TYSER, C.J. & BERTRAM, J. 1190

December 23

[TYSER, C.J. AND BERTRAM, J.]

COMPAGNIA MINERARIA DI CIPRO

v.

THE KING'S ADVOCATE.

INTERPRETATION OF LAWS—ARTICLES ENUMERATED IN SCHEDULE TO CUSTOMS LAW—"TILES"—CUSTOMS, EXCISE AND REVENUE LAW, 1899.

Words in a law must be understood in their primary sense unless it is shown that they are to be understood in some peculiar sense to give effect to the intention of the law.

If the words in question have reference to the common transactions of life, the primary meaning of such words is their plain and popular meaning.

Words denoting articles enumerated in a Schedule to a Customs Law for the purpose of taxation must be interpreted in the sense in which they are ordinarily understood, unless it is shown that at the time of the enactment they had some special customary trade meaning.

HELD: *that it is essential to the popular and ordinary meaning of the word "tile" that the thing in question should be made of baked earth, and that consequently certain roofing slabs composed of cement and asbestos of the shape, size and thickness of slates but of the colour of tiles (not shown to have acquired the name of "tiles") were not "tiles" within the meaning of the First Schedule to the Customs, Excise and Revenue Law,* 1899.

Per TYSER, C.J. (*dissentiente* BERTRAM, J.): *the true way to construe the law is to ascertain what kind of thing was meant by the word "tiles" at the time when the law was passed and to limit the application of the word to that kind of thing.*

Per BERTRAM, J.: *the things in question, if shown to be of the same type of any known "tile" and to be called "tiles" in common usage would be covered by the word "tiles" in the Schedule, in spite of the fact that by the progress of manufacture they had come to be made of material other than those of which they were made at the passing of the law.*

This was an appeal from the judgment of the District Court of Nicosia.

The only question in the case was whether certain articles imported by the Plaintiffs were "tiles" within the meaning of the First Schedule to the Customs, Excise, and Revenue Law, 1899.

The articles in question were thin flat slabs of a reddish material, composed of various substances including 10 per cent. of asbestos. A manufacturer's prospectus described them as "artificial slates or tiles," and it appeared that they were fixed to the roof by being clamped to each other. They were much larger than an ordinary tile, were not fragile, and could be cut or sawn without sustaining injury.

The District Court found that the articles were tiles within the meaning of the Schedule.

The Defendant appealed.

The King's Advocate in person. This article was not the sort of article contemplated by the legislature when it used the word "tiles" in the Schedule. By tiles the legislature meant the ordinary article made of baked earth. The basis of the duties fixed by the Schedule

was the market price of the commodity at the date when it was drawn up. At the commencement of the British Occupation all customs duties were *ad valorem*, that being the principle of the Turkish Customs system. (Young, Corps du Droit Ottoman, III., pp. 221 *seqq.*). Law I. of 1879 dealt with certain specific points but left the general Turkish principle of a uniform 8 per cent. *ad valorem* duty untouched. Law X. of 1882 only provided for certain exemptions and drawbacks. Law X. of 1893 for the first time introduced a schedule of specific duties, but the principle of these specific duties was still an 8 per cent. *ad valorem* duty, the amount being worked out on the basis of the market price. At that date these articles did not exist: they are altogether a more expensive article than what the Schedule contemplated. Their cost is £16 or £17 per thousand as against £3 or £4 per thousand. Law XXII. of 1899 introduced a variation of certain duties and it was in this law that the Section now printed as Sec. 29 for the first time appears. I pray that Section in aid, inasmuch as, since these articles did not then exist they could not have been classified as " tiles " at the coming into operation of the law.

[THE CHIEF JUSTICE: As to Sec. 29 the true position is, that as the articles did not exist, the Section has no application to the case.]

Artemis, for the Respondent. The market price at the date of the law has nothing to do with the subject. French tiles are more expensively made now and consequently cost more but they pay the same duty. Nor is the material decisive. French tiles contain many ingredients besides baked clay. The decisive test is the use to which the articles are put.

The Court allowed the appeal.

Judgment: THE CHIEF JUSTICE: The only question in this case is whether certain articles manufactured by the Plaintiff Company and intended to be used for roofing, covering walls and other purposes for which tiles are used, comes under the heading of tiles as used in the First Schedule of the Customs, Excise, and Revenue Law, 1899 so that on importation into this Island they pay duty at the rate of 5*s.* 5*cp.* per 1,000, or whether they should pay 8 per cent. *ad valorem* duty, as being not otherwise charged with duty.

If these articles are not tiles it is not suggested that they come under any other heading in the Schedule.

To ascertain whether the things in question are tiles we must first ascertain the meaning to be given to the word " tiles " as used in the Schedule. The word " tiles " must be construed in its primary sense,

as there is nothing, in the Law or Schedules, to shew that it is to be understood in some peculiar sense to give effect to the intention of the law.

