

[JACKSON, C.J., AND GRIFFITH WILLIAMS, J.]

1944
 March 24
 THE POLICE
 v.
 CHRISTO-
 FOROS
 GEORGHIOU
 PAVLIDES.

THE POLICE,

Appellants,

v.

CHRISTOFOROS GEORGHIOU PAVLIDES, *Respondent.**(Case Stated No. 29.)*

Requisition of Property—Composite Chattel—Meaning of chattel in Reg. 66 of the Defence Regulations, 1940 to (No. 7) 1942.

By regulation 66 of the Defence Regulations, 1940 to (No. 7) 1942 the Governor was authorized to requisition "any chattel in the Colony". Under paragraphs 1 to 4 of the said regulation the Governor had power to delegate and by order of 22 July, 1942, delegated to the Controller of Transport his own power to requisition any chattel. The schedule to the order purported to give to the Controller of Transport power to requisition :

- (a) any mechanically propelled vehicle ;
- (b) any part or fitting of any mechanically propelled vehicle ;
- (c) any spare part of any mechanically propelled vehicle ;
- (d) any outer cover or inner tube of any mechanically propelled vehicle whether such cover or tube is used or unused and whether it is on any mechanically propelled vehicle or not.

Acting under these powers the Controller of Transport requisitioned the tyres and sparking plugs attached to the appellant's motor car. It was common ground that under the schedule to the order of delegation, if not *ultra vires*, the Controller of Transport could requisition these things. It was argued however that the powers the order purported to delegate were *ultra vires*, as under regulation 66 there was no power to requisition a part of a chattel, and that tyres and sparking plugs had no separate entity as chattels while forming part of a motor car.

Held : When the component parts of a composite chattel have been actually assembled in accordance with the purpose for which they were separately manufactured to form a complete chattel, they have lost their separate or independent existence as chattels in themselves.

Appeal by way of Case Stated from the decision of the District Court of Limassol.

P. N. Puschalis, Acting Solicitor-General, for the appellants.

J. Potamitis for the respondent.

The facts of the case sufficiently appear in the judgment of the Court which was delivered by :

JACKSON, C.J. : This is an application by way of a case stated by the District Court, Limassol, at the request of the Attorney-General, for the opinion of this Court on a point of law.

The question is whether Regulation 66 of the Defence Regulations, 1940 to (No. 7) 1942, which empowers the Governor to provide for the requisitioning, for certain purposes, of any chattel in the Colony, includes a power to provide for the requisitioning or acquisition of tyres, tubes and sparking-plugs actually affixed to a motor car.

On the 28th October, 1942, a requisition order was served by the Controller of Transport on the manager of the firm of George Pavlides & Co. Ltd., of Limassol, requiring the manager to deliver to a named person five tyres and tubes and all the sparking-plugs then on a particular motor car. On the failure of the manager to comply with the order, he was charged before the District Court of Limassol under Regulations 93 and 94 of the Defence Regulations, and acquitted.

In stating a case, at the request of the Attorney-General, for the opinion of this Court, the District Judge, on 29th January, 1944, recorded the opinion of the District Court :— (a) that the Governor had power to delegate to the Controller of Transport his own power, under Regulation 66 of the Defence Regulations to requisition any chattel, (b) that the chattel in the case was the whole motor car and not parts of it, and (c) that the tyres, tubes and sparking-plugs requisitioned were not chattels within the meaning of Regulation 66 of the Defence Regulations. No reasons for this opinion were given by the District Judge.

The Controller of Transport purported to act under an Order made by the Governor on the 22nd July, 1942. This Order deputed the Controller to exercise, on behalf of the Governor, the powers mentioned in the Schedule to the Order "which", in the words of the Order, "I am empowered to exercise and perform under the provisions of paragraphs 1, 2, 3 and 4 of Regulation 66 of the Defence Regulations, 1940 to (No. 7) 1942". The Schedule to the Order was in the following form :—

" SCHEDULE.

The power to requisition—

- (a) any mechanically propelled vehicle ;
- (b) any part or fitting of any mechanically propelled vehicle ;
- (c) any spare part of any mechanically propelled vehicle ;
- (d) any outer cover or inner tube of any mechanically propelled vehicle whether such cover or tube is used or unused and whether it is on any mechanically propelled vehicle or not."

The order of delegation clearly includes the powers which the Controller of Transport purported to exercise, but it refers to those powers as powers which the Governor is himself already authorised to exercise under Regulation 66 of the Defence Regulations. The Order does not amend Regulation 66 and it does not therefore help us to answer the question whether or not Regulation 66 does in fact authorize the requisitioning of the articles with which we are concerned in this case. If it does, then the order of delegation obviously passes those powers to the Controller of Transport ; but if Regulation 66 does not include those powers, then they cannot be passed to the Controller of Transport until Regulation 66 has been amended to include them. It cannot be made to include them by simply declaring in an order of delegation that it does.

