1979 December 14

[HADJIANASTASSIOU, A. LOIZOU AND MALACHTOS, JJ.]

E. CIRILLI & A. PANTELIDES,

Appellants-Plaintiffs,

v.

METAFORIKI ETERIA DUMPERS (M.E.T.) LTD., AND OTHERS,

Respondents-Defendants.

(Civil Appeal No. 5393).

Statutes—Construction by reference to other statutes—Whether permissible—Definition in earlier Act dealing with the same subject-matter—No definition in subsequent Act—Impossible to construe expression "private motor-vehicles" in the order of the Council of Ministers, made under the Hire Purchase, Credit Sale and Hiring of Property (Control) Law, 1966 (32/66) *(Not. No.* 805 *of Official Gazette dated* 3.11.66 *Supplement No.* 3), *by reference to its definition in an earlier Act, the Motor Vehicles and Road Traffic Law, Cap.* 332.

Statutes—Construction—Anomalies—Circumstances in which Court can read words into an Act—Words of statute plain—Interpreted in their ordinary and natural meaning—Constuction of "private motor-vehicles" in the Order of the Council of Ministers, made under the Hire Purchase, Credit Sale and Hiring of Property (Control) Law, 1966 (32/66) *(Not. No.* 805 *of Official Gazette dated* 3.11.66, *Supplement No.* 3).

Bailment—Bailee for hire—Hire-purchase agreement of vehicles with power to owner to re-take possession on breach of terms by hirer —Default in payment of hire price—Agreement terminated—Hirer remains under any liability that had already accrued at date of termination—Right of owner to re-take possession of vehicles.

Words and phrases—"Private motor-vehicles".

By virtue of a hire-purchase agreement entered into on February 14, 1968, the appellants-plaintiffs agreed to hire to

respondents–defendants No. 1 ("the respondents") five vehicles, at a total hire price of £44,770 which were intended to be used by the respondents for removing ore at the mines of the Hellenic Mining Company. In case of cancellation of the above agreement the appellants were entitled, for the purpose of recovering possession of the vehicles in question, to enter any building of the respondents or under their control in which the said cars were to be found. The respondents paid certain sums of money on account of the hire price but as they failed to pay the balance due by the agreed time, the appellants sued them for the balance and for an order directing the return to them of the said vehicles.

The trial Court dismissed the action because the hire-purchase agreement was entered into in breach of the provisions of the Hire Purchase, Credit Sale and Hiring of Property (Control) Law, 1966 (32/66) and the Order of the Council of Ministers, published in Supplement No. 3 of the Official Gazette dated 3.11.1966, under Notification No. 805 ("Control Order 805") and was, therefore, void and unenforceable by reason of illegality.

Under Control Order 805 certain goods including "private motor-vehicles" were declared controlled and the hiring of such goods had to comply with section 4(1) of Law 32/66. There was no definition of the expression "private motor-vehicles" in Control Order 805 and in finding whether the vehicles in question were covered by this Order the trial Court relied on the definition of such expression as given in an earlier Act, the Motor-Vehicles and Road Traffic Law, Cap. 332.

Upon appeal by the plaintiffs:

Held, (1) that the earlier legislation, Cap. 332 and the recent one, 32/66, are not dealing with the same subject matter and Control Order 805 makes it clear that for the meaning of the terms contained therein one has to look in Law 32/66; that though neither in Control Order 805 nor in Law 32/66 is to be found a definition of the term or expression "private motor-vehicles" it was impermissible for the trial Court to look at an earlier legislation where the words have not been repeated in subsequent legislation, and particularly since one ought not even by any canon of construction to go back to the phraseology used in a previous Law; and that, therefore, the trial Court wrongly relied on the definition section of Cap. 332 in order

to arrive at the conclusion that the meaning of that expression in Control Order 805 was the same as that assigned to it by Cap. 332 (reasoning in *Richards* v. *Curwen* [1977] 3 All E.R. 426 applied).

(2) That though there is a lacuna in Control Order 805 this Court is not entitled to read words in this Order; that in the absence of a definition the term "private motor-vehicles" has to be interpreted in its ordinary and natural meaning (*Stock* v. *Frank Jones (Tipton) Ltd.* [1978] 1 All E.R. 948 adopted and followed); that the said term, in its ordinary and natural meaning, cannot include, also, motor-vehicles used for commercial purposes and for reward, and particularly cannot include the type of motor-vehicles hired to the respondents; that, therefore, the trial Court wrongly approached the matter; and that, accordingly, its judgment must be set aside once the hire-purchase agreement was neither void nor illegal.

