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THE CHAIRMAN
AND MEMBERS
OF THE
MUNICIPAL
CORPORATION
AND
TOWNSMEN
OF THE
TOWN OF
NICOSIA
AND THE
MAYOR,
DEPUTY
MAYOR,
COUNCILLORS
AND
TOWNSMEN
OF THE
TOWN OF
NICOSIA
v.
ROLOGIS
CO., LTD.

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

THE CHAIRMAN AND MEMBERS OF THE MUNICIPAL CORPORATION AND TOWNSMEN OF THE TOWN OF NICOSIA AND THE MAYOR, DEPUTY MAYOR, COUNCILLORS AND TOWNSMEN OF THE TOWN OF NICOSIA,

Appellants-Plaintiffs,

v.

ROLOGIS CO., LTD.,

Respondents-Defendants.

(Civil Appeal No. 4372).

Municipal Corporations—Licence to carry on, exercise any business, trade, calling or profession within the municipal limits—On payment of certain fees—The Municipal Corporations Law Cap. 240, sections 156, 157, and 158—“Business” “~~carrying~~ on business”—Meaning of, on the true ~~construction~~ of the words in section 156—“Permanent place of business” within the meaning of the words in (b) of the proviso to section 156—‘Regular Business’.

Municipal Corporations—Fees provided for licences under sections 157 and 158 of Cap. 240 (supra) are taxes—Therefore, they must be clearly payable under the statute on the broad principle that statutes imposing taxes must be construed strictly.

Statutes—Interpretation—Statutes imposing taxes—Must be strictly construed.

The appellant-plaintiff (the Municipal Authority of Nicosia) brought an action, under section 186 of the Municipal Corporations Law, Cap. 240, against the respondent company, which owns immovable property at Nicosia and alleged to carry on in Nicosia the business of letting out immovable property, to recover the sum of £100 being fees due for professional licences under sections 156, 157 and 158 of the aforesaid statute and assessed thereunder for the years 1958 and 1959. The trial Court dismissed the plaintiff's action on the grounds that the defendants did not manage their business in Nicosia, that the business was not regular and that the plaintiffs did not prove that the defendants carried on business in Nicosia for a period exceeding seven days.

Section 156 of the Municipal Corporations Law, Cap. 240, provides :—

“ 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 : Provided that—

(a) no person shall be required to obtain more than one licence in the same municipal limits during any period :

(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.”

(c) and (d) are not relevant.

Section 157 (1) provides :—

“ Any person desiring to carry on, exercise or practise, for profit, any business, trade, calling or profession within any municipal limits shall apply to the council for a licence and the council shall determine the fee payable . . . ”

It is admitted that the defendants made no such application and that if the fee is payable the Municipal Council of Nicosia has determined it.

Section 158 provides :—

“ If any person fails to apply to the council for a licence . . . within one month of his having commenced or recommenced to carry on, exercise or practise any business, trade, calling or profession, the council may determine the fee payable . . . and enter his name in the register of trade licences and the decision of the council shall be final and conclusive.”

The respondents-defendants obtained in Limassol licences under the aforesaid provisions of the statute in respect of the same years *i.e.* 1958 and 1959. The appellants-plaintiffs (The Municipal Authority of Nicosia), purporting to act in pursuance of their powers vested in them by the aforementioned provisions of the statute, assessed the respondents-defendants to a fee of £50 for the year 1958 and the same amount for the year 1959, together making the total of £100 claimed in the action.

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Other relevant facts are shortly as follows :—

- (a) The defendants are a commercial company incorporated under the Companies Law, 1951, by a memorandum and articles of association dated June 12, 1954, as being limited by shares. The following, among others, are its objects : to buy and sell land, to erect buildings, rent shops and flats and generally to manage such property as set out in its memorandum and articles.
- (b) Its powers are very broad and there appears to be no limitation upon the area in which it may carry on business. The evidence discloses that in addition to the 'Rologis Building' in Nicosia it owns and rents property in Limassol, it also operates a bakery there and sells its bread "all over Cyprus".
- (c) Its registered office is situated at Limassol where its Directors, Secretary and Shareholders also reside. It owns the immovable property consisting of flats and shops situated on Homer Avenue, Nicosia, known as the 'Rologis Building' which it rents to tenants under written leases of which exhibit 2 was filed as an example.
- (d) The leases were prepared by the defendants after they were negotiated between the tenants and the defendants' agent, Costas Georghiadis who lives at 12 Kallipolis Street, Nicosia. The terms were subject to acceptance by the defendants' managing director at Limassol who executed the leases there on the defendants' behalf after they had been signed by the respective tenants.
The tenants paid all rents to the agent at Nicosia who issued a receipt on a form.
- (e) The tenants considered him to be the agent for the defendants and he was the only person with whom the tenants had any negotiations or dealings.

On these facts the appellants contended :—

- (a) That the respondents carried on the business or trade of leasing immovable property within the municipal limits of the town of Nicosia without having obtained a licence in accordance with the provisions of section 156 of Cap. 240 (*supra*);
- (b) that the respondents were not qualified for the exemption under paragraph (b) of the same section (*supra*) from taking out a licence in Nicosia, inasmuch that they, the respondents, had at the material time "a permanent place of business" in Nicosia within the meaning of the words of the aforesaid paragraph (b) (*supra*);

(c) that therefore, the appellants rightly determined the fees in question under sections 156 and 158 of the statute (*supra*).

The main issues in this case are :—

(1) Whether the respondents-defendants were carrying on a trade or business in Nicosia without obtaining a licence contrary to the provisions of section 156 of the Municipal Corporations Law, Cap. 240 (*supra*).

(2) Whether having obtained such a licence in Limassol they qualify for the exemption, provided by section 156 (b) (*supra*) from taking out one in Nicosia.

