act of the appellants was not "dumping"; and
- 10 (c) That the articles placed and accumulated on the said open store were not "refuse".

*Held.* (1) that the Old Metals (Dealers) Law, Cap. 75 regulates the dealing in old metals and is administered by the Divisional Commander of the Police; that the regulations, under which appellants were charged, were made by the Municipal Council of Nicosia under the powers vested in it by s.125 of the Municipal Corporations Law to enable the Council to perform the duties assigned to it by s.123 (1)(a) "to prevent the accumulation in any public or private place of any filth or refuse so as to be dangerous to the public health . . ."; there is no inherent contradiction in the establishment of separate controls over the same act for different purposes (see *Tsiolis v. District Officer Nicosia*, (1982) 2 C.L.R. 11 at p. 16); that, therefore, the holding of a dealer's licence in old metals under the Old Metals (Dealers) Law, Cap. 75 and payment of the professional tax are irrelevant for the purposes of this case.

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(2) That the act of the appellants of placing and accumulating the said articles in the open store amounts to "dumping".

(3) (*After dealing with the meaning of the word "includes" in the definition of refuse*) that the matter dumped in the open store are not refuse but old metal materials stored there until sale to third persons for processing; that, therefore, the prosecution failed to prove an ingredient of the offence and the appeal must succeed.

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*Appeal allowed.*

35 *Per curiam:* We have to place on record that the appellants' act may be controlled by other provisions in the Bye-laws as the armoury of the law is not exhausted by Bye-laws

71 and 72. Furthermore the Old Metals (Dealers) Law was recently amended by Law 73/83 and the Divisional Commander of Police may impose conditions for the amenities of the affected area where they store their metals or carry on their trade. 5

Cases referred to:

- Isobis v. District Officer Nicosia* (1982) 2 C.L.R. 11 at p. 16;
- Becke v. Smith*, 150 E.R. (Ex.) 724 at p. 726;
- Ree v. J. Bridge Esq. (Metropolitan Police Magistrate)*, 24 Q.B. 609. 10

**Appeal against conviction.**

Appeal against conviction by Panayiotis Yerolemides and Another who were convicted on the 23rd February, 1982 at the District Court of Nicosia (Criminal Case No. 7120/81) on one count of the offence of dumping refuse at a place other than the special place allotted for the dumping of refuse contrary to Bye-laws 71, 72 and 216 of the Municipal Bye-laws of Nicosia, 1965-1980 and were sentenced by Ioannides, D.J. to pay £5.- fine each. 15

*M. Montamos*, for the appellants. 20

*I. Georghiadou (Mrs.)*, for the respondents.

*Cur. adv. vult.*

A. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Stylianides.

STYLIANIDES J.: This appeal was taken by the appellants against their conviction by the District Court of Nicosia of the offence of dumping refuse at a place other than the special place allotted for the dumping of refuse, contrary to Bye-laws 71, 72 and 216 of the Municipal Bye-laws of Nicosia, 1965-1980. 25

The facts, as found by the trial Court, are:- 30

The appellants are licensed dealers in old metals. They are the owners and occupiers of an open store situated at 49, Ayios Demetrios Street, Kaimakli (a quarter of Nicosia town). In that open store both accused "collected and dumped all kinds

of old metals, old batteries, old boxes, old cars and generally such old articles which are useless to other people and which the accused are buying and keep there till a buyer is found either in Cyprus or abroad who buys them".

5 The appeal was argued before us on the following grounds:-

(a) The appellants, being licensed dealers in old metals and having been issued with a professional licence by the Municipality, could not have been criminally liable for the accumulation of the said material:

10 (b) The act of the appellants is not "dumping": and,

(c) The articles placed and accumulated on the said open store are not "refuse".

A. The Old Metals (Dealers) Law, Cap. 75, regulates the dealing in old metals and is administered by the Divisional  
15 Commander of the Police. The regulations, under which they were charged, were made by the Municipal Council of Nicosia under the powers vested in it by s. 125 of the Municipal Corporations Law to enable the Council to perform the duties assigned to it by s. 123(1)(a) "to prevent the accumulation in any  
20 public or private place of any filth or refuse so as to be dangerous to the public health ...".

It is well settled that there is no inherent contradiction in the establishment of separate controls over the same act for different purposes. (*Tsiolis v. The District Officer Nicosia*, (1982) 2  
25 C.L.R. 11, at p. 16).

The holding of a dealers' licence in old metals and payment of the professional tax are irrelevant for the purposes of this case.

30 B. It was argued that the placing and accumulation of the materials above-referred to found by the trial Judge was not "dumping".