On the question whether the respondents can be ordered to return the motor-vehicles to the appellants:

That the hire-purchase agreement clearly states that in the event of the hirer failing to observe any conditions of the agreement the appellants would be entitled to re-take possession of the vehicles; that in the light of this clear and unambiguous clause the hirer remains under any liability that had already accrued at the date of the termination of the agreement and in view of the acceptance of the breach of the agreement by the hirer the appellants are entitled to re-take possession on breach of the agreement (*Brooks* v. *Beirnstein* [1909] 1 Q.B. 98 applied); that, therefore, the trial Court wrongly refused to order the return of the motor-vehicles in question to the appellants; and that, accordingly, an order for their return to their owners must be made.

Appeal allowed.

Cases referred to:

Escoigne Properties Ltd. v. *Inland Revenue Commissioners* [1958] A.C. 549;

Richards v. *Curwen* [1977] 3 All E.R. 426;

Thompson v. *Goold & Co.* [1910] A.C. 409 at p. 420;

Vickers, Sons & Maxim Ltd. v. *Evans* [1910] A.C. 444 at p. 445;

Stock v. *Frank Jones (Tipton) Ltd.* [1978] 1 All E.R. 948 at pp. 951–952;

Brooks v. *Beirnstein* [1909] 1 Q.B. 98;

Chatterton v. *Maclean* [1951] 1 All E.R. 761;

Re Davis & Co. Ex parte Rawlings [1888] 22 Q.B.D. 193;

Lep Air Services Ltd. v. *Rolloswin* [1971] 3 All E.R. 45;

Moschi v. *Lep Air Services Ltd.* [1972] 2 All E.R. 393;

Bowmakers Ltd. v. *Barnet Instruments Ltd.* [1944] 2 All E.R. 579;

Belvoir Finance v. *Cole & Co.* [1969] 2 All E.R. 904;

Belvoir Finance v. *Stapleton* [1970] 3 All E.R. 664;

Sajan Singh v. *Sardara Ali* [1960] 1 All E.R. 269;

Kingsley v. *Sterling Industrial Securities Ltd.* [1966] 2 All E.R. 414 at p. 427.

Appeal.

Appeal by plaintiffs against the judgment of the District Court of Nicosia (Demetriades, P.D.C. and Papadopoulos S.D.J.) dated the 15th January, 1975 (Action No. 5764/71) whereby their claim for, *inter alia*, a declaration of the Court that the contract in writing in the form of a hire-purchase agreement entered between them and the defendant was void, was dismissed.

T. Papadopoulos, for the appellants.

E. Lemonaris, for respondents 1, 2, 3, 4, and 5.

L. Papaphilippou, for respondent 6.

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment of the Court. In this appeal, the main questions raised are two: (1) whether the Full District Court of Nicosia, in dismissing the action of the appellants, rightly came to the conclusion that the contract in writing in the form of a hire-purchase agreement, entered between the appellants and the respondent company, Metaforiki Eteria Dumpers (MET) Ltd. is in breach of the Hire Purchase, Credit Sale and Hiring of Property (Control) Law (1966), (Law 32/66), and is therefore, void and unenforceable; and (2) that the trial Court rightly came to the conclusion that once the hire-purchase agreement was found to be illegal they

were unable to order the return of the motor-vehicles to the plaintiffs.

By an agreement in the form of a hire-purchase agreement dated February 14, 1968, E. Cirillis and E. Pantelides, as owners, hired five motor-vehicles (Fiat), Dumpers D.K. 20 to Metaforiki Eteria Dumpers (Met) Ltd. The agreement provided that the value of these motor vehicles was the sum of £44, 770 (English pounds) and the hirer, the said company, agreed for the period of hiring to commence as from the date of the signing of the agreement until November 1, 1972, subject to cancellation as provided in the said contract. Under clause 2 of the agreement, the hirer agreed to pay for that period the sum of £44,770 including the agreed interest payable as follows: The £29,972 payable to the order of Calabrese, Bari (plaintiffs No. 1), by bill of exchange, and £14,698 payable to the order of Cirillis and Pantelides (plaintiffs No. 2). It was further agreed that the instalments, and for each of which the hirer issued bonds carrying interest, were guaranteed by Messrs. G. Papacharalambous, G. Toumazis, Andreas Pandeli and M. Kouzoupi, and Manoli Panteli. The said bonds were given by the hirer and accepted by the owner as security for the punctual performance of the present contract and in no case could be considered as payment of the hire or part of the debt unless they were actually paid off.

By clause 3, it was provided "During the period of the present hiring the said vehicles remained the absolute property of the owner and shall stand registered in the name of the owner under numbers ...".