The High Court in allowing the appeal :—

Held, (1) per WILSON, P., VASSILIADES, J., concurring :

(1) The “fee” claimed is really a “Tax” and must be clearly payable under the statute. “Fees” for licences issued to regulate businesses are authorized by section 155 of the same law. I draw attention to the distinction because this action relates to taxation rather than to licensing as such.

“The language of a statute imposing a tax, duty or charge must receive a strict construction in the sense that there is no room for any intentment, and regard must be had to the clear meaning of the words.” (Halsbury 3rd Ed. Vol. 36, p. 416).

(2) (a) Counsel for the appellant contended that the ordinary dictionary meaning of the words “carrying on business” clearly applied and brought the defendants within the operation of these sections. He also relied upon the decision of this court in the *American Export Lines Inc., v. The Mayor, etc. of Larnaca*, (1953) 19 C.L.R. 206 as binding and conclusive against the judgment of the trial Court. This case decided that a foreign company was liable for tax assessed against it under section 159 (now s. 156) even though it did not have a permanent place of business in the Municipality of Larnaca but carried on business through its agents the Cyprus shipping firm of Messrs. Mantovani who represented other shipping lines also. While useful in interpreting the meaning of the expression “carrying on business”, it does not decide the meaning of “place of business”.

(b) On the other hand counsel for the respondents contended that under the decisions in England to which he referred and to which reference now will be made his clients were not carrying on business in Nicosia within the meaning of sections 156 and 157 and secondly they were exempted from

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the requirement to obtain a licence under section 156 (b), on the grounds that they had taken out such a licence in Limassol and that they had no place of business in Nicosia.

Brown v. London and North-Western Railway Company, 32, L.J. Q.B. 318 ; and *Dunlop Pneumatic Tyre Co. v. Acties-Gesellschaft*, 1902 71 L.J. K.B. 284, do not assist the respondents. The Brown's case turned upon the interpretation of a section of a statute which was later repealed but was not at all similar in purpose to the Municipal Corporations Law. Even in that case Crompton J. at p. 326, was of opinion that business could be carried on at more than one place. In *La Bourgogne* (1899) 68 L.J. p. 104 and the *Dunlop's* case, (*supra*) the real question was whether the defendant resided in England. To decide it the Courts had first to conclude the defendants were carrying on business in England. These cases are really decisions against the respondents' contentions in this respect.

(3) (a) The word "business" is one of broad meaning and having regard to the facts in this case no distinction need be drawn between it and the words "trade, calling or profession". According to the Concise Oxford Dictionary (4th Ed. 1951 reprinted and revised in 1958) the original meaning of the word was "being busy" but this is now obsolete. It now means among other things "habitual occupation, profession, trade".

(b) Judicially it has been admirably defined by Jessel M.R. in *Smith v. Anderson* 15 Ch. D. 258, where after citing definitions from several dictionaries he said--

"anything which occupies the time and attention and labour of a man, for the purpose of profit is 'business'. Further on he remarks : "There are many things which in common colloquial English would not be called a business, when carried on by a single person, which would be so called when carried on by a number of persons. For instance, a man who is the owner of a house divided into several floors and used for commercial purposes, e.g. offices, would not be said to carry on business because he let the offices as such. But suppose a company was formed for the purpose of buying a building, or leasing a house, to be divided into offices and to be let out—should not we say, if that was the object of the company, that the company was carrying on business for the purpose of letting offices ? The same observation may be made as regards a single individual buying or selling land, with this addition, that he may make it a business, and then it is a question of continuity. When you

come to an association or company formed for a purpose, you would say at once that it is a business, because there you have that from which you would infer continuity. So in the ordinary case of investments, a man who has money to invest, the object being to obtain his income, invest his money, and he may occasionally sell the investments and buy others, but he is not carrying on a business."

(c) By adopting the meaning given by Jessel M.R. I have no difficulty in arriving at the conclusion that the respondents were "carrying on business" in Nicosia for the following reasons. They were incorporated to carry on business as a commercial company with a wide variety of objects but importantly to own, rent and manage land and buildings and to collect rents and income. One half of their income was derived from the rents from buildings. In Nicosia they own the building in question known as "Rologis Building". By necessary inference from the evidence they must arrange for the maintenance and repairs to be done there. They acquire tenants through the medium of an agent living in Nicosia who interviews them, negotiates terms of tenancies, subject to acceptance by the managing director at Limassol, receives tenants' requests for repairs, collects rents quarterly and remits them to the respondents' office in Limassol from which they manage their business. All these acts performed in Nicosia are an integral part of their operations and constitute doing business there.

(d) I respectfully disagree with the learned trial Judge's judgment when he says "that the business they carry on through their agent is not a regular business but whenever the occasion arises, that is whenever a new tenant must be found or whenever rent is due". In my opinion the business was acts performed as necessary through an agent who was at all times ready and willing to perform them and who did so. The definition of the word "regular" in the Concise Oxford Dictionary 4th Edition is given "Acting, done, recurring, uniformly or calculably in time or manner, habitual, constant not capricious or casual, orderly".

(4) (a) The next question is more difficult to answer, namely whether or not the defendant qualifies for the exemption granted by section 156 (b).

Section 156 (b) exempts certain persons from taking out licences under section 156 namely :

(a) those who have taken out a licence in any other municipal

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limits unless such person has a *permanent place of business* in the municipality seeking to collect the licence fee (tax), or

(b) a person who remains in the latter municipality for the purpose of carrying on his business, trade, calling or profession at any one time for a period of 7 days [or less.

(b) The respondents have taken out the necessary licence in Limassol and are exempted unless they can be said to have a *permanent place of business in Nicosia* or be said to remain there for more than seven days.

(c) I need not pause to consider the word "permanent" save to say that it means, lasting, intended to last, indefinitely.

