

[WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES, JJ.]

GRAIN MILLERS AND TRADERS LIMITED,

Appellants-Defendants,

v.

THE MAYOR, DEPUTY MAYOR, COUNCILLORS AND
CITIZENS OF THE TOWN OF LIMASSOL,

Respondents-Plaintiffs.

(Civil Appeal No. 4371).

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Municipal Corporations—Weighing fees—The Municipal Corporations Law, Cap. 240, section 172—Weighing fees are in the nature of a tax—And not in the nature of payment depending on services to be rendered by the Municipality—Section 172 read in the light of sections 123 (1) (aa), 178 and 180 of Cap. 240 (supra)—Therefore, such weighing fees may become due and payable regardless of whether or not the weighing of the goods took place—And regardless of whether or not the fees have been ascertained by the weighing of the goods—Consequently in cases where the purchaser or seller of the goods fails in breach of the provisions of section 172 to call the municipal weigher to weigh the goods, the weighing fees are nevertheless due and payable—The penalty, therefore, prescribed by section 172 for the contravention of its provisions is not the only remedy against the defaulter—The Municipality in prosecuting for an offence against the statute is entitled, in addition to the penalty prescribed, to the fees, duties and charges connected with the offence, which ought to have been paid but have not been paid—Section 184 of Cap. 240 (supra)—Also, independently of any prosecution, the Municipality may, under section 186 of the statute, sue and recover by civil proceedings from any person in default any such weighing fee due and payable, (or, indeed, any fee, charge, rate duty or toll), notwithstanding that no weighing took place and such fee has not, thus, been ascertained by the weighing of the goods.

Statutes—Interpretation—Canons of construction—In construing a statute, the meaning of particular words therein is to be found not so much on a strict etymological propriety of the language nor even in popular use, as in the subject or occasion on which they are used, and the object that it is intended to be attained.

Statutes—Imposing taxes—Canons of construction—No tax is recoverable unless the language of the relevant statute is clear and unambiguous.

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Sections 172, 178, 184 and 186 of the Municipal Corporations Law, Cap. 240, read as follows :

Section 172 (1) "Whenever a sale takes place within any municipal limits, or whenever goods, the subject matter of any sale, are delivered or are to be delivered within such limits, the vendor or the purchaser of such goods shall inform a municipal weigher that the same are ready and require to be weighed, measured or tested and shall afford to the municipal weigher every facility to enable such weighing, measuring, or testing to take place, and all such goods shall be weighed, measured or tested by the municipal weigher. Upon such weighing, measuring or testing the vendor, or the purchaser for the account of the vendor, shall pay to the municipal weigher for such weighing, measuring or testing the fees specified in the Thirteenth Schedule hereto :

Provided that the minimum fee to be paid shall be the sum of three mils :

Provided also that the provisions of this section shall apply only to goods enumerated in such Schedule, not being imported goods, and to quantities of such goods being not less than the minimum weight or measure therein specified.

(2) Any person contravening this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding three pounds :

Provided that if the municipal weigher on receipt of notice as herein prescribed does not within one hour of the time at which such notice was received proceed to weigh, measure or test the goods for which he received notice, the vendor or purchaser, or both may weigh, measure or test the goods without incurring any penalty and without being liable to pay any fees".

Section 178 (1) " Any person bringing within the municipal limits of any town from any place within the Colony for disposal, manufacturing or processing within such town or for export therefrom any goods upon the sale of which the vendor would be liable to the payment of fees under the provisions of section 172 hereof shall, subject to the provisions of this section, notwithstanding that such goods are not weighed, measured or tested, pay to the municipal weigher the fees set forth in the Thirteenth Schedule to this Law as though such goods have been weighed, measured or tested in accordance with the provisions of section 172 hereof, and

the municipal weigher shall give to such person a receipt showing the particulars of the goods and the amount paid :

Provided”

Section 184 (1) “ If the District Court before which any person is brought for any contravention of this Law or for an offence against this Law or for the breach of any bye-law of a municipal corporation made under this Law, finds such person guilty of such contravention or offence or breach of any bye-law such Court shall in addition to the penalty it may consider fit to impose on such person and in addition to the costs of the proceedings order such person to pay any fees or duties connected with the charge which such person ought to have paid and which he failed or refused or neglected to pay.

(2) All such fees and duties ordered by the Court to be paid shall be recoverable in the same way as fines and penalties are recovered under any Law in force for the time being for the recovery of fines and penalties ”.

