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NIKODIMOS
ANDREOU
AND OTHERS

v.

REPUBLIC
(THE DISTRICT
OFFICER PAPHOS)

[MALACHTOS. J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

NIKODIMOS ANDREOU AND OTHERS,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE DISTRICT OFFICER PAPHOS,

Respondent.

(Case No. 181/72).

Compensation for injury to property—Payment of Compensation for Injury to Property Law, 1962 (Law No. 57 of 1962)—Damage caused to property by persons unknown or by undetected animals—Tax-paying inhabitants of the village concerned liable to pay compensation to complainant irrespective of whether the damage caused is accidental or intentional—Section 3(1) of the Law.

Injury to property—Compensation for—Law No. 57 of 1962—See supra.

Statutes—Construction—Cardinal principles applicable—Construction of “damage or destruction” in section 2 of said Law No. 57 of 1962, supra—Term not restrictive—Statute declaring a certain word or expression to “mean...” or to “include”—Term restrictive in the former case—Extensive in the latter.

Statutes—Repeal—Effect of.

Words and Phrases—“Damage or destruction” in section 2 of the said Law No. 57 of 1962, supra.

Dismissing this recourse, the learned Judge of the Supreme Court :

Held, (1) In my view under section 3(1) of the Compensation for Injury to Property Law, 1962 (Law No. 57 of 1962) for any damage or destruction which has been caused to property by persons unknown or by undetected animals, the tax-paying inhabi-

tants of the village within the lands of which the property is situate shall be liable to pay compensation to the complainant.

- (2) It makes no difference whether the damage caused is accidental or intentional so long as it has been caused by unknown persons, as in the present case.

Cases referred to :

Becke v. Smith [1836] 2 M. and W. 191, at p. 195, per Parke, B.

Recourse.

Recourse against the decision of the respondent to impose on the applicants the sum of £140.- for damage caused to property by unknown and undetected persons by virtue of the Payment of Compensation for Injury to Property Law, 1962 (Law 57/62).

E. Lemonaris, for the applicant.

N. Charalambous, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:-

MALACHTOS, J.: The applicants in this recourse are 107 out of 123 tax-paying inhabitants of Lemona village in the Paphos District.

On the 5th day of May, 1970, a fire broke out in the haystacks of the interested parties in this recourse, namely, Erodotos Savva and Evangelos Ioannou both of Letymbou village, which haystacks were situate at locality "Xyla" in the area of Lemona. The circumstances under which this fire broke out are unknown. The damage to both haystacks was assessed at £140.- including the costs of such assessment.

Due to the fact that the chairman of the Lemona village Commission failed to prepare the relative list and allocate the said amount among the tax-paying inhabitants of the village, the District Officer of Paphos acting under section 16 of the Payment of Compensation for Injury to Property Law 1962 (Law 57/62) appointed

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two persons who performed the said duties by preparing and posting the said list in a conspicuous place in the village.

The applicants, relying on the report of the police who investigated this case, in which report is stated that "the fire was caused accidentally and most probably by a cigarette end" lodged, by virtue of section 8 of the Payment of Compensation for Injury to Property Law 1962 (57/62) at the Office of the District Officer of Paphos, objections in writing duly signed by them, where they all stated as a ground of their objection that the damage was not caused maliciously by unknown persons, but it was accidental and as such could not be recovered under the provisions of Law 57/62.

On the 5/4/72 the District Officer enquired into the objections of the applicants and by letter dated 19/4/72 (*exhibit 1*) informed each one of them that his objection was dismissed. The said letter reads as follows:

"I have the honour to refer to the enquiry carried out on the 5th of April in connection with the damage caused to the property of Messrs. Herodotos Savva and Evangelos Ioannou both of Letymbou and to inform you that from the facts it follows that the damage was caused by unknown and undetected persons and so the payment of compensation under the Payment of Compensation for Injury to Property Law, 1962, is imperative. Consequently, your objection is dismissed."

The applicants being dissatisfied with the above decision filed on 29/6/72 the present recourse seeking a declaration of the Court that the act and/or decision of the respondent by which the payment of compensation of £140.- was imposed upon the applicants for damage caused to property by unknown and undetected persons by virtue of Law 57/62, is declared null and void and of no legal effect whatsoever.

The application is based on the following grounds of Law :-

(1) The term "damage or destruction" as defined in section 2 of Law 57/62 includes abstraction, detachment or uprooting of property but not fire as the present case;

(2) Even if we assume that the term damage or destruction includes damage caused to property by fire, it does not cover any kind of fire as such fire in order to be covered by Law 57/62 must be proved that it was set intentionally. In the present case the element of malice is missing; and

(3) The assessed damage is excessive.

When the case came on for hearing counsel for applicants argued his case on the first two grounds and abandoned the third one. Likewise counsel for the respondent in arguing his case relied on only one ground, namely, that the decision complained of was lawfully taken according to Law 57/62, and abandoned all his other grounds of objection.

As to the first submission of counsel for applicant I must say that I find no merit.

The term "damage or destruction" appearing in section 2 of the interpretation section of the Law, is not restrictive.

This section reads as follows :

"In this law 'damage or destruction' includes the abstraction, detachment or uprooting of property capable of being abstracted, detached or uprooted".

It is a fundamental principle in the construction of a statute that the words must be given their literal meaning. If language is clear and explicit the Court must give effect to it. In *Becke v. Smith* [1936] 2 M. & W. 191 at page 195 Parke, B. had this to say :

"It is a very useful rule in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid any such inconvenience but no further".

The general rule of interpretation is that where a statute declares a certain word or expression to "mean" so-and-so, the definition is explanatory and restrictive in

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contradistinction to the use of the word "includes", which is extensive. The submission of counsel for applicants, therefore, would certainly be correct if instead of the word "includes" the word "means" was used as in the case of the definition of "animal", "property", etc. appearing in the same interpretation section of the law.

Counsel for applicant in making his second submission has been influenced by the provisions of subsection (3) of section 8 of the old law Cap. 84, which law has been repealed by law 57 of 1962. Subsection (3) of section 8 of the law repealed reads as follows :

"No objection shall be lodged by any person whose name appears in the list, or if lodged shall be valid, unless made on all or any of the following grounds :

(a)

(b) that the damage or destruction has been caused by accident or that the complainant has been concerned in or has contributed to, either directly or indirectly, such damage or destruction."

It is clear from the above that under the old law accidental damage afforded a valid ground of objection.

This subsection, however, has been omitted from the corresponding section 8 of the new law. No doubt, the effect of repealing a statute is to obliterate it as completely as if it had never been passed. So, in my view under section 3(1) of the new law, which is identical to section 3(1) of the law repealed, for any damage or destruction which has been caused to property by persons unknown or by undetected animals, the tax-paying inhabitants of the village within the lands of which the property is situate shall be liable to pay compensation to the complainant. It makes no difference whether the damage caused is accidental or intentional so long as it has been caused by unknown persons, as in the present case.

For the reasons stated above this recourse fails.

There will be no order as to costs.

*Application dismissed.
No order as to costs.*