Regulation 66 of the Defence Regulations authorizes the Governor to requisition, among other things, any chattel in the Colony. The regulation was made by the Governor under the authority of section 1 of the Emergency Powers (Defence) Act, 1939, of the United Kingdom, which, as applied to Cyprus by the Emergency Powers (Colonial Defence) Order in Council, 1939, empowers the Governor to make regulations authorizing among other acts, "the acquisition, on behalf of His Majesty, of any property other than land".

The power of the Governor to make regulations under the Emergency Act is obviously extremely wide, as indeed it must be, having regard to the supreme purposes that the regulations are intended to serve, namely, the defence of the Island and the

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efficient prosecution of the war and other purposes ancillary to those. No individual rights of property can be allowed to stand in the way, if the Governor, in the exercise of his lawful discretion, thinks it necessary for the attainment of those purposes to restrict or to terminate those rights. But the present question does not concern the scope of regulations that might be made. It concerns only the scope of a particular regulation that has been made.

We have therefore to determine whether the power to provide for the requisitioning of any chattel in the Colony includes a power to provide for the requisitioning of the component parts of a composite chattel as separate chattels, notwithstanding that they have been actually assembled, in accordance with the purpose for which they were separately manufactured, to form a complete chattel, in this case a motor car.

The Acting Solicitor-General argued, for the Crown, that every component part of a composite chattel is itself a chattel and can be separately requisitioned. He maintained that, under Regulation 66 in its present form, it would be lawful to provide for the requisitioning, for example, of the crank-shaft or the differential of a motor car without taking the car, or the mainspring of a watch without taking the watch. Indeed if it is once admitted that component parts of a composite chattel can be separately requisitioned, it would be extremely difficult to draw any clear dividing line between parts that could be separately requisitioned and parts that could not.

The extent to which use could be made of the remainder of the composite chattel would not be a satisfactory test to determine whether or not the right to requisition existed, for such a test would raise questions of degree which it would be impossible to answer with certainty.

It would seem, therefore, that if the right to requisition extends at all to component parts of a composite chattel, it must extend to all such parts, provided, at any rate, that they can be separated from the remainder without actual injury to any part that is not requisitioned, and notwithstanding that the remainder is useless for any purpose until the component part is replaced.

The question cannot be answered with reference only to motor cars. It must equally concern any composite chattel, from a locomotive to an X-ray apparatus. Nor can we take into account the fact that in the case of motor cars the owner of the part requisitioned may be prohibited, by emergency restriction, from using his car. It is the power to requisition that is in question and not the consequences to the owner.

It may, however, be helpful to look at the provisions for compensating the owner for his loss. These are found in the Compensation (Defence) Law, 1940. The method of determining the amount of compensation in respect of the acquisition of goods is prescribed by section 8 and takes no account of any loss to the owner except the loss of the actual goods acquired. It takes no account, for example, of the loss which would be caused to the owner of a composite chattel costing several hundred pounds because it is made useless by the acquisition of some component part of it costing, possibly, a few shillings. The law would seem

to contemplate the acquisition of goods which are complete in themselves. The Compensation Law relates expressly to the Defence Regulations, and while an argument from the scope of the former may not be conclusive as to the scope of the latter, the Compensation Law appears to afford some indication of the way in which it was contemplated that the powers of requisition and acquisition under those Regulations would operate.

Unfortunately no authority which bears directly on the point at issue was cited to the Court by either side, and we could discover none in the reports available to us. The case of *Lipton v. Ford*, (1917, 2 K.B. p. 647) which was a case arising from the acquisition of certain material under Defence Regulations in the last war, was so different, in respect both of the facts and the wording of the regulation interpreted, that it gives no certain guide in the present case. Nevertheless, in spite of all differences, there is a phrase in the judgment in that case which seems helpful to us now. "It appears to me" said Mr. Justice Atkin, as he then was, "that the regulation contemplates the separate existence as chattels of the material . . . to be taken possession of".

We think that we should adopt that phrase and we think, further, that when the component parts of a composite chattel have been actually assembled, in accordance with the purpose for which they were separately manufactured, to form a complete chattel, those parts have lost their separate, or independent, existence, as chattels themselves. They can regain it if they are removed, otherwise than for some temporary purpose, but, while assembled, their separate existence is merged in that of the composite chattel of which they form part.

We conclude, therefore, that the powers of requisition and acquisition given by Regulation 66 of the Defence Regulations, in its present form, do not authorize orders requiring the dismemberment of composite chattels and the acquisition of only some of their component parts. We think that the word "chattel", as used without express definition, means, when applied to a composite chattel, the complete chattel.

In this case, we are of opinion that none of the five tyres or tubes which were actually on the wheels, including the spare wheel, of the motor car concerned, and none of the sparking-plugs fitted to the engine, could be separately acquired under the powers given by Regulation 66. We are consequently of opinion that the order of delegation to the Controller of Transport, dated the 22nd July, 1942, is *ultra vires* in so far as it purports to authorize orders of requisition or acquisition requiring removal from a mechanically propelled vehicle of any of its component parts, other than spare parts.

We accordingly affirm the decision of the District Court.

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