

[GRIFFITH WILLIAMS, J., AND ZEKIA, J.]

(February 24, 1953)

LARNACA OIL WORKS, LTD., *Appellants*,

*v.*

THE MAYOR, DEPUTY MAYOR, COUNCILLORS  
AND TOWNSMEN OF LARNACA, *Respondents*.

(*Civil Appeal No. 3951.*)

*Municipal Bye-law—Ultra vires—Statutory Corporations—Municipal Corporations Law (Cap. 252).*

By section 158 (1) (e) of the Municipal Corporations Law (Cap. 252) anyone keeping within Municipal limits a place of business used as a factory must first obtain a licence therefor from the Council. Acting under section 125 (1) (c) of the said Law, the Municipal Corporation of Larnaca made their bye-law 227 (1), giving a list of the trades enumerated in section 158 (1) of the Law and against each (including under sub-section (1) (e) a factory) setting the amount payable annually for such a licence. The appellant company refused to pay the sum of 1,000 shillings per annum fixed under sub-section (1) (e) of the said bye-law on the ground *inter alia* that bye-law 227 was *ultra vires*. The Municipal Corporation thereupon brought this action against them and obtained judgment in the District Court.

*Held*: A Municipal Corporation being a statutory body, its powers are limited by the instrument creating it, and it is therefore subject to the doctrine of *ultra vires*. A bye-law to be invalid must be either *ultra vires* or unreasonable. A municipality cannot without specific authority make a bye-law having the effect of imposing taxation. Section 158 (1) of the law was not enacted for the purpose of enabling the Council to raise revenue or fix annual fees in the nature of taxation. Section 125 (1) (c), the only section empowering the municipality to make bye-laws, only enables it to make such bye-laws as are specifically required by other sections of the Law. It did not empower the Municipal Council to make bye-law 227 (1) which is therefore *ultra vires*.

Appeal allowed.

*G. N. Chryssafinis*, Q.C., with *A. Demetriou* for the appellants.

*Chr. Mitsides* with *G. Achilles* for the respondents.

The following judgment was delivered by:

GRIFFITH WILLIAMS, J.: This action which is in the nature of a test case was brought by the Larnaca Oil Works Ltd. in the District Court of Larnaca asking for a declaration (1) that bye-law 227 of the Larnaca Municipal Bye-laws, 1949, was *ultra vires* and of no legal effect, and (2) that the Municipal Corporation of Larnaca was not entitled to claim from them payment of 1,000s. or any other sum whatsoever in order to grant them a licence to run their business.

1953  
February 24

LARNACA  
OIL WORKS  
LTD.

*v.*  
THE MAYOR,  
DEPUTY  
MAYOR,  
COUNCILLORS  
AND  
TOWNSMEN  
OF  
LARNACA.

For the appellants it was argued (1) that the Company had no regular office in Larnaca and that all their business was done through agents who were agents for other lines as well and themselves paid the trade and professional tax ; (2) that their ships did not call regularly at Larnaca ; and (3) that the words "carry on business" should not be interpreted in accordance with English Income Tax cases and should not be understood to apply to the mere calling of ships at a port for loading and unloading.

*Held* : Residence is not necessary to liability under section 159 ; that the appellants' carrying on of business was not merely technical but substantial ; and that they were not exempted under this section on account of their not being British subjects.

1953  
February 24.  
THE  
AMERICAN  
EXPORT  
LINES INC.  
v.  
THE MAYOR,  
DEPUTY  
MAYOR,  
COUNCILLORS  
AND  
TOWNSMEN  
OF  
LARNACA.

Judgment of District Court affirmed.

*G. Clerides* for the appellants.

*Chr. Mitsides* with *G. Achilles* for the respondents.

The facts fully appear from the judgment of the Court which was delivered by :

GRIFFITH WILLIAMS, J. : In this action the plaintiffs who are the Municipal Authorities for the town and port of Larnaca claimed against the defendants, an American shipping company whose ships occasionally call at the port of Larnaca, a sum of £160 in respect of trade or professional tax assessed on them for the years 1946, 1947, 1949 and 1950. There was no claim in respect of the year 1948 as the tax for that year had been paid on behalf of the defendants by their agents in Larnaca. The District Court of Larnaca gave judgment for the plaintiffs for the amount claimed ; and from that judgment the defendants have appealed to this Court on the ground that they should not be held liable to take out a licence and pay the required fee therefor under the Municipal Corporations Law (Cap. 252) section 159. That section reads as follows :

" No person shall, within any municipal limits, carry on, exercise or practise any business, trade, calling or profession for profit unless he has obtained a licence so to do in accordance with the provisions of this Law " .