By clause 4, the hirer agreed "the owner shall be entitled to get the said bonds discounted, and the hirer undertakes to pay each bond on its maturity, and if the hirer falls in arrears with the payment of any of the aforesaid bonds on its maturity, then all the said bonds and the said guarantee become due and payable and the owner has the right to cancel the hiring in the case of delay in payment of any bond, but shall be entitled to enforce by legal proceedings payment of any of the above bonds which became due by suing both the hirer and his guarantor".

By clause 6 it was provided: "In case of cancellation of this contract as above provided, the owner shall be entitled for the purpose of recovering possession of the cars hired on by this

contract, to enter any building of the hirer or under his control in which the said cars are to be found".

By clause 7 "the hirer shall be under an obligation to keep the cars in good condition and all damage which might be caused to the cars for any reason, or partial or total loss of the cars, shall be borne by the hirer and his guarantor". By clause 10, it was provided: "For the breaches referred to in paragraphs 7, 8 and 9 of this contract or for any of them, the owner shall be entitled to cancel the present hiring and exercise his right referred to in paragraphs 4, 5, 6 and 12 of the contract. The guarantor shall be jointly liable with the hirer for the said breaches or of any of them".

The undisputed facts of this case, as the trial Court has found, are these: Defendants No. 1, a company registered in Cyprus under our law, decided to buy through plaintiffs No. 2, E. Cirillis and Pantelides of Nicosia, five motor-vehicles, the body of which was to be built to meet the defendants' requirements. For this reason, Mr. Leandros Zachariades, the Managing Director of plaintiffs No. 2—motor car importers in Cyprus. Mr. Toumazis (defendant No. 3) and a certain Phedias, went to Italy for the purpose of visiting the Fiat factory and selecting the right chassis for the five motor-vehicles in question. They then proceeded to Bari of Italy where the defendants selected the special type of body which they wanted to be built. In the meantime, and before the bodies of these vehicles were constructed, Mr. Calabrese on behalf of plaintiffs No. 1 visited Cyprus. He inspected the mines of the Hellenic Mining Company of Cyprus where the vehicles were to be employed, and made certain modifications so that the [illegible] would produce would be exactly the one required by the defendants and then the bodies of the vehicles were constructed. These vehicles were to be used by defendants No. 1 for removing ore at the mines of the Hellenic Mining Company. The said motor-vehicles were later on imported in Cyprus after a special import licence was issued by the Government of the Republic. On March 28, 1968, the said five motor-vehicles were granted a carriers' permit in accordance with the provisions of the Motor Transport (Regulation) Law, 1964, (No. 16/64), and on April 13, 1968, they were registered.

The defendants, according to the evidence, paid on account of

the hire price certain sums of money, but because there was a long delay in meeting their obligations, and once neither the defendants nor the guarantors paid the instalments due, the appellants addressed a letter to them terminating the hiring, in accordance with the said hire-purchase agreement.

The plaintiffs filed the present action 5764/71 and plaintiffs No. 1 claimed the sum of £18,415 with interest thereon at 9% p.a. from 1.8.70 to final payment as balance due by virtue of the above-mentioned contract and/or by virtue of bills of exchange and/or promissory notes and/or bonds; the sum of £11,734 in favour of plaintiffs No. 2 with interest thereon at 9% p.a. from 1.2.71 to final payment, being balance due under the said contract and/or by virtue of bills of exchange and/or bonds and/or promissory notes; an order of the Court for the delivery of the possession of the above described vehicles and their sale in satisfaction of the claims of the plaintiffs, the defendants being liable for any balance; damages for breach of the said hire purchase agreement and/or written contract and for damage caused to the vehicles, the subject-matter of the action.

According to Georghios Savvides, the accountant of plaintiffs No. 2, on the date of the hearing of the action, the defendant Co. owed the sum of £11,734 plus interest at 9% p. a. In addition, an employee of Barclays Bank, Neofytos Herodotou, said that 9 bills of exchange drawn by plaintiffs No. 1 and accepted by the defendants were still unpaid and were in the possession of the bank. Those bills of exchange which are foreign bills were all protested and are of the total value of £20,579.

On the contrary the defendants repudiated the allegation of the plaintiffs and in their defence, during the trial of this case, they relied mainly on (a) that the transaction between the plaintiffs and the defendants is illegal because the parties did not comply with the provisions of the Hire Purchase, Credit Sales and Hiring of Property (Control) Law, 1966, (Law 32/66) and the Order published under Not. No. 805; (b) that the bills of exchange, being foreign bills, were not properly protested; and (c) that plaintiffs No. 1, not being a party to the hire purchase agreement cannot sue under it.

There is no doubt that the House of Representatives in enacting the Hire Purchase, Credit Sale and Hiring of Property

(Control) Law, 32/66, had in mind to provide for the control of hire purchase, credit sale and hiring of property, and that the Council of Ministers should take steps against inflation and for improving the exchange situation.