(d) The real question here is whether the facts justify the conclusion that the "Rologis Building" in Nicosia is a place of business of the respondents-defendants. In my opinion they do. Although the defendants manage their whole business from their office in Limassol and for certain purposes, e.g. perhaps, income tax, they may be said to have only one place of business, it is also true that for other purposes they may have more than one such place. No one would question this if in fact they operated a bakery shop in Nicosia. Quite plainly this would be a place of business. It makes no difference therefore what the activity may be so long as it amounts to carrying on business at a certain place. If the respondents-defendants had been incorporated outside Cyprus with their head office also outside the country, but all other facts were the same, could it be said they had no place of business in Nicosia when they owned property, paid taxes, maintained a commercial building in which they rented shops and flats utilizing the services of an agent in Nicosia to do what the agent does in this case? I think not.

(e) In my opinion the defendants operate the building as a commercial venture to make a profit in carrying out the very objects for which it was formed. It is one of the places where in a commercial sense they carry on their business and for the same reason it must be held for purposes of section 156 (b) to be a place of business.

(f) It may be argued that because there is no person regularly in the building who represents the defendant, the building cannot be said to be the defendants' place of business. I find no difficulty in answering this by saying that under present

day business conditions there are an increasing number of businesses which do not require the constant attendance of proprietors, for example the electrically operated coin laundries, cigarette and soft drink businesses where those commodities are sold through unattended vending machines. They are places which can be operated for profit only through the expenditure of time and effort at the site of the business and are therefore places of business.

(g) The defendants also deny that ownership by it of immovable property which is let to tenants renders it liable to the payment of the fee claimed. The test however is not whether the tax in question is based upon "ownership" and "letting" as such out but whether or not the defendant is "carrying on business" in the municipality and quite clearly it was.

(h) I have not referred to that part of section 156 (b) which exempts from taking out a licence a person who remains in a municipality for the purpose of carrying on his business etc., at any one time for a period of 7 days or less. It is obvious that this provision has no application to the present case.

(5) For these reasons this appeal will be allowed. The judgment at trial will be set aside. In its place there will be judgment for the plaintiffs against the defendant for £100 and the costs of the action throughout.

Held, (II) per ZEKIA, J.

(1) As to the question whether the respondents were carrying on business in Nicosia within the meaning of section 156 of Cap. 240 (*supra*) for the years 1958 and 1959, I agree with respect with what has been stated in the judgment of the President.

(2) As to the other question *i.e.* whether the respondents had during the said period a permanent place of business in Nicosia rendering them liable to obtain another licence under section 156 (b) (*supra*) in addition to the licence they admittedly obtained from the Limassol Municipal Authority, I prefer to base my judgment on the fact that the respondent company by employing a certain Costas Georghiades of Nicosia, as their agent to contact prospective tenants and negotiate contracts of lease for their shops and houses and collect rents from tenants, had, through their Nicosia agent, maintained a permanent place of business in Nicosia and became liable for the payment of licence fees under section 156 (b) of Cap. 240 (*supra*)

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Held, (III) per JOSEPHIDES, J.

(1) I have had the advantage of reading the judgment of the learned President and I am in full agreement with his conclusion, and the reasons therefor, that the respondent company is “carrying on business” in Nicosia within the meaning of section 156 of Cap 240 (*supra*).

(2) With regard to the second question, namely, whether or not the respondent company qualifies for the exemption under proviso (b) to section 156, while agreeing with the result reached by the learned President, I would state my reasons in this way.

As the respondent company has taken out a licence in Limassol, under the proviso (b) to section 156 it shall not be required to take out another licence in the municipal limits of Nicosia unless—

(1) it has a “permanent place of business” in Nicosia, or (2) it remains therein for the purpose of carrying on its business at any one time for a period exceeding 7 days.

In the circumstances of this case paragraph (2) is not applicable.

As to paragraph (1), can it be said that the respondent company has a “permanent place of business” in Nicosia? The real question is whether the facts in the present case constitute a “permanent place of business” within the meaning of the section quoted above.

(3) (a) On the facts in this case I am of the view that the respondent company carries on a regular business of renting shops and flats situate in Nicosia through an agent in Nicosia who is at all times ready and willing to do such business and who did so; that there is a permanent arrangement whereby prospective tenants are directed by the cafe-keeper on the company’s premises in question (the “Rologis Building”) in Nicosia, to the agent’s house at 12 Kallipolis Street, Nicosia, for the purpose of negotiating the letting of a shop or flat; and that the company’s tenants who want repairs done to their premises apply to the company’s agent in Nicosia, who gets in touch with the Company in Limassol.

(b) Do these facts constitute a “permanent place of business” within the meaning of the statute. I am of the opinion that they do. I think that a place to be within the statute must be a fixed ascertained place occupied or used so far

permanently that people may know or ascertain that there is a person there with whom they may negotiate the terms of a lease or to whom persons from time to time or upon any particular occasion or occasions may apply for the purpose of the carrying on of the company's business of renting property in Nicosia.

(c) I, therefore, hold that the respondent company had a permanent place of business in the municipal limits of Nicosia within the meaning of proviso (b) to section 156 of the Law, and that, consequently, it does not qualify for exemption under that section.

(4) For these reasons I would allow the appeal and order as in the President's judgment.

Appeal allowed. Judgment for the plaintiffs (appellants) against the defendants (respondents) for £100 with costs throughout.

Cases referred to :

- American Export Lines Inc. v. The Mayor etc., of Larnaca* (1953) 19 C.L.R. 206 ;
- Brown v. London and North-Western Railway Company*, 32 L.J. Q.B. 318 ;
- La Bourgogne* (1899) 68 L.J. P. 104 ;
- Dunlop Pneumatic Tyre Co., v. Actien-Gesellschaft* (1902) 71 L.J. K.B. 284 ;
- Smith v. Anderson* 15 Ch D. 258.

Appeal.

Appeal against the judgment of the District Court of Nicosia (Demetriades D.J.) dated the 27.2.62 (Action No. 331/61) dismissing plaintiffs claim for £100.—being professional tax assessed against the defendants for the years 1958 and 1959.