Section 186 “ Every municipal corporation may sue and recover by civil proceedings from any person in default any charge, fee, rate, duty or toll prescribed in this Law or in any bye-law made hereunder notwithstanding that the non-payment thereof is due to an act or omission of such person which is made an offence by this Law or any such bye-law and notwithstanding that the person in default has or has not been prosecuted in respect of such offence ”.

The respondents (the Municipality of Limassol) brought an action under section 186 of Cap. 240 (*supra*) against the appellant company, claiming the sum of £4,066 as weighing fees alleged to be due and payable under section 172 of aforesaid statute in respect of flour sold and delivered by the appellants within the municipal limits of the town of Limassol for the period 19 September, 1956 to 15 April, 1958.

The defendant (appellant) company, prior to the trial, moved the trial Court under Order 27, r. 1, of the Civil Procedure Rules to determine certain points of law raised in the pleadings and which if decided in their favour would have disposed of the whole. One of the points so raised was whether, in view of the fact that no weighing of the goods involved in this case took place, the action was maintainable. It was common ground that the municipal weigher did not weigh the said goods due to the default of the defendant

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company to call him to do so as they ought to have done in accordance with the provisions of section 172 of the statute.

The Court of trial answered the point of law in the affirmative holding that : (a) the weighing fees imposed under section 172 of the Municipal Corporations Law, Cap. 240, were not only for services to be rendered but also for securing revenue to the Corporations, (b) the scope of section 186 of the statute (*supra*) was wide enough to enable the Municipality to recover by civil proceedings fees, in case purchasers or vendors fail to pay such weighing fees by omitting to call the municipal weigher to weigh the goods when they are sold within the municipal limits or are to be delivered upon sale within such limits.

The point at issue in this appeal is whether the action instituted under section 186 of the statute (*supra*) by the respondent Municipality was maintainable.

It was argued on behalf of the appellants that unless and until the goods are weighed and, thus the fees have been ascertained, the fees do not become payable and that the fees recoverable by civil proceedings under section 186 of the statute must be limited to the instances where the weighing takes place, and once the fee becomes thus payable and the person refuses to pay.

The High Court in dismissing the appeal by the defendant company :—

Held, (1) we agree with trial Court that the answer to the question in issue rests on the construction to be placed on section 172 and 186 of the Municipal Corporations Law, Cap. 240. The canons of interpretation to be borne in mind in construing the above sections are mainly two : (a) The object and the intention of the legislature in enacting section 172 and 186 of the Municipal Corporations Law and (b) the fees claimed being in the nature of a tax on the citizens, whether the language used in sections 172 and 186 is clear and unambiguous for the imposition of such tax.

(2) *As to the object of the law* : We entertain no doubt that weighing fees payable under section 172 of the Law were primarily meant as a source of revenue to the Municipality's town fund. In the past when the Municipal Corporations were at a formative and primitive stage and the unimported commodities sold in a town were mainly brought in by the villagers,

the sole or main object of rendering such services (weighing, measuring and testing the goods sold) might as well have been to protect the purchasers from unscrupulous vendors or *vice versa*. But the Municipal Corporation nowadays in order to meet its multiple obligations under section 123 of the Law and in particular section 123 (1) (aa), that is, in order to discharge generally its onerous obligations as a Council and in particular to keep sufficient balance scales and weights and sufficient staff to carry out the duties connected therewith within a short notice, has to secure funds to meet the heavy expenses involved. Moreover, this object becomes clearer when one reads the subsequent sections such as sections 178 and 180 of the same law ; section 178 imposes fees on the same scale as those prescribed for section 172 on the commodities brought within the Municipal limits of the town for disposal, manufacturing or processing within such town or for export therefrom where the fees would have been payable if sold or delivered upon sale within the municipal limits of such town under section 172. And the payment under section 178 does not depend on any service to be rendered by weighing, measuring or testing the goods brought in. No further fee is chargeable on the same goods if weighed or tested later on for being sold within the Municipal limits or taken out to another municipal area.