The trial Court dismissed the action of the plaintiffs because in their view both the hire-purchase agreement and the hired vehicles fell within the provisions of the Control Order 805, and that the whole transaction was illegal. The Court dismissed also the counter-claim of the defendants.

Counsel for the appellants, in support of his second ground of law argued (a) that the trial Court wrongly interpreted the term "private motor-vehicles" appearing in the First Schedule of the Control Order, and wrongly relied on the definition in Cap. 332, when there were a number of other laws containing definitions regarding motor-vehicles; and (b) that because the Control Order has a lacuna or a serious flaw in its drafting, it led to anomalies, especially since the description of the items contained in that schedule are not defined. With those difficulties in mind, counsel further argued that regarding the terms or expressions "refrigerators of home use" or "washing machines", the legislator intended to give to those terms or expressions their original and natural meaning; but with regard to the term or expression "private motor-vehicles", there was nothing in the Control Order indicating that it was that definition found by the trial Court that it was intended, particularly so when the Court did not consider the other available definitions, and particularly those appearing in the Regulations. Finally, counsel submitted that a "private motor-vehicle" is not a motor-vehicle which can be used for carrying either passengers or cargo at the same time.

On the contrary, counsel for the respondents Nos. 1-5 supported the finding of the trial Court and urged that the Court should firstly consider what was the object of the statute. He further argued that the motor-vehicles hired by the respondent should be considered as being private motor-vehicles and not public, and that in construing the term or expression contained in the Control Order 805, the Court should not accept the invitation of counsel for the appellants to read words into the Control Order. In support of his argument, counsel relied on the case of *Escoigne Properties Ltd.* v. *Inland Revenue Commissioners*, [1958] A.C., p. 549.

Having considered the argument of counsel, we think that the case of *Richards* v. *Curwen*, [1977] 3 All E.R. 426, would provide the answer to the first question. Wien, J. delivering the first Judgment at the invitation of Lord Widgery C.J., and having dealt with the Fire Arms Act, 1968, s. 58(2), as well as with the question whether it was open to justices to find that the firearms were "antique", in dismissing the appeal, said at p. 430:-

> " The third approach, and the approach for which counsel for the appellant contended, was one which invited the Court to import part of the definition of an 'antique pistol' in the 1903 Act, and we could therefore decide in this Court that an antique firearm cannot include one where there is reasonable ground for believing it to be capable of being effectually used. For that proposition counsel for the appellant refers to Maxwell's Interpretation of Statutes[1] where, in one passage, it is said: 'Light may be thrown on the meaning of a phrase in a statute by reference to a specific phrase in an earlier statute dealing with the same subject-matter.'. Secondly, he relied on another passage[2] to the effect that one ought to look at the mischief which the particular Act, namely the Firearms Act 1968, was passed to prevent. He submits that one ought to have regard to the words in the heading to Part I of the Act: '..... Prevention of crime and measures to protect public safety', and submits accordingly that one is entitled to go back to the words in the 1903 Act.
>
> I disagree with that approach completely. Indeed it would lead to a patent absurdity because counsel for the appellant is merely selecting one part of the term 'antique pistol' in the 1903 Act, and it would not bear on a person, for example, who purchased a firearm, on any basis an antique firearm, being perhaps 200 or 300 years old, together with ammunition for use in that firearm. Counsel for the appellant never sought to deal with the part of the proposition.
>
> Furthermore, I think it is impermissible to look at an earlier Act where the words have not been repeated in

1. 12th Edn. (1969) p. 66.
2. Ibid, p. 40.

subsequent legislation, since one ought not even by any canon of construction to go back to the phraseology used in a previous Act. In my view the proper approach is the first of the three adumbrated by counsel for the appellant. It is in all cases a question of fact and degree. It seems to me that the justices approached this matter sensibly and properly. They took into account, as was conceded, that the respondent is a genuine collector of old firearms. He had these firearms as curiosities or ornaments. They were capable of being something very nearly approaching 100 years old and the justices rightly in my judgment came to the conclusion that the prosecution's case had not been made out. They stated so quite explicitly. For those reasons I would dismiss this appeal."

