

1983 June 28

[HADJIANASTASSIOU, DEMETRIADES, SAVVIDES, LORIS, STYLIANIDES  
AND PIKIS, JJ.]

VASSILIKO CEMENT WORKS LTD.,

*Appellants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF COMMERCE & INDUSTRY,

*Respondents.*

(*Revisional Jurisdiction  
Appeal No. 281*).

*Constitutional Law—Interpretation of Constitutional Provisions—  
Principles applicable—Interpretation of Article 188.1 of the  
Constitution—“Made by virtue of a Law” in Article 188.5*

5 *Defence (Exportation of Goods) Regulations, 1956—Valid and in  
force on the date prior to Independence and they continued to  
be in force—Article 188.1 of the Constitution.*

10 *Statutes—Repeal by implication—Principles applicable—Supplies  
and Services (Regulation and Control) Law, 1962 (Law 32/62)  
has not repealed by implication the Defence (Exportation of  
Goods) Regulations, 1956 and the Supplies and Services (Trans-  
sitional Powers) (Continuation) Law Cap. 175A.*

15 This appeal was directed against an interim decision of the Pre-  
sident of the Court where by he pronounced for the validity of the  
Defence (Exportation of Goods) Regulations 1956 (“the Regula-  
tions”).

Counsel for the appellants submitted that the Regulations do  
not continue to be in force after the establishment of the Republic  
on the 16th August 1960, inasmuch as:-

20 (a) They are not a “law” within the meaning of Article 188\*  
of the Constitution; and,

\* Article 188.1 provides as follows:

“1. Subject to the provisions of this Constitution and to the following provisions  
of this Article, all laws in force on the date of the coming into operation of this  
Constitution shall, until amended, whether by way of variation, addition or repeal,  
by any law or communal law, as the case may be, made under this Constitution,  
continue in force on or after that date, and shall, as from that date be construed  
and applied with such modification as may be necessary to bring them into con-  
formity with this Constitution”).

- (b) Assuming that they survive the Constitution, the Regulations have been repealed by virtue of Law 32/62, and, if not repealed expressly or by implication, they cannot be relied upon once Law 32/62 made provision for the same subject-matter by legislation enacted by the legislative machinery created by the Constitution. 5

The Regulations were made in 1945 at a time when Cyprus was a Crown Colony by the Governor of Cyprus, in exercise of the powers vested in him by the Supplies and Services (Transitional Powers) Act, 1945, as extended to the Colony by the Supplies and Services (Transitional Powers) (Colonies, etc.), Order in Council. As the Act was due to expire on 10.12.1958, the Supplies and Services (Transitional Powers) (Continuation) Law No. 36/58, Cap. 175A, was passed on 7.11.1958 that came into operation upon the expiration of the Act. 10  
15  
By section 6 of the said Law the Regulations were "deemed to be made by the Governor under this Law and shall, with necessary modifications, have effect accordingly".

*Held*, (after stating the principles governing interpretation of Constitutional provisions) (1) that all laws, including public instruments, valid and in force on the date prior to the establishment of the Republic were saved and continued to be in force subject to the necessary modifications; that there is no difference in the expression "made by virtue of a Law" and "deemed to have been made under a Law and have effect under this Law" which is the expression used in Cap. 175A; and that the Regulations were valid and in force on the date prior to Independence and they continued to be in force. 20  
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(2) That the Supplies and Services (Regulation and Control) Law, 1962 (Law 32/62) is not inconsistent with the Regulations or Law Cap. 175A and therefore it has not been repealed by implication the previous Law and the Regulations. 30

*Appeal dismissed.*

Cases referred to:

- Abeysekera v. Jayatilake* [1932] A.C. 260; 35  
*Cambell v. Hall* (774) 1 Cowp. 204;  
*Sammut v. Strickland* [1938] A.C. 678;

*Christodoulou v. Republic*, 1 R.S.C.C. 1 at p. 4;

*Republic v. Zacharia*, 2 R.S.C.C. 1 at p. 6;

*Sturges v. Crowninshield*, 4 L. ed. 529 at p. 550;

5 *Jacobson v. Commonwealth of Massachusetts*, 49 L.ed. 643  
at p. 648;

*Attorney-General for Ontario v. Attorney-General for Canada*  
[1912] A.C. 571 at p. 583;

*River Weir Commissioners v. Adamson* [1877] 2 A.C. 743 at  
p. 764;

10 *Secretary of State v. Bank of India* (1938) 65 I.A. 286;

*Ozturk v. The Republic*, 2 R.S.C.C. 35 at p. 39;

*Irfan and Others v. Republic*, 3 R.S.C.C. 39;

*Kutner v. Phillips* [1891] 2 Q.B. 267 at p. 272;

*Watson v. Winch* [1916] 1 K.B. 688 at p. 690.