(3) Now, if the legislature thought fit to enable the Municipalities to collect fees from goods brought into the municipal limits of a town for disposal, manufacturing or processing even in cases where no services are to be rendered, its object of enacting such a section is manifestly the securing of revenue to the Corporation. If this is so in respect of all goods brought in a municipal area for the purposes enumerated in section 178 and the person bringing goods within the area is made liable to pay fees equivalent to the weighing fees referred to in section 172 and prescribed in the 13th Schedule attached to the Law, regardless of any services to be rendered by the Municipal Authorities ; then a fortiori the weighing fees payable under section 172 could not have been for the sole object of rendering weighing services to the vendors or purchasers but it must have as its main object the securing of revenue to the municipality. In our view the fact that against the payment of fees by the vendor the Municipality has to render services by weighing, measuring or testing the goods subject matter of sale, does not alter the main object of the law.

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(4) (a). The second relevant point to be considered is where contravention of any section of the Municipal Corporations Law, Cap. 240, occurs, and in particular contravention of provisions of section 172, whether the penalty prescribed is intended by the Legislature to be the only remedy available against a defaulter.

(b) If apart from the penalty clauses occurring in section 172 and 178 and other sections there was no provision in the Law for the recovery of fees, taxes, charges, etc., from defaulters then I would have subscribed to the proposition that where a contravention of the law has been made an offence and a penalty has been prescribed for it the complainant-council could recover nothing more than the penalty prescribed. But section 184 of the Municipal Corporations Law makes it abundantly clear that a Municipal Corporation in prosecuting an offence for contravention of the law under the section is entitled, in addition to the penalty to be paid, to fees, duties or other charges connected with the offence, which ought to have been paid but have not been paid. Also independently of any prosecution under section 184 the Municipal Corporation is empowered by section 186 to sue and recover by civil proceedings from any person in default any fees, toll or charges prescribed by the Law.

(c) We agree with the trial Court that the language used in section 186 is wide enough to enable the Municipal Corporation to recover weighing fees which ought to have been paid in respect of goods sold and delivered within the Municipal limits notwithstanding that the purchaser or seller failed to inform the municipal authorities to send a weigher within an hour to carry out the weighing.

(5) (a). The non-payment of the weighing fees in this case is alleged to be due to the failure of the vendors and/or purchasers to call the weigher to weigh the flour sold and this amounts clearly to an omission which constitutes an offence. Fees, charges, rates, duties or tolls are recoverable even when the person in default has been prosecuted. There is nothing in the section to restrict its operation to cases where fees, charges, etc., have already been ascertained by actual weighing, measuring or testing or to restrict the meaning of the words "any person in default of payment of any charge, fee, rate duty or toll prescribed in this Law" to cases where a person refused to pay an ascertained amount to a municipal officer as a toll or against services rendered.

(b) The learned counsel for the appellant argued that, unless and until the goods are weighed, the fees do not become payable and that the fees or rates recoverable by civil proceedings under section 186 must be limited to the instances where the weighing takes place and the payment becomes payable and the person refuses to pay. To my mind this is a very strict interpretation to be placed on section 186 and the liability of the vendor or purchaser for the account of the vendor for the payment of the fees for the goods sold or delivered within the Municipal limits does not depend on the actual weighing but the vendor is only exonerated when the municipal weigher, after receiving notice, fails to attend and weigh or measure or test the goods within an hour from the time he receives such notice.

(c) The words occurring in section 172 " upon such weighing, measuring or testing, the vendor or purchaser for the account of the vendor, shall pay to the municipal weigher etc. etc. " indicates the time of payment and cannot be taken to convey that the liability of payment of such fees is dependent in all circumstances on actual weighing. In other words, the phrase quoted is not inconsistent with the interpretation laid on section 186.

We find ourselves, therefore, in agreement with the trial Court in the way sections 172 and 186 of the Municipal Corporations Law, Cap. 240, have been interpreted and the point of law decided upon and we are of the opinion, therefore, that the decision of the lower Court should be affirmed with costs in favour of the respondents.

*Appeal dismissed. Judgment
of the trial Court affirmed.*

Cases referred to :—

King v. Hall, 107 E.R. 51, *applied*.

Appeal.

Appeal against the judgment of the District Court of Limassol (Zenon Ag. P.D.C. and Malachtos, D.J.) dated the 29.3.62 (Action No. 280/60) whereby certain preliminary points of Law were decided in favour of the plaintiffs in an action for £4,066.450 mils weighing fees.

Sir Panayiotis Cacoyannis with *A. Triantafyllides* for the appellant.

J. P. Potamitis for the respondents.

Cur. adv. vult.

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WILSON, P. : Mr. Justice Zekia will deliver the judgment in this case and I concur in his reasons for judgment.