As to what is the primary sense of a word, this is, as is said in Taylor on Evidence, a question which in some cases is more easily asked than answered.

I will give the illustrations which he gives as best explaining the meaning of the term "primary sense."

"If the language be technical or scientific, and be used in a matter "relating to the art or science to which it belongs, its technical or "scientific sense must be considered its primary meaning; but if, on "the other hand, the expressions have reference to the common "transactions of life, they will be interpreted according to their plain "ordinary and popular meaning." (2 Taylor, 7th edition, p. 943).

Further it is laid down in Chitty on Contracts (Chitty, 10th edition, p. 78) that terms are to be understood in their plain, ordinary, and popular sense if they have not, in respect to the subject matter, acquired a particular sense.

Now the Customs, Excise, and Revenue Law is a law dealing with the transactions of merchants and traders who import merchandise into the Island. Therefore if the term "tiles" had, at the time when the Act was framed, any customary meaning in trade, I should give that customary meaning to it in this law. There was however no evidence of any such customary trade meaning and it cannot be suggested that the term is used in any scientific or other special sense. I am driven therefore to determine what is the plain, ordinary, and popular meaning of the word. What is the popular definition of the word "tiles"? That is to say how is the word "tiles" to be defined, in order that the definition may guide us to a correct use of the term, and protect us from applying it in a manner inconsistent with custom and convention? The definition must tell us how the term "tiles" is used, and not how it ought to be used, or what should be included in the term.

A popular definition never gives the whole meaning of a term, nor do ordinary people have any definite knowledge of the meaning of words they use. But they do know what in a popular sense is denoted by it, and how far, if it were used to denote other things, people would be deceived by its use.

Now it has been argued that the term "tiles" means anything used for roofing or similar purposes. Is this so? Should we so use it if we wanted to make our hearers understand the truth? Should we call a slate roof, a tile roof? or a marble floor a tile

floor? Would the word "κεραμίδια" lead one to suppose that the person who used it meant "πλάκες" or "μάρμαρα"? If we were informed by a trustworthy person that a roof was tiled, should we not deny that it was a slate roof, or a corrugated iron roof? In my opinion, according to its customary and conventional use, the term "tiles" does not include slates, or flags, or marbles, or corrugated iron. I have no doubt that if a person were told that a floor or roof was made of "tiles" he would understand; to use the words of Webster's Dictionary, "Plates, or thin pieces of baked clay used for covering the roofs of buildings, for floors, for drains and often for ornamental mantel works," and, that that is the plain, ordinary, and popular meaning of the term "tiles." That is the ordinary, common, and popular meaning attached to the term "tiles" now, and that is the meaning which presumably attached to the term "tiles" at the time when the Law under consideration was passed, and therefore it must be assumed that it was the intention of the legislature when they passed the law containing the Schedule to use the word "tiles" in that sense.

So much is the idea of the material of which the thing is made associated with the word "tile," as opposed to the use to which it is put, that people talk of "pipe drain tiles" which are pipe drains made of burnt clay, and not used for covering at all. But it is said that the word "tiles" is derived from "tegula" which comes from the same root as tegere "to cover" and in its primitive signification means a little thing used for covering, and therefore the word "tile" must mean any little thing used for covering.

In the first place I may point out that we are not concerned with the primitive signification of the word "tile," and still less with the primitive signification of the word from which it is derived, but with the conventional and customary meaning of the word "tile." In the second place I am by no means sure that the term "tegula" was not used to denote small baked tiles such as we understand now by the word "tiles," and whether custom had not limited its use for the denotation of such tiles alone. However that may be, it seems to me immaterial to consider what is the meaning of the word, from which the word "tile" is derived, or what is the meaning of the root from which the word is formed.

If we look at the meaning of the root from which words are formed, the Greek "τέγος" or "στέγος" the Latin "toga" the Saxon "thatch," the German "dak," the English "deck" all come from the roots which signify covering, but no one would hesitate to say that these words are limited in their use to denote particular forms of covering, and

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that they could not be construed to denote any form of covering other than that to which custom has limited their use. But a prospectus or advertisement has been put in, in which the things which are the subject matter of this action are called tiles or slates, and which states that they may be used for roofing and for a variety of other purposes for which tiles are used. To my mind it does not matter what the things are called, the sole question is whether they come within the category of things which in their popular sense are denoted by the term " tiles."

There is one other contention which I must consider and it is this. It is said that, as the legislature was fixing a tariff to apply to future transactions, when they said that " tiles " were to pay a duty, the word " tiles " must be construed to cover every thing that might at any time be called in common parlance a " tile." That if " slates " or " iron roofing material " came to be regarded popularly as denoted by the term " tiles " they would pay duty as tiles. That this article manufactured from cement would, if used in Cyprus, be universally called a " tile " and that it therefore should pay duty as a " tile." I know of no authority to this effect.

