

[STRONGE, C.J., AND FUAD, J.]

THE MAYOR, ETC., OF NICOSIA

v.

AKOUP TATOURIAN.

*(Criminal Application No. 23/35.)*1935.  
April 1 & 6.THE MAYOR,  
OF NICOSIA  
v.  
AKOUP  
TATOURIAN.

*Municipal Corporations Law, 1930, Section 116 (e), and Nicosia Bye-laws of 1931 — Validity of Bye-law No. 28B — Power to prevent the unlicensed sale of perishable goods outside specified places.*

This was a case stated under clause 94 of the C.C.J.O., 1927, by the Magistrate of Nicosia, who sought the opinion of the Supreme Court on the validity of Nicosia Municipal Bye-law No. 28B, it being admitted that the defendant had sold perishable goods without a licence elsewhere than at one of the places appointed for the sale of such goods, contrary to that bye-law.

*Held*, that the bye-law was valid.

*M. Michaelides* for the prosecutor:

Section 116 (e) of the Municipal Corporations Law clearly empowers the Council to allot special places for the sale of perishable goods, and section 117 enables it to make bye-laws for that purpose.

*S. Evangelides* for the defendant:

“Special” does not mean exclusive, so there is no power to prohibit sale of perishable goods outside the allotted places: *Corporation of City of Toronto v. Virgo*, 1896, A.C., 88.

The judgment of the Supreme Court was delivered by the Chief Justice.

STRONGE, C.J.: This matter comes before us as a case stated pursuant to the provisions of clause 94 of the C.C.J.O., 1927.

The accused was charged in the Court below upon a single count, viz.: that without having first obtained a licence from the Municipal Council of Nicosia he did at a place within the municipal limits of Nicosia not licensed by the said council for the sale of perishable goods—in the words of the summons—“sell or expose for sale” oranges, lemons, onions, potatoes and vegetables which are perishable goods. A gay galaxy of sections of laws and bye-laws figures at the close of the summons intended, no doubt, to inform the accused of the legal fences through which he has crashed, but, to our minds, confusing and unnecessary. In our opinion a simple reference to bye-law 28B alone would have been sufficient statement of the enactment against which the accused in the words of clause 82 of the C.C.J.O. “is said to have offended”.

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On being thus charged in the lower Court the accused admitted that he did sell without a permit perishable goods within the municipal limits at a place not licensed by the municipal council for the sale of such goods. He argued, however, by his counsel that such sale constituted no offence inasmuch as bye-law 28B prohibiting the sale of perishable goods at any place other than the special places allotted by the council under the provisions of section 116 (e) of Law 26 of 1930 was not a bye-law which the Municipal Council possessed any power to make. The learned Assistant District Judge, the sole question at issue being the validity of this bye-law, thereupon declared the accused guilty and referred the question as to the validity of the bye-law to this Court for determination.

Section 116 (e) of the Municipal Corporations Law of 1930, as amended by section 10 (e) of Law 44 of 1934, empowers a municipal council within the municipal limits to provide for the allotment of special places for the sale of . . . perishable goods and to regulate the fees . . . for the use of such special places. Section 117 of the same law empowers a municipal council to make and vary bye-laws for any of the four purposes therein mentioned, one of such purposes being "to enable or assist such council to carry out any of the provisions of section 116 and to provide for the payment of any fees or charges in connection therewith. This section also empowers a municipal council to impose penalties not exceeding, however, certain specified amounts for breaches of any of such bye-laws.

Turning next to the bye-laws, it appears that in 1931 bye-laws under this Law 26 of 1930 were passed by the Nicosia Municipal Council (*Gazette* 1931, p. 423). Of these bye-laws No. 202 provides that every person convicted of a breach of any of the bye-laws shall be liable to the penalties prescribed in the Municipal Corporations Law, 1930.

These 1931 bye-laws did not allot any special place or places for the sale of perishable goods, but in 1932 (*Gazette* 1932, p. 600), additional bye-laws were passed which by Chapter 1A containing bye-laws Nos. 28A to 28K deal with the market for and sale of perishable goods. *Inter alia* these bye-laws contain a definition of "perishable goods," a definition, it may be observed, of doubtful efficacy, since this term has been already employed by the legislature in the statute itself which contains, however, no definition of the expression, and it follows consequently that the question whether particular goods are or are not perishable must, if and whenever it is raised, fall to be determined by the Courts unfettered and untrammelled by any definition which a bye-law may purport to assign to the term.