### 15 Appeal.

Appeal against the interim decision of the President of the  
Supreme Court of Cyprus, (Triantafyllides, P.) given on the  
19th June, 1982 (Revisional Jurisdiction Case No. 443/78)\*  
20 whereby he pronounced on the validity of the Defence (Export-  
ation of Goods) Regulations, 1956.

*A. Triantafyllides*, for the appellants.

*Cl. Antoniadis*, Senior Counsel of the Republic, for the  
respondent.

*Cur. adv. vult.*

25 HADJIANASTASSIOU J.: The judgment of the Court will be  
delivered by Mr. Justice Stylianides.

30 STYLIANIDES J.: This appeal is directed against an interim  
decision of the President of the Court whereby he pronounced  
for the validity of the Defence (Exportation of Goods) Regu-  
lations, 1956 (hereinafter referred to as "the Regulations").

\* Reported in (1983) 3 C.L.R. 709.

The appellants own and operate a cement factory that sells its products locally and abroad. The Minister of Commerce & Industry by decisions contained in letters dated 22.1.1979 and 26.2.1979 ordered that applicants should satisfy 70% of the needs of the local market in cement as a condition precedent for the issue to them of export licence. The export prices abroad were higher than the local prices. The respondent relied on regulation 3 of the Defence (Exportation of Goods) Regulations, 1956. The appellants challenged the validity of these Regulations and the trial Judge decided that the said Regulations are valid and in force.

Counsel for the appellants submitted that the Regulations do not continue to be in force after the establishment of the Republic on the 16th August, 1960, inasmuch as:-

- (a) They are not a "Law" within the meaning of Article 188 of the Constitution; and,
- (b) Assuming that they survive the Constitution, the Regulations have been repealed by virtue of Law 32/62, and, if not repealed expressly or by implication, they cannot be relied upon once Law 32/62 made provision for the same subject-matter by Legislation enacted by the legislative machinery created by the Constitution.

Cyprus was a Crown Colony and as from late 1931 it had no representative Government at all.

The British Crown - and by this we mean not the Crown in Parliament - had a prerogative right to legislate exercisable by Orders in Council, proclamations or letters patent. (*Abeyesekera v. Jayatilake*, [1932] A.C. 260). In Colonies, where Legislature has been granted, the prerogative power to legislate could not be exercised unless such power was expressly reserved. If, however, the representative Government was revoked, the prerogative power to legislate revived. (*Campbell v. Hall*, (1774) 1 Cowp. 204. See also *Sammut v. Strickland*, [1938] A.C. 678).

By section 1 of the Colonial Laws Validity-Act, 1865, "an Act of Parliament, or any provision thereof, shall be said to extend to any Colony when it is made applicable to such Colony by the express words or necessary intendment of any 'Act of

Parliament'." Usually Parliament preferred to authorize the issue of Orders in Council by the Crown when Parliamentary authority was necessary or desirable for legislation in respect of a Colony.

5 The Imperial Supplies and Services (Transitional Powers) Act, 1945, was made applicable to Cyprus by Order of His Majesty in Council published in Supplement No. 2A to the Cyprus Gazette of the 7th February, 1946. The operation of this Act was repeatedly extended and by the Order of Her Majesty  
10 in Council the Supplies and Services (Continuance) Order, 1957, the operation of the Act was extended until 10.12.58. By Order in Council of 27.11.57 the Governor of Cyprus was authorized to provide by order for the continuation in force of Regulations and modifications, etc., of same until 10.12.58. The Governor  
15 of Cyprus, in exercise of the powers vested in him by the Supplies and Services (Transitional Powers) Act, 1945, as extended to the Colony by the Supplies and Services (Transitional Powers) (Colonies, etc.) Order in Council, made the Defence (Exportation of Goods) Regulations, 1956, (the Regulations in question), published under Notification No. 378 in Supplement No.2  
20 to the Gazette of 10.5.56. As the Act was due to expire on 10.12.58, the Supplies and Services (Transitional Powers) (Continuation) Law No. 36/58, Cap. 175A, was passed on 7.11.58 that came into operation upon the expiration of the Act.