Suppose these slabs of concrete being not generally known in Cyprus were now to pay duty under the omnibus clause in the Schedule and after some use when they became known they were commonly, ordinarily, and popularly spoken of as " tiles." According to the contention under consideration they would, when they were popularly spoken of as tiles, be entitled to come in on payment of duty as " tiles."

I do not think that this is so. The true way to construe the law in my opinion is to ascertain what kind of thing was meant by the word " tiles " at the time when the law was passed, and to limit the application of the word to that kind of thing. If for example the duty had been imposed on " tiles and things used for similar purposes " there is no doubt that the articles in question would come under the denomination of " things used for a similar purpose to tiles " although they are new things not contemplated when the law was passed. But the word used is " tiles " and the word " tiles " was popularly understood to mean things which amongst other qualities had this quality that they were made of baked clay. Whatever these things were called they would never possess this quality and would not be " tiles " within the meaning of the law. Cement slabs for roofing do not come within the popular signification of tiles any more than concrete draining pipes would be considered tile draining pipes.

As regards the contention that the word " tiles " denotes roofing of any substance—*i.e.*, that it is to be taken to denote things put

to that use although not made of a particular material—it may be remarked that the word "tiles" in archaeological language would appear to be used in the sense contended for by the Plaintiffs, that is to say, to denote a small slab of marble or metal used for roofing. In colloquial slang it is used to denote a "hat" as a cover for the head. But that is not the plain, ordinary, and popular sense in which this term is used.

The legislature, in passing this Schedule, must be supposed to have intended to use the words in the sense in which they would be understood by the ordinary man, *i.e.*, in their plain, ordinary, and popular sense. That is the sense too which will best carry out the intention of the law because if the material of which the thing is made is not to be considered, things of very different value would pay the same duty of 5*s.* 5*cp.* which it does not seem likely was intended by the law.

The articles which the Plaintiffs describe as "tiles" are made of cement and not of burnt clay and are therefore not in my opinion tiles within the meaning of the Law.

It is not immaterial to notice that if there is any ambiguity in the English word "tiles" the words in the Greek and Turkish translations of the law, "*Κέραμοι*" and "كيرميد" seem to be quite clear.

BERTRAM, J.: I concur. I entirely agree that in interpreting the Schedule to a customs law, enumerating a number of articles on which duty is to be paid, the words are to be interpreted in the sense in which they are ordinarily understood. This was the principle laid down in *A.G. v. Bailey* (1817) 1 Ex., 672, 74 R.R., p. 681. In that case it was held that "Sweet spirits of nitre" were not "spirits" within the meaning of the Act in question, not being what is ordinarily known as "spirits."

On examining the definitions of "tile" in Webster's Dictionary and the Imperial Dictionary I cannot resist the conclusion that as ordinarily understood a "tile" implies something made of baked earth. It appears from the latter dictionary that tiles may be of various kinds. Thus among roofing tiles, there are flat (or plain) tiles, curved (or pan) tiles, ridge tiles (which run along the ridge of the roof), and gutter tiles (which run along the eaves). There are things known as "drain tiles," some of which are in the form of an arch, which are laid upon certain other flat tiles known as "soles." All these various shapes of tiles have this in common that they are made of earthenware.

Tiles then as ordinarily understood are articles made of earthenware, used among other purposes for roofing houses. They are of certain

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recognised shapes and of a recognised size and thickness (probably limited by the material of which they are composed), and they are applied to the roof in certain recognised ways.

At the same time (and here I am not sure that I am wholly at one with the Chief Justice) if it were shewn that the articles now in question were in all respects identical with tiles, except that they are composed of different materials, and that they were known as "tiles" among those using them, I should be inclined to hold that they were included in the words "tiles" as used in the law. It frequently happens that with the progress of invention things which are at one time universally made of one substance come to be made of another. Thus sugar, at one time manufactured entirely from cane is now made from beet; tall hats once made of beaver skin are now made of silk; combs once made of tortoise shell, or bone, are now made of celluloid; candles, once made of tallow, or wax, are now made of paraffin; whisky, once made solely of barley, is now made of various other substances. Though the substance has changed the thing is the same, and is known by the same name, and in a customs schedule would in my opinion be taxed at the same rate.

But, on careful consideration, I cannot identify these articles with tiles though they are of the colour of tiles. They are not of the same shape, or size, or thickness of any known tiles, nor are they applied in the same manner. Nor is there any evidence that in the countries where they are used (and they are said to be used "enormously") they are known as "tiles." In the manufacturer's prospectus (which was produced in evidence) they are called "artificial slates or tiles" and are referred to as both "slates" and "tiles," but more frequently as "slates" than "tiles." It would seem indeed that the manufacturer did not know how to describe them feeling that they were of the colour of tiles, but of the shape and thickness of slates.

The inference I draw is that they are neither slates nor tiles, but a new and convenient form of roof covering which has not yet acquired a recognised name, and that consequently they must pay an *ad valorem* duty.

Appeal allowed.