Having considered very carefully the ratio-decidendi of *Richards* v. *Curwen* (*supra*), we would endorse and apply its reasoning to the present case. In our view, our earlier legislation, Cap. 332, and our recent one, 32/66, are not dealing with the same subject matter, and as we have pointed out earlier, the Control Order 805, makes it clear that we should look for the meaning of the terms contained therein in Law 32/66. It is true, of course, that neither in the said Control Order 805, nor in law 32/66 is to be found a definition of the term or expression "private motor-vehicles". We, therefore, think that it was impermissible for the trial Court to look at an earlier legislation where the words have not been repeated in subsequent legislation, and particularly since one ought not even by any canon of construction to go back to the phraseology used in a previous law. In our opinion, therefore, the learned Judges wrongly relied on the definition section of Cap. 332 in order to arrive at the conclusion that the meaning of that expression in the Control Order was the same as that assigned to it by Chapter 332.

Turning now to the allegation of counsel that the Control Order has a lacuna or a serious flaw in its drafting, he contended that a private vehicle is not a vehicle which can be used for carrying either passengers and/or cargo at the same time. In explaining further his argument, he suggested that this Court should use the definitions of the words "public service motor-vehicle" and "motor-vehicle" for the definition of the word "private motor-vehicle", and where there appear in that definition the words "motor-vehicle" should interject the definition

of "motor-vehicle". And where the words "public service motor-vehicle" which appear in the second line of this definition interject the definition underneath. With that in mind, counsel added, this is what we get. A "private motor-vehicle" means here, (and he interposed the words defined) vehicle, a private motor-vehicle, which means any mechanically propelled vehicle or any trailer drawn thereby other than (here he interposed the definition of the words "public service motor-vehicle") other than a motor vehicle used for the conveyance of passengers who are used also for the carriage of goods or not.

Finally, he expressed the view that this is the full definition intended by the law, of the words "private motor-vehicle", and that he had nothing else to state except interpose into the definition of "public motor-vehicle" the further definitions given by the law of the words "motor-vehicle" and the words "public service motor-vehicle". Obviously, learned counsel concluded, the definition that results is an implanting of the definitions given by the law; and that it is something different than the private motor-vehicle as related to the lorries, subject matter of this action, because it was obvious from that definition which he had included that a private motor-vehicle is not a motor-vehicle which can be used for carrying either passengers and cargo at the same time.

We must confess that we had some doubts or some difficulty in following the formula suggested by counsel, but we agree with him that there is a lacuna in the Control Order 805, which definitely has created some difficulties in interpreting the term or expression "private motor-vehicles". We also find ourselves in agreement with counsel for the respondents 1-5, that if the purpose of the formula suggested by counsel for the appellant amounts to reading words into the Control Order 805, then according to a number of authorities, it is clearly laid down, in construing the words of a statute, that no words be read into that statute. "It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity, it is a wrong thing to do", said Lord Mersey in *Thompson* v. *Goold & Co.*, [1910] A.C. 409 at 420.

It is said, time and again, that if there is nothing to modify, nothing to alter, nothing to qualify the language which a statute contains, the words and sentences must be construed in the

ordinary and natural meaning. "We are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself" said Lord Loreburn L.C. in *Vickers, Sons & Maxim Ltd.* v. *Evans*, [1910] A.C. 444 at 445.

In a very recent case, in *Stock* v. *Frank Jones (Tipton) Ltd.*, [1978] 1 All E.R. 948, the House of Lords dealt with the question whether the words of a statute were leading to anomalous results, and the circumstances in which a Court is justified in departing from the plain meaning of words of a statute. Viscount Dilhorne, delivering the first speech, in dismissing the appeal, said at pp. 951–952:–

> " It is now fashionable to talk of a purposive construction of a statute, but it has been recognised since the 17th century that it is the task of the judiciary in interpreting an Act to seek to interpret it 'according to the intent of them that made it'[1]. If it were the case that it appeared that an Act might have been better drafted, or that amendment to it might be less productive of anomalies, it is not open to the Court to remedy the defect. That must be left to the legislature.....
>
> 'It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do' said Lord Mersey in Thompson *v.* Goold & Co.[2] 'We are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself' said Lord Loreburn L.C. in Vickers, Sons & Maxim Ltd. *v.* Evans.[3]
>
> I can see no justification for reading the words 'and at the date of the dismissal were taking part' into para. 8(1)(a). So to do would be to limit the scope of the protection against victimisation given by the paragraph. Its language is clear and unambiguous. Criticisms are not infrequently made of draftsmen. I can see no ground for criticising the drafting of this paragraph or for concluding

1. 4 Co. Inst. 330.
2. [1910] A.C. 409 at 420.
3. [1910] A.C. 444 at 445.

that the use of the past tense in para 8(2)(a) was not deliberate and was an error in drafting."

