

1959  
Jan. 19, 30

[BOURKE, C.J., and ZEKIA, J.]

THE MAYOR,  
DEPUTY MAYOR,  
COUNCILLORS  
AND TOWNSMEN  
OF KYRENIA  
v.  
D. SEVERIS &  
SONS LTD

THE MAYOR, DEPUTY MAYOR, COUNCILLORS AND  
TOWNSMEN OF KYRENIA, *Appellants*,  
v.  
D. SEVERIS AND SONS LTD., *Respondents*.

(Case Stated No. 130).

*Local Government—Buildings—Door—Door, leaves of which open or project into street—Repair thereof without any dimension of the building being thereby altered—No permit required—The Streets and Buildings Regulation Law, Cap. 165, section 2 and section 3 (1) (b) as the latter was amended by section 3 of the Streets and Buildings Regulation (Amendment) Law, No. 44 of 1954—Whether a particular work is an “alteration” or “reconstruction” or “demolition” or “repair”, is a question of fact.*

The respondents were charged on six counts with three alternative sets of offences alleging the demolition, reconstruction and repair of part of their building (i.e. the front doors of their stores opening into the street) without having first obtained a permit from the appropriate authority, the Municipal Council of Kyrenia, contrary to section 3 (1) (b) of Cap. 165 as amended by section 3 of the Streets and Buildings Regulation (Amendment) Law, 1954. The relevant part of the section reads as follows.  
Section 3 (1) “No person shall—

(a)

(b) erect, or suffer or allow to be erected a building or demolish or reconstruct or make any alteration, addition or repair to any existing building, or suffer or allow any such demolition or reconstruction or any such alteration, addition or repair to be made, without a permit in that behalf first obtained from the appropriate authority as in sub-section 2 provided” (i.e. the municipal council).

The definition of “building” appears in section 2.

“Building means any construction and includes any pit or part of a building”. By section 2. “repair” with reference to buildings (or part thereof) means a “repair” whereby any dimension of such building is altered but shall not include: (a) (b) the re-repair of any existing door the leaves of which do not open or project into a street”

It was contended on behalf of the appellants that the facts disclosed that there was a “demolition” and “reconstruction”

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requiring a permit; that, even if the work done was merely a "repair", then, because the leaves of the doors in question opened into the street, it was a "repair" as to require the obtaining of a permit irrespective of whether the dimension of the building has been altered or not. This last submission was based on a sort of *argumentum a contrario* derived from the wording of section 2 (b) (*supra*)

The trial judge, accepting the submission of the respondents, found as a fact that the work done to the building did not amount to "demolition" or "reconstruction" — for which a permit is required by section 3 — but was a genuine work of "repair" affecting in no way the *dimensions of the building*. He held accordingly at the close of the case for the prosecution that no *prima facie* case was made out against the respondents and dismissed the charge.

On a case stated by the trial judge on the application of the appellants:

*Held:* (1) The question whether a particular work is a demolition, or reconstruction or repair, is a question of fact depending on the circumstances of each case. Although it is sometimes difficult to draw the line there must be room for common sense in the application of the Law.

Dicta in that regard in *Serghides v. The Municipal Corporation of Kyrenia*, 18 C.L.R. 176, p. 179 followed.

(2) In the present case the finding is that the work done was a repair (and not "a demolition" or "reconstruction" and in the circumstances it cannot be said that this conclusion was unreasonable. Indeed on the facts proved no other finding could be reasonably reached.

*Serghides v. The Municipal Corporation of Kyrenia*, 18 C.L.R. 176, considered and distinguished.

(3) As the work done did not alter any dimension of the building, no permit was required.

(4) The exception in section 2 (b) concerning repairs of existing doors the leaves of which do not open or project into any street—(Note: for which no permit is required irrespective of whether the dimensions of the building are hereby affected or not—) does not affect the question. If the leaves of the door opening on to the street had been repaired in such a way as to alter the dimension of the building then a permit would have been required.

*Decision of the District Judge affirmed.*

Cases referred to:

*Serghides v. The Municipal Corporation of Kyrenia*, 18 C.L.R. 176.

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### Case stated.

The respondents were charged before the District Court of Kyrenia (St. Evangelides, D.J., Case No.380/58) on six counts with three alternative sets of offences alleging the demolition or reconstruction or repair of part of their stores at Kyrenia without having first obtained a permit from the appropriate authority (i.e. the Municipal Council of Kyrenia) contrary to the Streets and Buildings Regulation, Law, Cap. 165 section 3 (1) (b) as amended by Law No. 44 of 1954, s.3. At the close of the case for the prosecution on the 28th November 1958 the District Judge held that no *prima facie* case was made out against the respondents and dismissed the summons. On the application of the Municipal Corporation of Kyrenia the learned Judge stated a case for the opinion of the Supreme Court.