G. S. Stavrinakis for the appellants.

G. P. Cacoyannis for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgment delivered by WILSON, P. and JOSEPHIDES, J.

WILSON, P. : This is an appeal from the judgment of the District Court of Nicosia, on February 27th 1962, dismissing the plaintiffs action with costs.

The plaintiffs, who were as of the date of the hearing of the appeal, October 25 1962, the Municipal Authority for Nicosia, brought this action against the defendant, which owns immovable property at Nicosia, to recover £100 professional tax assessed against it for the years 1958 and 1959. The defendant denied it was liable to such tax.

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The learned trial Judge dismissed the action upon the following grounds :—

- “(1) The defendant manages its business and directs the affairs of their property at Nicosia from Limassol ;
- (2) that the business they carry on through their agent is not a regular business but whenever the occasion arises, that is whenever a new tenant must be found or whenever rent is due ;
- (3) the plaintiffs had to prove that the defendants both in 1958 and 1959 carried on a business within the Municipal limits of Nicosia at any one time for a period exceeding seven days as provided by Section 156 (b) of the Municipal Corporations Law, Cap. 240, since it has been proved that in 1958 and 1959 the defendant took a professional licence in the Municipal limits of Limassol.”

In his opinion the mere fact that one of the defendants' shops at Nicosia was let during the whole of the years 1958 and 1959 to one Mouradian did not prove that the defendants were “ exercising a profession ” as he put it, within the Municipal limits of Nicosia for a period exceeding seven days. “ The plaintiffs have, therefore, failed to prove their case and their claim fails and is dismissed with costs.” In arriving at this decision he distinguished this case from *American Export Lines Inc. v. the Mayor etc., of Larnaca* (1953) 19 C.L.R. 206 to which reference will be made later.

With respect and for the reasons hereinafter given I arrive at a different result. The real questions to which answers are required are—

- (1) Whether the defendant was carrying on a trade or business in Nicosia without obtaining a licence contrary to the provisions of sec. 156 of the Municipal Corporations Law, and
- (2) Whether having obtained such a licence in Limassol it qualifies for the exemption granted by sec. 156 (b) from taking out one in Nicosia.

It becomes necessary to examine the relevant facts.

The defendant is a commercial company incorporated under the Companies Law 1951 by a memorandum and articles of association dated June 12, 1954 as being limited by shares. The following, among others, are its objects;

to buy and sell land, to erect buildings, rent shops and flats and generally to manage such property as set out in its memorandum and articles namely :—

- “ 3 (b) To acquire by purchase, lease, exchange, grant, concession, or otherwise, any properties, movable and immovable of any kind and description
- (c) to sell, convey, rent . . . or otherwise dispose of and generally deal with any lands and buildings of all kinds and descriptions . . . and any other properties, movable or immovable whatsoever or any rights or interests therein ;
- (d) to erect any building or construction and to hold, develop and turn to account any properties movable or immovable
- (f) to manage land, buildings and other property of whatsoever kind whether movable or immovable and whether belonging to the company or not and to collect rents and income.
- (y) to do all such things as are incidental or conducive to the above objects or any of them.”

Its powers are very broad and there appears to be no limitation upon the area in which it may carry on business. The evidence discloses that in addition to the Rologis Building in Nicosia it owns and rents property in Limassol, it also operates a bakery there and sells its bread “ all over Cyprus ” (Evidence of Georghiadēs).

Its registered office is situated at Limassol where its Directors, Secretary and Shareholders also reside. It owns the immovable property consisting of flats and shops situated on Homer Avenue, Nicosia, known as the ‘ Rologis Building ’ which it rents to tenants under written leases of which exhibit 2 was filed as an example. This lease states that the—

landlord is Rologis Limited Limassol,
the tenant is Mouradian Bros Nicosia,
leased property the shops No. 13-14 of the immovables of Rologis Ltd., of Limassol, situated at Homer Avenue, Nicosia,

period of tenancy from 1.1.59 to 31.12.59,
rent £55 per month, three months payable in advance,
plus town rate and other rates as provided in the lease,
payment of rent every three months payable in advance, that is £165.

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There are other terms to which reference need not be made for the purpose of this action.

The lease was prepared by the defendant after it was negotiated between the tenant and the defendant's agent, Costas Georghiades who lives at 12 Kallipolis Street, Nicosia. The terms were subject to acceptance by the defendants' managing director at Limassol who executed it there on the defendants' behalf after it had been signed by the tenant.

The tenant paid all rents to the agent at Nicosia who issued a receipt on a form—(exhibit No. 1).

“Rologis Ltd.,
P.O.Box 142,
Limassol.

No. 1084

Received from Messrs. Mouradian Bros. of Nicosia the sum of one hundred and sixty pounds rent for July, August and September 1959.

1.7.59.

The Collector
(sgd) C. Georghiades.”

The tenant considered him to be the agent for the defendant and he was the only person with whom the tenant had any negotiations or dealings.

Costas Georghiades is a soap manufacturer who lives at Nicosia but owns a soap factory at Larnaca. He describes his relations with the defendant in the following language—

“The defendants have no plate outside my house. There are no employees of defendants at my house. I myself am connected with the defendants. My connection with defendants is to find tenants for the defendants' premises at Nicosia and collect the rents from their tenants. The terms of the tenancy as well as the prospective tenant must be approved by the defendants. When I find a tenant for the defendants I either ring them up or write to them or go myself to Limassol and inform them of what the tenant wants. The contract is then prepared at Limassol and signed by George Rologis who is the managing director of the defendant company. Georghios Rologis lives at Limassol. The defendant company are managed at Limassol. The defendants run a bakery at Limassol. At the bakery building there are offices but I do not know whether the affairs of defendant company are managed from there. The Defendants own immovable property at Limassol

which they let out. The defendants sell their bread all over Cyprus. By consent receipts No. 56576 dated 22.10.1958 and 61929 of 24.11.1959 issued by the Municipal Corporation of Limassol for the collection of the professional tax imposed on defendants by that corporation for 1958 and 1959 are put in marked exhibits 5 and 6 respectively.