Lord Simon of Glaisdale, having agreed with Viscount Dilhorne that the appeal should be dismissed, said at pp. 952–954:–

"In his argument based on alleged anomaly counsel for the appellants was founding himself on the rider in what has become to be known as 'Lord Wensleydale's golden rule'[1] of statutory construction, namely one is to apply statutory words and phrases according to their natural and ordinary meaning without addition or subtraction, unless that meaning produces injustice, absurdity, anomaly or contradiction, in which case one may modify the natural and ordinary meaning so as to obviate such injustice etc. but no further. (Nowadays we should add to 'natural and ordinary meaning' the words 'in their context and according to the appropriate linguistic register'). Counsel for the appellants urged your Lordships, as he did the Court of Appeal, to modify the natural and ordinary meaning of the statutory language, in effect, to add words which are not in the statute in order to obviate what he claimed were the absurd and anomalous consequences of taking the words literally.

The rider to Lord Wensleydale's golden rule may seem to be at variance with the citations of high authority contained in the speeches of my noble and learned friends. But this is not really so. The clue to their reconciliation is to be found in the frequently cited passage on statutory construction in Lord Blackburn's speech in River Wear Comrs *v.* Adamson[2]:

'In all cases the object is to see what is the intention expressed by the words used. But, from the imperfection of language, it is impossible to know what that intention is without inquiring farther, and seeing what the circumstances were with reference to which the words were used, and what was the object, appearing from those circumstances, which the person using them had in view...' ".

1. Caledonian Railway Co. *v.* North British Railway Co. [1881] 6 App. Cas. 114 at 131 per Lord Blackburn.
2. [1877] 2 App. Cas. 743 at 763.

Finally, Lord Scarman said at pp. 955–956:–

" I wish, however, to add a few words of my own on the 'anomalies' argument. Counsel for the appellants sought to give the words a meaning other than their plain meaning by drawing attention to what he called the 'anomalies' which would result from giving effect to the words used by Parliament. If the words used be plain, this is, I think, an illegitimate method of statutory interpretation unless it can be demonstrated that the anomalies are such that they produce an absurdity which Parliament could not have intended, or destroy the remedy established by Parliament to deal with the mischief which the Act is designed to combat.

It is not enough that the words, though clear, lead to a 'manifest absurdity': per Lord Esher MR in R. *v.* City of London Court Judge[1]. Lord Atkinson put the point starkly in Vacher & Sons Ltd. *v.* London Society of Compositors[2]:

> 'If the language of a statute be plain, admitting of only one meaning, the Legislature must be taken to have meant and intended what it has plainly expressed, and whatever it has in clear terms enacted must be enforced though it should lead to absurd or mischievous results.'

The reason for the rule was given by Lord Tenterden CJ in Brandling *v.* Barrington[3] in a passage in which he was considering the so–called 'equity of a statute'; he commented—

> '...that is so much safer and better to rely on and abide by the plain words, although the Legislature might possibly have provided for other cases had their attention been directed to them'.

As Lord Moulton said in *Vacher's* case[4]:

'The argument ab inconvenienti is one which requires to be used with great caution. There is a danger that it may

1. [1892] 1 Q.B. 273 at 290.
2. [1913] A.C. 107 at 121.
3. [1827] 6 B & C 467 at 475.
4. [1913] A.C. 107 at 130.

degrade into mere judicial criticism of the propriety of the acts of the Legislature.'

If the words used by Parliament are plain, there is no room for the 'anomalies' test, unless the consequences are so absurd that, without going outside the statute, one can see that Parliament must have made a drafting mistake."

In the light of these weightly pronouncements, we have no alternative, in the absence of a definition to interpret or construe the term "private motor-vehicle" in its ordinary and natural meaning, once we are not entitled to read words into the Control Order 805. In taking this stand, we would adopt and follow *Stock* v. *Frank Jones* (*Tipton*) *Ltd.* (*supra*).

In our view, therefore, the term or expression "private motor-vehicles", in its ordinary and natural meaning, cannot include also motor-vehicles used for commercial purposes and for reward, and particularly could not include the type of motor-vehicles hired to the respondents.

With this construction in mind, we think that the trial Court wrongly approached the whole matter, as we believe that having regard to the facts of this case, the motor-vehicles hired to the respondents do not fall within the provisions of Law 32/66 and the Control Order 805. We would, therefore, set aside the judgment of the trial Court once, we repeat, the hire-purchase agreement is neither void nor illegal, and because the appellants have terminated the agreement in question, in accordance with clause 4 and are entitled to judgment as per claim, both against respondents 1 and respondents 2-6, the guarantors, for any amount which has been accrued and is due.