"Dump" must be given its ordinary literal meaning. It is a fundamental principle in the construction of statutes that words must be given their literal meaning. The language is  
35 clear and explicit and the Court has to give effect to it. This Golden Rule was lucidly stated in this way by Parke B. in *Becke v. Smith*, 150 E.R. (Ex.) (1836) 724, at p. 726:-

"It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further."

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The ordinary meaning of the verb "dump" is "to throw down in a lump or mass, to fling down or drop with a bump, to deposit". (See *The Shorter Oxford English Dictionary*, Volume 1).

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In the *Oxford Advanced Dictionary of Current English* the meaning of "dump" is given as follows: "Dump - Put on or into; put or throw down carelessly", and the example given is: "Where can I dump this rubbish?"

We find no merit in the submission that the ingredient of "dumping" was not proven before the trial Court. The act of the appellants of placing and accumulating the said articles in the open store amounts to "dumping".

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### C. REFUSE:

Are the materials dumped in that open store within the definition of the word "refuse" as set out in the Bye-laws?

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In Bye-law No. 2 we read the following definition of "refuse": "Refuse" includes ashes, dung, dust, hay, filth, litter, paper, rubbish, shavings, straw, sweepings or other waste matter".

The point that falls for determination is a point of law. The real controversy between the parties is upon the interpretation of the Bye-laws. There is no dispute as to the nature of the materials dumped. The dispute is whether the subject-matter was refuse. A question of law, therefore, arises as to whether the said material comes within the meaning of the word "refuse" used in the Bye-laws. (*Reg. v. J. Bridge Esq. (Metropolitan Police Magistrate)*, 24 Q.B. 609).

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The trial Judge had this to say on this issue:-

"It is the case for the prosecution that all those old articles which are collected and dumped in that open place is refuse in accordance with the definition of refuse referred to in the Bye-laws.

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5 The submission, on the other hand, of the accused is that what they are collecting and dumping in their open store is not refuse but various articles which have some value and which they are trading with and actually what they keep there is their stock-in-trade and cannot be considered as refuse.

10 I can find no difficulty in holding that what accused are collecting and dumping there in their open store are waste and useless things and therefore refuse. I can see no reason to hold otherwise and to give a different interpretation to the word 'refuse' considering and having in mind the particular circumstances of the present case".

15 This interpretation and finding of the trial Judge was vigorously challenged by Mr. Montanios. He cited a number of English decisions mainly of the 19th century and early 20th century. Those decisions turn on the statutory definition of "house refuse" or "trade refuse" in the relevant statutes. They are of no assistance whatsoever, and are not applicable in the consideration of our present statutory provision.

20 The overriding principle in the interpretation of legislation made under powers conferred by statute is that it should be construed in the light of the enabling statute generally, and, in particular, so as to be consistent with its substantive provisions.

25 We were invited to apply the Eiusdem Generis rule and to interpret the general expression "or other waste matter" as comprehending only things of the same kind designated by the preceding particular words. For the ejusdem generis rule to apply, the specific words must constitute a category, class or genus and the general words must not by their nature exclude themselves from the category, class or genus, so that, for example, a superior thing will not be held to be within a class of inferior things. (*Maxwell on Interpretation of Statutes*, 12th edition, p. 297; *Halsbury's Laws of England*, 4th edition, volume 44, para. 877).

35 This is not strictly a case for applying the rule of ejusdem generis. It is noteworthy that the verb "mean" was not used for the specified materials set out in the definition but the word "includes". "Includes" is only explanatory whereas

matter is restrictive. The specific words, which are explanatory and not restrictive, are not of one genus or category. The structure of the definition in the Bye-law makes it clear that a matter not specifically referred to in the definition, to fall within the area of "refuse" must be a matter that is obnoxious to sanitation and health and at the same time waste in the sense that it is disposed by the owner. Every matter has some value - negligible, small or substantial. "Waste" does not mean valueless. 5

Having regard to the findings of the trial Court as to the matter dumped in the open store, we hold the view that they are not refuse but old metal materials stored there until sale to third persons for processing. The prosecution failed to prove an ingredient of the offence and the appeal succeeds. 10

We have to place on record that the appellants' act may be controlled by other provisions in the Bye-laws as the armoury of the Law is not exhausted by Bye-laws 71 and 72. Furthermore the Old Metals (Dealers) Law was recently amended by Law 77(I) and the Divisional Commander of Police may impose conditions for the amenities of the affected area where they store their metals or carry on their trade. 15 20

In view of the aforesaid this appeal succeeds and the conviction is quashed.

*Appeal allowed. Conviction quashed.*