I cannot bind the defendants with my actions .

I remember that witness 1 for the plaintiffs asked me on one occasion whether I would accept payment of the rent by monthly instead of quarterly instalments as was provided in his contract of lease but I told him that I had no authority to do that and that he had to write directly to the defendants. I have no authority to carry out repairs or alterations to the defendants' building or spend any money without the authority of the defendants. I collect on behalf of the defendants the rents and I issue receipts. The money I collect I remit to the defendants. I do not keep accounts and records for the defendants.

X-Xon by Mr. Spanos : The defendants pay a commission to me for the services I render to them. The commission I receive is based on the amount of rents I collect. My main concern was to find tenants for the defendants' building. People who wanted to let shops or flats made enquiries at the building and the coffee shop keeper there sent them to me. The tenants themselves signed the contract of lease at Nicosia. If a tenant wanted repairs to be done he gets in touch with defendants through me.

Re-Xon. On 2 occasions tenants let 2 shops directly from defendants and not through me.'

This is confirmed by the defendants' chairman and managing director Georghios Rologis.

The plaintiffs contend the defendant carried on the trade of leasing immovable property within the Municipal limits of Nicosia without obtaining a licence in accordance with the provisions of section 156 of the Municipal Corporations Law, Cap. 240 (1959 ed.), which reads as follows :—

(Section 159, Cap. 252 of the Laws of Cyprus, revised edition 1949, applies to the period before the 1959 revision came into force ; the wording of the two sections is the same) :—

“ No person shall, within any Municipal limits, carry on, exercise or practise any business, trade, calling

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or profession for profit unless he has obtained a licence so to do in accordance with the provisions of this law : Provided that—

- (a) no person shall be required to obtain more than one licence in the same municipal limits during any period ;
- (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.'
- (c) and (d) are not relevant.

Section 157 (1) (1959) provides that—

“ Any person desiring to carry on, exercise or practise, for profit, any business, trade, calling or profession within any municipal limits shall apply to the council for a licence and the council shall determine the fee payable ”

It is admitted that the defendants made no such application and that if the fee is payable the Council has determined it. Section 158 (1959) provides :—

“ If any person fails to apply to the council for a licence... within one month of his having commenced or recommenced to carry on,.... calling or profession, the council may determine the fee payable.. . and enter his name in the register of trade licences and the decision of the council shall be final and conclusive.’

Acting in pursuance of this power the plaintiffs assessed the defendant for the year 1958 a fee of £50 and for the year 1959 the same amount, together making the total of £100 claimed in this action.

I shall not dwell upon the use of the words “ carry on . . . any business, trade, calling or profession for profit ” although there are discrepancies in the wording throughout the proceedings. Before the action was commenced the Municipal Corporation demanded “ professional fees.” The defendant through its advocate’s letter of December 30, 1958, refused to pay them on 3 grounds—

- (a) it was “ not carrying on, exercising or practising any business, trade, calling or profession within the Municipal limits of Nicosia ”,

- (b) its registered office and only place of business was in Limassol and it had taken out the relevant licence there for 1958,
- (c) it had “ no permanent or other place of business whatsoever in Nicosia nor have they (sic) ever remained in the Municipal limits of Nicosia for the purpose of carrying on their business, trade, calling or profession at any one time for a period exceeding seven days or at all. They therefore also fall within proviso (b) to section 159 of the Municipal Corporations Law, Cap. 252.” (now sec. 156, Cap. 240).

In the statement of claim the plaintiffs claimed the defendant “carried on the trade of leasing immovable property” without obtaining the necessary licence.

In the reasons for judgment the learned trial Judge says the plaintiffs claim “in respect of professional tax” and that they did “not prove that the defendants were exercising a profession within the municipal limits of Nicosia for a period exceeding seven days.” Also he said “the plaintiffs had to prove that the defendants both in 1958 and 1959 carried on a business” within the limits of Nicosia at any one time for a period exceeding seven days.

It is clear from all the facts and arguments of Counsel that what is desired is a ruling upon the real issues the first of which is whether or not the defendant was “carrying on a trade or business” in Nicosia in respect of which, under the provisions of sections 156 and 157 of the Municipal Corporations Act, it was required to pay a licence fee. All of the authorities cited were directed to this particular issue. It has been assumed that the company’s operations were carried on for the purpose of making a profit.

Counsel for the appellant contended that the ordinary dictionary meaning of the words “carrying on business” clearly applied and brought the defendant within the operation of these sections. He also relied upon the decision of this Court in the *American Export Lines Inc., v. The Mayor, etc. of Larnaca*, as binding and conclusive against it.

Opposing Counsel for the respondent contended that under the decisions in England to which he referred and to which reference now will be made his client was not carrying on business in Nicosia within the meaning of sections 156 and 157 and secondly his client was exempted from the requirement to obtain a licence under section

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156 (b), on the grounds that his client clearly had taken out such a licence in Limassol and that it had no place of business in Nicosia. I shall consider the authorities cited by the latter.

