

[BOURKE C.J. AND ZEKIA J.]

GEORGE HARMANDIAN, *Appellant,*

v.

THE POLICE, *Respondents.*

(*Case Stated No. 117.*)

1957
Oct. 22,
Dec. 4

GEORGE
HARMANDIAN
v.
THE POLICE.

Summer Afternoon Recess Law, Cap. 168, sections 3, 6 and 7—Closing order—Summer Afternoon Recess Order, 1954—Bar functioning with restaurant—Whether bar constituent of business of restaurant—Whether two businesses more than one kind of trade or business—Question posed in error.

The appellant was convicted of keeping his place of business open after hours, contrary to section 7 of the Summer Afternoon Recess Law, Cap. 168, read in conjunction with section 3 of that Law and the closing order made thereunder, *i.e.* the Summer Afternoon Recess Order, 1954.

The appellant was a restaurant keeper and on his premises, consisting of a large room, he provided meals at the customary times. He was also the holder of a licence to sell intoxicating liquors on the premises, and such drink was served at meals and also at other hours with small pieces of food known in Cyprus as “mezé.” At 3 p.m. on the 31st August he was found by the Police to be serving five customers, seated at a table, with intoxicating liquors and the usual “mezé.”

The question stated for the opinion of the Supreme Court was whether a bar when functioning together with a restaurant should be considered as a constituent of the business of the restaurant and therefore exempted from the Summer Afternoon Recess Law at the material time, and whether it was correct to decide as a matter of law that the two businesses in question were more than one kind of trade, industry or business, under section 6 of the Summer Afternoon Recess Law, Cap. 168.

Held: that the question reserved was posed in error in all the circumstances of the case, and since it was seen to be hypothetical the Court did not express any view; that on the face of it the appellant kept open a place of business exempted under the Order of 1954, and he was never charged with carrying on more than one business at the same place or with contravening the law in that he failed to obtain a permit; and that the proper course in the circumstances was to set aside the conviction and sentence.

Lorden v. Brooke-Hitching and Ors. (1927) 2 K.B.D. 237, referred to.

Conviction and sentence set aside.

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The appellant was convicted at the District Court of Larnaca on the 31st August, 1957 (Case No. 3369/57), of the offence of keeping his place of business open after hours in contravention of the provisions of the Summer Afternoon Recess Law, Cap. 168, and was sentenced by Limnatis, D.J. to pay a fine of £1.500 mils. On the application of the appellant a case was stated on the points stated in the headnote.

Chr. Mitsides and L. Santamas for the appellant.

D. Goodbody for the respondents.

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

BOURKE C.J. : This is a case stated by the District Judge at Larnaca arising out of proceedings in which the appellant was convicted of an offence contrary to section 7 of the Summer Afternoon Recess Law, Cap. 168, read in conjunction with section 3 of that Law and the closing order made thereunder, namely, the Summer Afternoon Recess Order, 1954. He was fined £1.500 mils with ten days imprisonment in default of payment.

The appellant is a "restaurant keeper" and on his premises consisting of a large room he provides meals at the customary times. It appears that he is also the holder of a licence to sell intoxicating liquors on the premises and such drink is served at meals and also at other hours with small pieces of food referred to as "mezé." At 3 p.m. on the 31st August, 1957, he was found by the police to be serving five customers seated at a table with intoxicating liquors and the usual "mezé." On enquiry the applicant admitted that he had no *permit* to keep the premises open at that hour.

He was then charged under the provisions to which reference has already been made, the particulars of the charge being :—

"The accused on the 17th August, 1957, at Larnaca, did keep his place of business open after 13.00 hours, to wit, at 15.00 hours, in contravention of the Summer Afternoon Recess Law."

Learned Counsel for the Crown in argument before this Court has given his opinion that the charge is bad in that it discloses no offence. No objection on this ground was taken here or below on behalf of the applicant, but I have no doubt that Crown Counsel is correct. It is material in such a charge to state the nature of the business carried on in the premises because many places of business, of which one is restaurants, are expressly exempted from the obligation to close under the Summer Afternoon Recess Order, 1954.

It was submitted, however, to the learned trial Judge by the prosecution that this was a case to which section 6 of Cap. 168 applied in that, as it was argued, the applicant was running the business of a restaurant and the "business of a bar", he was, in short, both a restaurateur and a publican in respect of the same place of business. The argument proceeded that he had therefore offended against the law in that he did not have a permit in writing obtained from the Commissioner as required by section 6 which reads :—

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"Where more than one kind of trade, industry or business is carried on at the same place of business, and any one kind is such as would, if carried on alone at such place of business, exempt such place of business from the operation of a closing order, such place of business shall not, if otherwise coming within the operation of any such order, be opened or kept open during the afternoon recess except under a permit in writing obtained from the Commissioner and subject to such terms and conditions as he may see fit to impose."

These contentions were accepted by the learned Judge who came to the conclusion as stated in the case that a person carrying on such a combined business is required to obtain a permit from the Commissioner under section 6 of the Law, but who proceeded to convict on the charge as laid, which contained no allegation that the applicant had kept open a place of business where more than one kind of business was carried on and had done so without obtaining a necessary permit in writing. This Court is then asked to determine the question reserved whether "a bar when functioning together with a restaurant should be considered as a constituent of the business of the restaurant and, therefore, exempted from the Summer Afternoon Recess Law at the material time" and whether it was correct to decide as a matter of law that "the two businesses in question are more than one kind of trade, industry or business under section 6 of the Summer Afternoon Recess Law."

I find myself wholly in agreement with learned Counsel for the Crown that on the facts as recited in the case the question does not properly arise. No doubt on a determination of any such question there is much in *Lorden v. Brooke-Hitching and Ors.* (1927) 2 K.B.D. 237, to which reference has not been made, which would be found to be helpful. But here it is made quite apparent that there never was any allegation of an infringement of the provisions of section 6; the charge on which the applicant was found guilty, though faulty in not disclosing the nature of the business alleged to be carried on at the applicant's place of business, clearly sets out to affirm a transgression of the

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law in that the applicant kept open at a prohibited hour a place of business required to be kept closed at such time under the Summer Afternoon Recess Order, 1954. In my opinion the question reserved is posed in error in all the circumstances of the case and since it is seen to be hypothetical I do not propose to express any view. On the face of it the appellant kept open a place of business exempted under the Order of 1954 and he was never charged with carrying on more than one business at the same place or with contravening the law in that he failed to obtain a permit. In my judgment the proper course in the circumstances is to set aside the conviction and sentence and, since my learned brother agrees, such will be the order of this Court.

Conviction and sentence set aside.