*A. Protopapas* for the Appellants.

*M. Triantafyllides* for the Respondents.

*Cur. adv. vult.*

The facts and the points of law involved 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 Kyrenia under section 146 of the Criminal Procedure Law. The following statement of facts is taken from the case:—

“The respondents were the owners of some stores situated within the Municipal limits of Kyrenia. These stores have front doors opening into the street. These doors are of the usual kinds of doors that stores used to have in Cyprus. They are wooden doors consisting of two leaves and each leaf has two folds. The wooden boards are held together by iron bars across them. The wooden boards of the doors had become rotten and the respondents employed a carpenter who took the doors out of their hinges. New wooden doors were put back in their place, *i.e.* new wooden boards were used but the same iron bars and the same hinges. The new leaves were put on the old hinges. The frames of the doors were not touched. There was no evidence that any other kind of work or repair was carried out in these stores either before or after the work which I described above. On the above facts I found as a fact that the work carried out was repair to a building and not demolition or reconstruction”.

The respondents were charged in six counts with three alternative sets of offences alleging the demolition, reconstruction and repair of part of their building without having first obtained a permit from the municipal council, contrary to section 3 (1) (b) of the Streets and Buildings Regulation Law,

Cap. 165, as amended by section 3 of the Streets and Buildings Regulation (Amendment) Law, 1954. The relevant part of the section as so amended reads:—

“3 (1) No person shall—

- (a) .....
- (b) erect, or suffer or allow to be erected a building or demolish or reconstruct or make any alteration, addition or repair to any existing building, or suffer or allow any such demolition or reconstruction or any such alteration, addition or repair to be made,

without a permit in that behalf first obtained from the appropriate authority as in sub-section 2 provided” (i.e. the municipal council).

The learned Judge having found as a fact that what was done to the building did not amount to “demolition” or “reconstruction” but was a genuine work of “repair”, came also to the conclusion, in acceptance of the submission put forward on behalf of the respondents, that section 2 of Cap. 165 confined repairs for which a permit is required under the Law to repairs by which a dimension of a building is altered. On the facts the dimensions of the building were not affected and it was held that no *prima facie* case was made out against the respondents—

The argument advanced by the appellants is that the facts disclose that there was a “demolition” and “reconstruction” requiring a permit; and that even if the work done was a repair, then because the leaves of the door opened into the street, it was a repair of such a nature as to require the obtaining of a permit.

The relevant portion of section 2 of the Streets and Buildings Law reads as follows:—

“2. In this Law:—

- “alteration”, “addition” or “repair”, when used with reference to buildings, means any structural alteration, addition or repair whereby any dimension of such building is altered but shall not include—(a) .....—
- (b) the repair of any existing door the leaves of which do not open or project into a street”.

The definition of “building” in the same section is :—

“Building” means any construction, whether of stone, concrete, mud, iron, wood or other material, and includes any pit and any foundation, wall, roof, chimney, verandah, balcony, cornice or projection or part of a building, or anything affixed thereto, or any wall, earthbank, fence, paling or other construction enclosing or delimiting or intended to enclose or delimit any land or space”.

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Reliance has been placed by the appellants on the case of *Serghides v. The Municipal Corporation of Kyrenia*, 18 C.L.R. 176. In that case a substantial area of the wall of a building abutting on a street of the township was pulled down and reconstructed of a different material though no dimension of the building was altered. It was held that in the circumstances, and having regard to the special purpose of the Streets and Buildings Regulation Law, it was impossible to say that the trial judge did not act reasonably in holding that the work done was a demolition and reconstruction requiring a permit and not an alteration or repair for which no permit was required. It was held further that it clearly could not be argued that because a work did not alter any dimension of a building it must, therefore, be an alteration or repair. As was said in that case, the question whether a particular work is demolition or repair or a reconstruction is always a question of fact depending on the circumstances of each case. It is sometimes difficult to draw the line. It was also appositely said that there must be room for common sense in the application of the Law.

In the present case the finding is that the work done was a repair and in the circumstances we are not prepared to say that this conclusion was unreasonable. Indeed we would go further and say that in our opinion on the facts proved no other finding could reasonably be reached. The work done, as no one disputes, did not alter any dimension of the building and therefore it was a repair for which no permit was required. The exception to the application of the general provision concerning the alteration of the dimension of a building contained in section 2 (b) does not affect the question. If the leaves of the door opening on to the street had been repaired in such a way as to alter the dimension of the building then a permit would have been required ; but the repair executed did not have this effect and so it was not covered by the definition of "repair" in section 2 which is applicable for the purposes of section 3 (1) (b) under which the charges were laid.

*The decision of the District Judge is affirmed.*