Then follow a number of provisos of which the only one of interest to this case is (b). This proviso is as follows :

" Provided that . . . . (b) any person who has taken out a licence in any municipal limits shall not be required to take out another licence in any other municipal limits unless he has a permanent place of business therein or remains therein for the purpose of carrying on his business, trade, calling or profession at any one time for a period exceeding seven days ; " .

1953  
February 24

THE  
AMERICAN  
EXPORT  
LINES INC.  
v.  
THE MAYOR,  
DEPUTY  
MAYOR,  
COUNCILLORS  
AND  
TOWNSMEN  
OF  
LARNACA.

The appellants contended that they should not be held to be carrying on, exercising or practising the business of a shipping company within the limits of the Municipality of Larnaca because:—

- (a) They were not normally resident in Larnaca and had no place of business there. Any business they required to be done was done through their agents Mantovani & Sons, who were agents for other shipping companies as well as themselves took out a licence to carry on their business as shipping agents.
- (b) Their ships did not call regularly at Larnaca but only when they were bringing cargo to Larnaca or loading—and that the section was only intended to apply to persons who carried on business in a regular manner.
- (c) The phrase “ carrying on business ” should not be interpreted in accordance with the Income Tax cases, because those cases were all based on the wording of Section 2, Schedule D, of the Income Tax Act, 1852 (16 & 17 Vic. C. 74). This statute was made by this section expressly to apply to persons not resident within the United Kingdom. Counsel for the appellants argued that as there was no similar provision in the Municipal Corporations Law, this Law could not be held to apply to non-residents.

With regard to residence in Larnaca it is quite clear from section 159 (b) that in order to be liable for tax residence within the Municipal limits is not necessary—nor indeed it would seem is a permanent place of business—because any man, even if he has already a licence to trade in another town in the Island, must obtain a licence if he remains within the Municipal limits seven days for the purpose of his business. The appellants’ argument as to having no permanent residence therefore fails.

The appellants’ next argument that they do not carry on business in Larnaca because they have no office there and their ships only call there at irregular intervals does not seem to us a correct conclusion from the evidence. Messrs. Mantovani have a plate outside their Larnaca office notifying all and sundry that they are agents for the appellants. This notice is a permanent notice. As agents they advertise on behalf of the appellants for cargo, they fix up contracts on their behalf, and sign the bills of lading. They also notify merchants of the arrival and departure of appellants’ steamers. To suggest therefore that the only business done by appellants is when their ships call at the port of Larnaca is not in accordance with the facts. The business they carry on through their agents in Larnaca is a regular business.

The last point raised by appellants was that the meaning of "carry on or practise any business" should not be interpreted according to the income tax cases which decided what was carrying on business in England for the purpose of English Income Tax ; because the subject-matter of the Law on which the cases were based was not in *pari materia* with the subject-matter of the Municipal Corporations Law. We do not think it necessary for us to decide this question or indeed to rely on the income tax cases cited by the respondents in interpreting the meaning of the words "carry on or practise any business" in the sections of the Municipal Corporations Law under consideration. There is no need to do more than give the words their ordinary meaning, when it is clear that the appellants are carrying on business within the wide provisions of section 159. Theirs is not a mere technical but a substantial carrying on of business as already shown.

There is no exemption from the provisions of the section for those who are not British subjects or not resident in the Island. The only exemption is under section 159 (b) for those non-residents who have no place of business within the municipal limits and have taken out a licence to carry on their business within the municipal limits of some other town of Cyprus. This exemption however does not extend to permit such persons to remain for the purposes of their business for more than seven days at any one time ; but no other persons are entitled to any exemption.

For the foregoing reasons we agree with the learned trial Judge that the appellants are carrying on or exercising a trade or business for profit within the municipal limits of the town of Larnaca and should be licensed under section 159 of the said Law.

*The appeal is therefore dismissed with costs.*

1953  
February 24

THE  
AMERICAN  
EXPORT  
LINES INC.  
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THE MAYOR,  
DEPUTY  
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AND  
TOWNSMEN  
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LARNACA.