Further bye-laws were again passed in 1933 (*Gazette* 1933, p. 411), by which *inter alia* bye-law 28A specifying the places for sale of perishable goods was amended and for the existing bye-law 28B a new 28B was substituted. It is the validity of this latter bye-law with which we are now concerned. It provides in effect that without permit of the council or the mayor no person is to sell or expose for sale any perishable goods at any place within the municipal limits except at the market of perishable goods. Mr. Evangelides zealously and ably contended before us that the power conferred by section 116 (e) upon the municipal council of allotting special places for the sale of perishable goods does not empower the council to pass any bye-law prohibiting the sale of perishable goods at places other than the special places allotted under bye-law 28A. He relied in support of his contention upon the case of *Municipal Corporation of Toronto v. Virgo* (1896, A.C., 88) in which the Judicial Committee of the Privy Council held that a statutory power to make bye-laws for regulating and governing a trade did not in the absence of an express power of prohibition empower the making of a bye-law prohibiting them from trading at all in eight enumerated streets of the city. Regulation and governance of a trade said the Privy Council in effect implies that trade as continuing to exist and be carried on, whereas to say it shall not be carried on means its non-existence and is consequently not regulation and governance of it. In coming to this conclusion the Privy Council were influenced by the fact that in other sections of the Act under consideration the legislature when it intended to give power to prohibit did so expressly by use of the word "prevent" and this was the case in eight sections referred to. In the later case, however, of *Cassell v. Jones* (1913, 23 Cox, 373), Channell and Bray, JJ., held that the power to regulate gives power to allot certain places where the thing may be done and to denote certain places where it may not be done. In any event the *ratio decidendi* of the Toronto case turning as it did upon the words "regulating and governing" does not afford any support to Mr. Evangelides in the present case in which the statutory power is not a power to make bye-laws regulating and governing the sale of perishable goods but a power to allot special places for the sale of perishable goods.

The standpoint from which the Courts should approach bye-laws made by public representative bodies entrusted by the legislature with delegated authority as distinct from bye-laws made by railway companies, dock companies or other like companies carrying on business for their own profit, is thus stated by Lord Russell of Killowen, L.C.J., in *Kruse v. Johnson*, 1898, 2 Q.B. at p. 99, in the following passage from his judgment: "They (the bye-laws) ought

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to be supported, if possible. They ought to be, as has been said, "benevolently" interpreted. As we have already seen, section 116 (e) empowers municipal councils to allot special places for the sale of perishable goods. The word "special" is, in my opinion, here used in the sense of "determinate" or "fixed". One of the objects aimed at in conferring such a power would undoubtedly appear to be the welfare and protection of the public by gathering into one or more specified localities all the dealers in perishable goods so as to facilitate the supervision and inspection of their wares and thereby ensure as far as possible that they are in a fit state for human consumption. This object would clearly be much more difficult of achievement were the vendors of such goods free to sell anywhere and everywhere within the municipal limits. Such, then, being one of the objects wherewith this power is conferred, it does not require any great power of discernment to see that it would be almost wholly, if not altogether, defeated if after the allotment of such special places and the imposition of a fee for their use the dealers in perishable goods were nevertheless still free, as contended by Mr. Evangelides, to dodge such inspection and supervision by selling anywhere they chose within the city limits.

In our opinion a power to allot special or determinate places for sale of perishable goods involves inferentially the notion of such sale there and nowhere else.

Furthermore, a bye-law providing that perishable goods shall not (without a permit) be sold elsewhere than at such special places may, we think, without in any way straining the language of the statute, be considered to be a bye-law "enabling or assisting the council"—we are quoting section 117—in carrying out provision (e) of section 116 which empowers the council to provide for the allotment of special places for the sale of perishable goods. The conclusion, therefore, at which we have arrived is that the bye-law 28B is *intra vires* the municipal council and valid.

Clause 94 of the C.C.J.O., 1927, says that the Supreme Court where a question of law is submitted for its opinion "shall consider and determine such question". That being the case it would, we are satisfied, be inappropriate for this Court to take into consideration or make any pronouncement upon the points to which we drew the attention of counsel during the progress of the argument before us. We have as directed by law determined the question reserved and we remit the case to the Magisterial Court that it may deliver judgment.