The first is *Brown v. London and North-Western Railway Company*, 32. L.J. Q.B.318 where it was decided that a County Court is not entitled to exercise its special jurisdiction under “an Act for the More Easy Recovery of Small Debts and Demands in England” 9 & 10 Victoria c.95, unless leave has been granted to the plaintiff to commence such an action. It also held, strictly speaking as obiter dicta, that a railway company “carries on business” within the meaning of 9 & 10 Victoria c.95, section 60, only at the principal station where the general superintendence of the concern is centred : and not at any station, however large, where the local management of any portions of the line was conducted, subject to the supervision of the General Manager at the principal station. At page 321, Blackburn J., agreeing with the other members of the court stated :

“...The question turns entirely on the construction of the 60th section”.—(the wording of which is not available in Cyprus)—“That was enacted with a view of regulating where the defendants in general should be sued ; and it would appear that the legislature thought that in small cases, managed generally by the parties themselves, the most convenient place would be that in which the defendant either dwelt or carried on his business ; contemplating such cases as a man having a place of business in Westminster and living in some suburban villa. But business can only be said to be carried on where it is managed. No doubt there may be cases where a man carries on more businesses than one and in different places, but such cases are quite exceptional ; and the place of business, in general, must be the place where the general superintendence and management take place. For instance, Pickfords must have persons through whose means they carry through every county almost in England, and would be liable, if the present defendants can be sued at Chester to be sued in almost every county Court in England. So the defendants, the London and North-Western Railway Company, are carrying on a very extensive business at different great stations, Chester amongst the rest, but it is one entire business, and the whole is controlled by the directors in London where there is the general superintendence. The Chester superintendent controls the

local traffic, but subject to the general superintendent or manager in London. I agree with Hill, J., that a railway company carries on its business at the principal station only : in the present case at Euston Square, and that a branch only is carried on and managed at Chester, and that the defendants are not liable to be summoned to the county Court there. If the business were to be held to be carried on at Chester, the same principle must apply to every station, however small. In most cases the hardship suggested can be obviated, by obtaining the leave of the Judge to sue in the county Court of the district in which the cause of action arose."

However, Crompton J. points out at page 321—

" I am inclined to think that there may be cases in which the business of a railway company may be held to be carried on at two places ; for instance, suppose a terminus at two places like Liverpool and Manchester, and the meetings of the directors held as much at one place as the other, I do not see why the business may not be said to be carried on at both."

He agreed in the result in this case which depended upon the wording of section 60. His judgment and that of Blackburn J. do indicate, however, that the decision related only to the place at which the defendant had to be sued and that there was left open for decision under other circumstances the interpretation of the phrase " carrying on business."

In *La Bourgogne* (1899) 68 L.J.P. 104, the House of Lords held that a writ was effectually served on the agent in England of a foreign company who not only acted as a broker and carried on business as an agent for others as well as a French company but the real question, held to be one of fact, was whether the foreign corporation could be said to be resident in England within the meaning of order IX, rule 8 and the Court held it was. At page 105 the Lord Chancellor, the Earl of Halsbury, with his usual clarity spoke as follows :—

" I observe that in one of the authorities quoted Vice-Chancellor Bacon, with the broad common sense which not infrequently distinguished that learned Judge's observations, said, in a similar case—*Lhoneux, Limon & Co. v. Hongkong and Shanghai Banking Corporation*—They hire an office, write up their name, and beyond all question, stamp upon them—

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selves and upon their place of business here the assumption that here they carry on their business. It appears to me that as a consequence of these facts the appellants are resident here in the only sense in which a corporation can be resident—to use the phrase which counsel has so constantly referred to, they are ‘here’. And, if they are here, they may be served.

“This is, as I have said, a question of fact—it is admitted to be so—and I have nothing to add to what the learned Lords Justices in the Court of Appeal have said upon the subject. It appears to me to be established beyond all doubt that in this case the writ was properly served and upon the proper person. Therefore I move your Lordships that this appeal be dismissed with costs.”

Lord Macnaghten and Lord Morris concurred.

Lord Shand said—

“I have only to say that, so far as I am concerned, it is sufficient for the judgment that we have the fact that this company was carrying on business on its own premises, and had announced that it was carrying on business on its own premises by having its name in a most prominent position over the doors.”

In *Dunlop Pneumatic Tyre Co., v. Actien-Gesellschaft*, (1902) 71 L.J. K.B. 284, the Court of Appeal decided that a writ was properly served upon the defendant when it was served upon its Clerk in premises rented at a fair for nine days only. The question was whether the defendant was resident within the jurisdiction. At page 285, Collins, M.R. said—

“Now it has been held over and over again in a series of cases extending from *Newby v. Van Oppen* down to *La Bourgogne* that the real test of ‘residence’ for this purpose is the carrying on by the company of its own business in this country at a defined place. If these conditions are fulfilled, then the foreign corporation is resident here. That is the way in which a company resides at a place. If a trading corporation carries on its own business by its own agent in a particular place, then it ‘resides’ there. This is quite clear. The difficulty in these cases generally arises where, as in *The Bourgogne*, the company’s agent is a person who carries on business on his own

account ; and the question consequently arises how far the company by utilising his premises can be said to be carrying on business there. In the present case, however, no such difficulty arises, because here the company have themselves hired and taken possession of the premises for their own exclusive use, for the purpose of carrying on their own business exclusively, and have sent over their own servant specially to conduct that business exclusively on their behalf. This brings us to the only real difficulty in the case, which is this : 'The time for which the premises were taken was the duration of the exhibition at the Crystal Palace—a period of some nine days only ; and it is argued on the defendant's behalf that in determining the question of residence, time is an essential element to be taken into consideration. I agree that it is. But it is, and must be, conceded that if the defendants announced the intention of carrying on their business within the jurisdiction for nine days, the fact that the period was limited to nine days would not exclude the conclusion that there was residence within the jurisdiction. Nine days is in itself a substantial period of time, and in the present case the nine days chosen were during the whole period of an exhibition to which people were invited to come and see the goods exhibited, and when there were special facilities for carrying on business.'"

In my view none of these cases assist the respondent. *Brown v. London and North Western Railway Company* turned upon the interpretation of a section of a statute which was later repealed but was not at all similar in purpose to the Municipal Corporations Law. Even in that case, however, Crompton J. was of opinion that business could be carried on at more than one place. In *La Bourgogne (supra)* and *Dunlop Pneumatic Tyre Co. v. Actien etc., etc., (supra)* the real question was whether the defendant resided in England. To decide it the Courts had first to conclude the defendants were carrying on business in England. These cases are really decisions against the respondent's contentions in this respect.