The next question is whether the respondents can be ordered to return the motor-vehicles to the appellants. Having listened to the arguments of all three counsel, we have decided to make an order for the return of the motor-vehicles to the appellants for the reasons enumerated in this judgment. There is no doubt that the hire-purchase agreement clearly states that in the event of the hirer failing to observe any conditions of the agreement the appellants would be entitled to re-take possession of the motor-vehicles. In the light of this clear and unambiguous clause we would repeat that the hirer remains under any liability that had already accrued at the date of the termination of the agreement

and, in view of the acceptance of the breach of the agreement by the hirer, the appellants are entitled in our view, in accordance, *inter alia*, with cl. 6, to re-take possession on breach of agreement by the hirer, as we have said earlier. We think the case of *Brooks* v. *Beirnstein* [1909] 1 Q.B., 98 supports this proposition and is applicable to the present case. In addition we would add that the guarantors are also liable under the agreement once they have not shown that they have been released therefrom. Indeed no such argument was put forward by counsel appearing for all the respondents. See *Chatterton* v. *Maclean* [1951] 1 All E.R., 761. Parker, J. delivering the judgment of the Court in that case relied, *inter alia*, on Re Davis & Co. Ex *p. Rawlings* [1888] 22 Q.B.D. 193, and said at p. 764:-

> " I think the true position here was that the hirer had clearly been guilty of a breach of the hire-purchase agreement. He appears to have been about a year in arrear with his monthly payments, and he had, I should think fraudulently, sold this car. On ordinary principles of law the Trust had the right either to hold him to the agreement or to treat his conduct as a repudiation of the agreement. They also had the right, given them expressly by cl. 5 of the hire-purchase agreement, to re-take possession of the car against the hirer, whereupon the agreement was to cease and determine except as therein provided, but that was a right and in no way a remedy of which they were bound to avail themselves. I think the true effect of what happened was that they chose to treat the hirer's conduct as a repudiation of the hire-purchase agreement, because they, being the owners, parted with the property in the car to the plaintiff and thereby clearly put it out of their power to continue to hold the hirer to the agreement. What is the effect of that? The hirer remains under any liability that has already accrued at the date of the acceptance of the repudiation. That is put beyond all doubt by Brooks *v.* Beirnstein[1]. The hirer would also remain liable for any damages for breach of contract. If he remained liable for the accrued liability—and, of course, it was only right that he should remain liable, because he had had the benefit of the car for the period relating to it—prima facie, he being liable and the sum not having been paid, the guarantor

1 [1909] 1 K.B. 98.

is liable under his guarantee. It is rightly admitted by both sides that the endorsement on the hire-purchase agreement, reciting an agreement between the Trust and the plaintiff, cannot affect the hirer's liability for hire already accrued. Therefore, in May, 1947, and at all times after that date the position was that the Trust could have sued the hirer for hire due, and he would have no answer whatsoever. Prima facie, therefore, the guarantor, the defendant in this action, would also be liable unless he could show that he had been released."

The ratio-decidendi of the above cases applied in *Lep Air Services Ltd.* v. *Rolloswin* [1971] 3 All E.R. 45 and in *Moschi* v. *Lep Air Services Ltd.* [1972] 2 All E.R. 393.

The trial Court dealing with that question viz., with regard to the return of the motor-vehicles addressed their mind to the ratio-decidendi of *Bowmakers Ltd.* v. *Barnet Instruments Ltd.*, [1944] 2 All E.R. 579. Du Parcq, L.J., delivering the Judgment of the Court of Appeal, said at pp. 582, 583:-

"The question then is whether in the circumstances the plaintiffs are without a remedy. So far as their claim in conversion is concerned, they are not relying on the hiring agreements at all.....

In our opinion a man's right to possess his own chattels will as a general rule be enforced against one who, without any claim of right, is detaining them, or has converted them to his own use, even though it may appear either from the pleadings, or in the course of the trial, that the chattels in question came into the defendant's possession by reason of an illegal contract between himself and the plaintiff, provided that the plaintiff does not seek, and is not forced, either to found his claim on the illegal contract, or to plead its illegality in order to support his claim.....

The Latin maxim which MELLOR, J., cited must not be understood as meaning that where a transaction is vitiated by illegality the person left in possession of goods after its completion is always and of necessity entitled to keep them. Its true meaning is that, where the circumstances are such that the Court will refuse to assist either party, the consequences must in fact follow that the party

in possession will not be disturbed. As LORD MANSFIELD said in the case already cited, the defendant then obtains an advantage 'contrary to the real justice' and so to say, 'by accident'.

It must not be supposed that the general rule which we have stated is subject to no exception."

The ratio decidendi of this case was applied in *Belvoir Finance* v. *Cole & Co.* [1969] 2 All E.R. 904; and in *Belvoir Finance* v. *Stapleton* [1970] 3 All E.R. 664.