VASSILIADES, J. : I have had the advantage of reading my brother Zekia Bey's judgment in this case and I agree.

JOSEPHIDES, J. : I agree and I have nothing to add.

ZEKIA, J. : The Municipal Corporation of Limassol, the respondents in this case, brought an action against the Grain Millers and Traders Ltd., the appellants, and claimed £4,066.450 mils as weighing fees due and payable to the plaintiff corporation for the flour sold and delivered by the appellants within the municipal limits of the town of Limassol for the period 19.9.1956 and 15.4.1958, both days inclusive.

The defendants-appellants, prior to the trial, moved the Court under O. 27 r. 1 of the Civil Procedure Rules to determine certain points of law raised in the pleadings which points or some of them, if decided in favour of the defendant company, would have disposed of the whole action.

The application made was opposed by the plaintiffs-respondents and they obtained a ruling by the trial Court in their favour. This Court reversed the said ruling and sent the case back to the trial Court with a direction to determine the points of law raised in the pleadings prior to a full hearing of the case. The following were the points of law framed and agreed upon by the parties for consideration and decision by the Court.

1. Is there any allegation in the statement of claim that the flour alleged to have been sold by the defendant company is not imported flour ?

2. Is it necessary that the names of the alleged purchasers of the flour in question should be disclosed in the statement of claim ?

3. Is the action maintainable under section 186 of the Municipal Corporations Law, Cap. 240 ?

Point 1 : The statement of claim having been amended by a statement that the flour sold and delivered within the limits of the town of Limassol was not imported flour the determination of the first point became unnecessary.

As to the 2nd point the learned counsel for the appellant declared before this Court that he abandoned the appeal

in respect of this point of law and, therefore, it does not need any consideration. There remained only the third point of law for which the appeal was argued before us. The Court below answered the third remaining point of law in the affirmative holding that (a) the weighing fees imposed under section 172 of the Municipal Corporations Law were not only for services to be rendered but also for securing revenue to the Corporations, (b) the Court also held that the scope of section 186 of the Law was wide enough to enable the Council to recover by civil proceedings fees, in case purchasers or vendors fail to pay such weighing fees by omitting to call the Municipal weigher to weigh the goods when they are sold within the municipal limits or are to be delivered upon sale within such limits.

The present appeal is against the said decision of the trial Court. I agree with the trial Court that the answer to the third and remaining question rests on the construction to be placed on sections 172 and 186 of the Municipal Corporations Law, Cap. 240. The canons of interpretation to be borne in mind in construing the above sections are mainly two : (a) The object and the intention of the legislature in enacting sections 172 and 186 of the Municipal Corporations Law and (b) the fees claimed being in the nature of a tax on the citizens whether the language used in sections 172 and 186 is clear and unambiguous for the imposition of such tax.

As to the object of the law I entertain no doubt that the weighing fees payable under section 172 of the Law were primarily meant as a source of revenue to the Municipality's town fund. In the past when the Municipal Corporations were at a formative and primitive stage and the unimported commodities sold in a town were mainly brought in by the villagers, the sole or main object of rendering such services (weighing, measuring and testing the goods sold) might as well have been to protect the purchasers from unscrupulous vendors or vice versa. But the Municipal Corporation, nowadays in order to meet its multiple obligations under section 123 of the Law and in particular section 123 (1) (aa), that is, in order to discharge generally its onerous obligations as a Council and in particular to keep sufficient balance scales and weights and sufficient staff to carry out the duties connected therewith within a short notice, had to secure funds to meet the heavy expenses involved. Moreover, this object becomes clearer when one reads the subsequent sections such as sections 178 and 180 of the same law ; section 178 imposes fees on the same scale as those prescribed for section 172 on the commo-

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dities brought within the Municipal Limits of the town for disposal, manufacturing or processing within such town or for export therefrom where the fees would have been payable if sold or delivered upon sale within the municipal limits of such town under section 172.

The payment under section 178 does not depend on any service to be rendered by weighing, measuring or testing the goods brought in. No further fee is chargeable on the same goods if weighed or tested later on for being sold within the Municipal limits or taken out to another municipal area.