They are the only authorities cited on its behalf to which I need refer.

The American Export Lines case (*supra*) cited on behalf of the plaintiffs decided that a foreign company was liable for tax assessed against it under section 159 (now 156) even though it did not have a permanent place of business

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in the Municipality of Larnaca but carried on business through its agents, the Cyprus shipping firm of Messrs. Mantovani who represented other shipping lines also. While useful in interpreting the meaning of the expression "carrying on business", it does not decide the meaning of "place of business."

One further point may be noted now. The "fee" claimed is really a "Tax" and must be clearly payable under the statute. "Fees" for licences issued to regulate businesses are authorized by section 155 of the same Law. I draw attention to the distinction because this action relates to taxation rather than to licensing as such.

"The language of a statute, imposing a tax, duty or charge must receive a strict construction in the sense that there is no room for any intentment, and regard must be had to the clear meaning of the words."

(Halsbury 3rd Edition Vol. 36, p. 416).

I come next to consider whether the defendant is carrying on business in Nicosia.

The word "business" is one of broad meaning and having regard to the facts in this case no distinction need be drawn between it and the words "trade, calling or profession." According to the Concise Oxford Dictionary (4th Edition 1951 reprinted and revised in 1958) the original meaning of the word was "being busy" but this is now obsolete. It now means among other things "habitual occupation, profession, trade". Judicially it has been admirably defined by Jessel M.R. in *Smith v. Anderson* 15 Ch. D. 258, where after citing definitions from several dictionaries he said—

"anything which occupies the time and attention and labour of a man, for the purpose of profit is business." Further on he remarks: "There are many things which in common colloquial English would not be called a business, when carried on by a single person, which would be so called when carried on by a number of persons. For instance, a man who is the owner of a house divided into several floors and used for commercial purposes, e.g. offices, would not be said to carry on business because he let the offices as such. But suppose a company was formed for the purpose of buying a building, or leasing a house, to be divided into offices and to be let out—

should not we say, if that was the object of the company, that the company was carrying on business for the purpose of letting offices? The same observation may be made as regards a single individual buying or selling land, with this addition, that he may make it a business, and then it is a question of continuity. When you come to an association or company formed for a purpose, you would say at once that it is a business, because there you have that from which you would infer continuity. So in the ordinary case of investments, a man who has money to invest, the object being to obtain his income, invest his money, and he may occasionally sell the investments and buy others, but he is not carrying on a business."

Other examples of the broad interpretation apparently often conflicting may be found in Stroud's Judicial Dictionary (3rd Edition 1952) Vol. 1, under the headings "Business" and "Carrying on business."

By adopting the meaning given by Jessel M.R. I have no difficulty in arriving at the conclusion that the defendant was carrying on business in Nicosia for the following reasons. It was incorporated to carry on business as a commercial company with a wide variety of objects but importantly to own, rent and manage land and buildings and to collect rents and income. One half of its income was derived from the rents from buildings. In Nicosia it owns the building in question. By necessary inference from the evidence it must arrange for the maintenance and repairs to be done there. It acquires tenants through the medium of an agent living in Nicosia who interviews them, negotiates terms of tenancies, subject to acceptance by the managing director at Limassol, receives tenants requests for repairs, collects rents quarterly and remits them to the defendant's office in Limassol from which it is managed. All these acts performed in Nicosia are an integral part of its operations and constitute doing business there.

I respectfully disagree with the learned trial Judge's judgment when he says "that the business they carry on through their agent is not a regular business but whenever the occasion arises, that is whenever a new tenant must be found or whenever rent is due." In my opinion the business was regular, not in the sense of daily business, but of recurring acts performed as necessary through

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an agent who was at all times ready and willing to perform them and who did so. The definition of the word "regular" in the Concise Oxford Dictionary 4th Edition is given "Acting, done, recurring, uniformly or calculably in time or manner, habitual, constant, not capricious or casual, orderly."

The next question is more difficult to answer, namely whether or not the defendant qualifies for the exemption granted by section 156 (b).

Section 156 (a) provides that no person shall be required to obtain more than one licence in the same municipal limits in any one period. It follows therefore that a person may carry on business in more than one place in a municipality without the necessity of obtaining more than one licence under this section. Under section 155, however, he must take out a separate licence for each business in respect of which licences are required.

Section 156 (b) however exempts certain persons from taking out licences under section 156 (a) namely

- (a) those who have taken out a licence in any other municipal limits unless such person has a permanent place of business in the municipality seeking to collect the licence fee (tax), or
- (b) a person who remains in the latter municipality for the purpose of carrying on his business, trade, calling or profession at any one time for a period of 7 days or less.

The defendant has taken out the necessary licence in Limassol and is exempt unless it can be said to have a permanent place of business in Nicosia or be said to remain there for more than seven days.

I need not pause to consider the word "permanent" save to say that it means, lasting, intended to last, indefinitely.

The real question here is whether the facts justify the conclusion that the Rologis Building is a place of business of the defendant. In my opinion they do. Although the defendant manages its whole business from its office in Limassol and for certain purposes, e.g. perhaps income tax, it may be said to have only one place of business, it is also true that for other purposes it may have more than one such place. No one would question this if in fact it operated a bakery shop in Nicosia. Quite plainly this would be a place of business. It makes no difference

therefore what the activity may be so long as it amounts to carrying on business at a certain place. If the defendant had been incorporated outside Cyprus with its head office also outside the country, but all other facts were the same, could it be said it had no place of business in Nicosia when it owned property, paid taxes, maintained a commercial building in which it rented shops and flats utilizing the services of an agent in Nicosia to do what the agent does in this case? I think not.

In my opinion the defendant operates the building as a commercial venture to make a profit in carrying out the very objects for which it was formed. It is one of the places where in a commercial sense it carries on its business and for the same reason it must be held for purposes of section 156 (b) to be a place of business.