With these cases in mind, and particularly *Bowmakers Ltd.*, the trial Court observed that this case was criticized by Guest on the Law of Hire Purchase, 1966 edn. and added that since then this case was applied in two English cases. Finally, the Court said this:-

" In the light of the decision in the *Bowmakers* case, we hold that we cannot order the return of the vehicles to the plaintiff".

With great respect to the view of the trial Court, we think that those two cases quoted are distinguishable both on the facts and on the law from the present case, and in any event, *Bowmakers* case (*supra*) has been relied on and found to be still good law. In *Belvoir Finance* v. *Stapleton* (*supra*), the cases *Bowmakers Ltd.* (*supra*), Sajan Singh *v.* Sardara Ali, [1960] 1 All E.R. 269 and the dictum of Winn L.J. in *Kingsley v. Sterling Industrial Securities Ltd.*, [1966] 2 All E.R. 414 at 427 applied.

Lord Denning M.R., delivering the first Judgment, said at p. 667:-

" I do not accept this distinction taken by counsel for the defendant. I think that the proposition stated in Sajan Singh *v.* Sardara Ali[1] applies even where the transferee has not taken possession of the property, so long as the title to it has passed. If this were not so, it would mean that anyone could take the property with impunity, because there would be no one who could show a title to it. Take this very case. The dealers who sold the car to the finance company, cannot claim it back from anyone. They have

1. [1960] 1 All E.R. at 272.

received their price and are out of the picture. Belgravia, who resold the car illegally to a purchaser, cannot claim it from him or anyone else, for they have received the price too. The only persons who can claim it are the finance company who paid for it and have not been repaid. Although it obtained the car under a contract which was illegal, nevertheless, inasmuch as the contract was executed and the property passed, the car belonged to the finance company and it can claim it. This was the view of Winn L.J. in Kingsley *v.* Sterling Industrial Securities Ltd.[1] and I agree with it. *Bowmakers*[2] was rightly decided, even though this point was not argued."

Sachs, L.J. delivering the second Judgment, said at pp. 668–669:–

" It was submitted by counsel for the defendant that as a result the finance company cannot establish its title to these cars against any third parties in general and against the defendant in particular. It is argued that this is because—as is the case—it cannot prove its title without putting in evidence and then relying on an illegal contract.

The effect of accepting this submission would, of course, be drastic. It was plain, as indeed counsel for the defendant conceded, that in the circumstances of this case as a whole, there was no one other than the finance company in whom the ownership of these cars could be said in law to be vested at the material time.....

There is, however, ample authority for rejecting a proposition that would have these results. Of these the first and nowadays most cited is Bowmakers Ltd. *v.* Barnet Instruments Ltd.[3] where du Parcq, L.J., when giving the judgment of the Court said:

> ' Prima facie, a man is entitled to his own property, and it is not a general principle of our law (as was suggested) that when one man's goods have got into another's possession in consequence of some unlawful

1. [1966] 2 All E.R. 414 at 427.
2. [1944] 2 All E.R. 579.
3. [1944] 2 All E.R. 579 at 582.

dealings between them, the true owner can never be allowed to recover those goods by an action.'

Fifteen years later came the decision in Sajan Singh v. Sardara Ali[1]. It is only necessary to quote two passages from the opinion of Lord Denning. The first reads:[2]

'Although the transaction between the respondent and the appellant was illegal, nevertheless it was fully executed and carried out; and on that account it was effective to pass the property in the lorry to the respondent'.

Then a little later he said:[3]

'The reason is because the transferor, having fully achieved his unworthy end, cannot be allowed to turn round and repudiate the means by which he did it—he cannot throw over the transfer. And the transferee, having got the property, can assert his title to it against all the world, not because he has any merit of his own, but because there is no one who can assert a better title to it. The Court does not confiscate the property because of the illegality...'

It follows that despite the careful and persuasive arguments of counsel for the defendant, I have no hesitation in supporting the judgment of the trial Judge. It is quite clear that the title to the cars passed as soon as the agreement between the finance company and the dealers was executed and that the passing of this property was not affected by the illegality of that contract nor that of the hire-purchase agreement."

Having reviewed the authorities at length, and in the circumstances of this case, we think that even on the strength of the authorities quoted, the trial Court wrongly refused to order the return of the motor-vehicles in question to their owners, the appellants. We would, therefore, set aside this decision also, and we order the return of the said motor-vehicles to their owners.

1. [1960] 1 All E.R. 269.
2. [1960] 1 All E.R. at 272.
3. [1960] 1 All E.R. at 272, 273.

In a case like this with so many legal points raised and argued very ably by all counsel, we ought not to conclude this Judgment without expressing our indebtedness in the preparation of it.

We would allow this appeal. No order as to costs.

Appeal allowed. No order as to costs.