Now, if the legislature thought fit to enable the Council to collect fees from goods brought into the municipal limits of a town for disposal, manufacturing or processing even in cases where no services are to be rendered its object of enacting such a section is manifestly the securing of revenue to the Corporation. If this is so in respect of all goods brought in a municipal area for the purposes enumerated in section 178 and the person bringing goods within the area is made liable to pay fees equivalent to the weighing fees referred to in section 172 and prescribed in the 13th Schedule attached to the Law, regardless of any services to be rendered by the Municipal Authorities ; then a fortiori the weighing fees payable under section 172 could not have been for the sole object of rendering weighing services to the vendors or purchasers but it must have as its main object the securing of revenue to the municipality. In my view the fact that against the payment of fees by the vendor the Municipality has to render services by weighing, measuring or testing the goods subject matter of sale, does not alter the main object of the law.

The second relevant point to be considered is where contravention of any section of the Municipal Corporations Law occurs, and in particular contravention of the provisions of section 172 of the Law, whether the penalty prescribed is intended by the Legislature to be the only remedy available against a defaulter.

If apart from the penalty clauses occurring in sections 172 and 178 and other sections there was no provision in the Law for the recovery of fees, taxes, charges etc. from defaulters then I would have subscribed to the proposition that where a contravention of the Law has been made an offence and a penalty has been prescribed for it the complainant-council could recover nothing more than the penalty prescribed. But section 184 of the Municipal

Corporations Law makes it abundantly clear that a Municipal Corporation in prosecuting an offence for contravention of the law under the section is entitled, in addition to the penalty to be paid, to fees duties or other charges connected with the offence which ought to have been paid but have not been paid. Also independently of any prosecution under section 184 the Municipal Corporation is empowered by section 186 to sue and recover by civil proceedings from any person in default any fees, toll or charges prescribed by the Law.

I agree with the trial Court that the language used in section 186 is wide enough to enable the Corporation to recover weighing fees which ought to have been paid in respect of goods sold and delivered within the Municipal limits notwithstanding that the purchaser or seller failed to inform the municipal authorities to send a weigher within an hour to carry out the weighing.

Section 186 reads :

“ Every municipal corporation may sue and recover by civil proceedings from any person in default any charge, fee, rate, duty or toll prescribed in this Law or in any bye-law made hereunder notwithstanding that the non-payment thereof is due to an act or omission of such person which is made an offence by this Law or any such bye-law and notwithstanding that the person in default has or has not been prosecuted in respect of such offence.”

The non-payment of the weighing fees in this case is alleged to be due to the failure of the vendors and/or purchasers to call the weigher to weigh the flour sold and this amounts clearly to an omission which constitutes an offence. Fees, charges, rates, duties or tolls are recoverable even when the person in default has been prosecuted. There is nothing in the section to restrict its operation to cases where fees, charges etc. have already been ascertained by actual weighing, measuring or testing or to restrict the meaning of the words “ any person in default of payment of any charge, fee, rate duty or toll prescribed in this Law ” to cases where a person refused to pay an ascertained amount to a municipal officer as a toll or against services rendered. It may not be out of place to quote Abbot, C.J. on the Interpretation of Statutes in the case of *King v. Hall* (English Reports, 107, p. 51) :

“ Now, the meaning of particular words in Acts of Parliament, as well as other instruments, is to be found not so much in a strict etymological propriety of

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language, nor even in popular use, as in the subject or occasion, on which they are used, and the object that is intended to be attained.”

The learned counsel for the appellants argued that, unless and until the goods are weighed, the fees do not become payable and that the fees or rates recoverable by civil proceedings under section 186 must be limited to the instances where the weighing takes place and the fee becomes payable and the person refuses to pay. To my mind this is a very strict interpretation to be placed on section 186 and the liability of the vendor or purchaser for the account of the vendor for the payment of the fees for the goods sold or delivered within the municipal limits does not depend on the actual weighing but the vendor is only exonerated when the municipal weigher, after receiving notice, fails to attend and weigh or measure or test the goods within an hour from the time he receives such notice.

The words occurring in section 172 “upon such weighing, measuring or testing, the vendor or purchaser for the account of the vendor, shall pay to the municipal weigher etc. etc.” indicates the time of payment and cannot be taken to convey that the liability of payment of such fees is dependent in all circumstances on actual weighing. In other words, the phrase quoted is not inconsistent with the interpretation laid on section 186.

I find myself, therefore, in agreement with the trial Court in the way sections 172 and 186 of the Municipal Corporations Law, have been interpreted and the point of law decided upon and I am of the opinion, therefore, that the decision of the lower Court should be affirmed with costs in favour of respondents.

Appeal dismissed. Judgment of the trial Court affirmed.