It may be argued that because there is no person regularly in the building who represents the defendant, the building cannot be said to be the defendants' place of business. I find no difficulty in answering this by saying that under present day business conditions there are an increasing number of businesses which do not require the constant attendance of proprietors for example the electrically operated coin laundries, cigarette and soft drink businesses where these commodities are sold through unattended vending machines. They are places which can be operated for profit only through the expenditure of time and effort at the site of the business and are therefore places of business.

The defendant also denies that ownership by it of immovable property which is let to tenants renders it liable to the payment of the fee claimed. The test however is not whether the tax in question is based upon "ownership" and "letting" as such but whether or not the defendant is "carrying on business" in the municipality, and quite clearly it was.

I have not referred to that part of section 156 (b) which exempts from taking out a licence a person who remains in a municipality for the purpose of carrying on his business etc. at any one time for a period of 7 days or less. It is obvious that this provision has no application to the present case.

For these reasons this appeal will be allowed. The judgment at trial will be set aside. In its place there will be judgment for the plaintiffs against the defendant for £100 and the costs of the action throughout.

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ZEKIA, J. : Two were the main points which call for decision in this appeal.

- (1) Whether respondents—defendants were carrying on business, within the meaning of section 156 of the Municipal Corporations Law (Cap. 240) in Nicosia for the years 1958 and 1959.
- (2) Whether respondents—defendants had during the said period permanent place of business in Nicosia rendering them liable to obtain another licence under section 156 (b) of the said law in addition to the licence they admittedly obtained from the Limassol Municipal Authorities.

As to the first point I agree with respect with what has been stated in the judgment of the President and I have nothing to add.

As to the second point I prefer to base my judgment on the fact that the respondent company by employing a certain Costas Georghiades of 12 Kallipolis Street, Nicosia, as their agent to contact prospective tenants and negotiate contracts of lease for their shops and houses and collect rents from tenants, had, through their agent, maintained a permanent place of business in Nicosia and became liable for the payment of licence fees under section 156 (b).

In my view the fact that for the completion of a contract the signing by respondents was required would make no difference for the purpose of the section in question.

I am also of the opinion, therefore, that the appeal should be allowed with costs.

VASSILIADES, J. : I have had the advantage of reading the judgment of the President of this Court, and with respect I agree with his judgment. I have nothing to add.

JOSEPHIDES, J. : I have had the advantage of reading the judgment of the learned President of this Court and I am in full agreement with his conclusion, and the reasons therefor, that the respondent company is “carrying on business” in Nicosia within the meaning of section 156 of the Municipal Corporations Law, Cap. 240. I am of the view that for the purposes of this section the renting of shops and flats and the collection of rents by a company, incorporated with the object of owning and renting property for profit, constitutes “carrying on busi-

ness" within the municipal limits in which such property is situate, irrespective of where the general management of the company takes place. In fact, the very wording of section 156 contemplates the carrying on of business in more than one municipalities.

With regard to the second question, namely, whether or not the respondent company qualifies for the exemption under proviso (b) to section 156, while agreeing with the result reached by the learned President, I would state my reasons in this way.

As the respondent company has taken out a licence in Limassol, under the proviso (b) to section 156 it shall not be required to take out another licence in the municipal limits of Nicosia unless—

- (1) it has a "permanent place of business" in Nicosia, or
- (2) it remains therein for the purpose of carrying on its business at any one time for a period exceeding 7 days.

In the circumstances of this case paragraph (2) is not applicable.

As to paragraph (1), can it be said that the respondent company has a "permanent place of business" in Nicosia? The real question is whether the facts in the present case constitute a "permanent place of business" within the meaning of the section quoted above.

The facts admitted by the respondent company are that it owns the "Rologis Building" in Nicosia which consists of shops and flats, and has an agent who lives at 12 Kallipoli Street, Nicosia, but there is no plate of the company outside his house. This agent finds tenants for the company's shops and flats, he collects the rents on a commission basis and issues receipts to the tenants. He then remits such rents to the respondent company in Limassol. When a prospective tenant applies to him he negotiates the terms of the lease and he then gets in touch with the managing director of the respondent company in Limassol for approval of the terms. The latter prepares and signs the contract on behalf of the company and sends it to the agent in Nicosia who produces it to the tenant for signature. In the first instance the prospective tenants make their enquiries at the "Rologis Building" and the cafe-keeper on the premises directs them to the agent's house at 12 Kallipoli Street, Nicosia

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and whenever a tenant requires some repairs to be carried out to his premises, he gets in touch with the Company's agent in Nicosia who, in turn, contacts the managing director of the respondent company in Limassol.

On these facts I am of the view that the respondent company carries on a regular business of renting shops and flats situate in Nicosia through an agent in Nicosia who is at all times ready and willing to do such business and who did so ; that there is a permanent arrangement whereby prospective tenants are directed by the cafe-keeper on the company's premises in question (the " Rologis Building ") to the agent's house at 12 Kallipoli Street, Nicosia, for the purpose of negotiating the letting of a shop or flat ; and that the company's tenants who want repairs done to their premises apply to the company's agent in Nicosia, who gets in touch with the company in Limassol.

Do these facts constitute a " permanent place of business " within the meaning of the statute? I am of the opinion that they do. I think that a place to be within the statute must be a fixed ascertained place occupied or used so far permanently that people may know or ascertain that there is a person there with whom they may negotiate the terms of a lease or to whom persons from time to time or upon any particular occasion or occasions may apply for the purpose of the carrying on of the company's business of renting property in Nicosia.

I, therefore, hold that the respondent company had a permanent place of business in the municipal limits of Nicosia within the meaning of proviso (b) to section 156 of the Law, and that, consequently, it does not qualify for exemption under that section.

For these reasons I would allow the appeal and order as in the President's judgment.

Appeal allowed with costs.