25 By section 6 of the said Law the Regulations were "deemed to be made by the Governor under this Law and shall, with necessary modifications, have effect accordingly".

30 On the 16th August, 1960, as a result of the London and Zurich Agreement and the Cyprus Act of Parliament of the United Kingdom, a new State - the Republic of Cyprus - emerged from the status of dependency by succession from a metropolitan country. On the said date by the emancipation of the former British Colony of Cyprus the independent Republic of Cyprus came into being.

35 Upon change of sovereignty there is a continuity of Law between the former Colony and the new State. The bulk of the legal system of the predecessor State is left unaffected by the change. So much only of the Law of the predecessor State as is repugnant to that of the successor State does not revive the

change of sovereignty and so much as is not repugnant does. Such a conclusion is consonant with the thesis that Law is an emanation of the social order and is not the creature of abstract sovereignty, and it is compelled by considerations of stability. Law is designed to avoid social and economic anarchy, which would result from the automatic termination of juridical institutions with the hiatus in sovereignty. (See *D. P. O'Connell - International Law*, 2nd Edition, Volume 1, pp. 388-389). 5

Article 188 of the Constitution embodied the aforesaid principle. Subject to the provisions of the Constitution and to certain transitional provisions, all Laws in force on the date of the coming into operation of the Constitution, until amended whether by way of variation, addition or repeal, by any Law made under the Constitution, continued in force on or after the establishment of the Republic and are construed from that date and applied with such modification as may be necessary to bring them into conformity with the Constitution. "Law" includes any public instrument made before the date of the coming into operation by virtue of such Law. 10 15

In the first judgment of the Supreme Constitutional Court, delivered on the 16th December, 1960 - *Miltiades Christodoulou and The Republic of Cyprus*, 1 R.S.C.C. 1, at p. 4 - we read:- 20

"It is proper to begin by observing that the legal provision under consideration, if otherwise valid, is saved and continues in force by virtue of Article 188 of the Constitution. In this respect the Court regards the phrase 'all laws in force on the date of the coming into operation of this Constitution' in paragraph 1 of the said Article, as meaning all laws validly in force on the date of the coming into operation of the Constitution, and the Court further considers that the word 'laws' also includes all subsidiary legislation. It is clear, however, that the Constitution, by such transitional provision, aimed only at ensuing the continued application of existing legislation, notwithstanding the creation of the Republic of Cyprus on the 16th August, 1960, but it did not have, and could not have had, as its object to render valid ex post facto a legislative provision which, for one reason or another, was invalid on a date prior to the 16th August, 1960." 25 30 35

In *The Republic v. Charalambos Zacharia*, 2 R.S.C.C. 1, at p.6. Forsthoff, P., said:-

5 “Article 188 has to be considered in the general framework of the change of sovereignty which has taken place on the 16th August, 1960. On the said date by the emancipation of the former British Colony of Cyprus the independent Republic of Cyprus came into being.

10 In accordance with the most widely accepted principles of International Law a change of sovereignty of this nature would not disrupt the ‘continuity of law’ between the former Colony and the new Republic. Nevertheless, it appears that *ex abundante cautela* Article 188 was included in the Constitution”.

15 Counsel for the appellants referred the Court to two American cases on the interpretation of constitutional provisions. The material passages of the judgment in *Sturges v. Crowninshield*, 4 L. ed. 529, is to be found on p.550. It reads:-

20 “..... it may not be improper to promise that, although the spirit of an instrument, especially of a constitution, is to be respected not less than its letter, yet the spirit is to be collected chiefly from its words. It would be dangerous in the extreme to infer from extrinsic circumstances, that a case for which the words of an instrument expressly provide, shall be exempted from its operation. Where words conflict with each other, where the different clauses of an instrument bear upon each other, and would be inconsistent unless the natural and common import of words be varied, construction becomes necessary, and a departure from the obvious meaning of words is justifiable. But, if, in any case, the plain meaning of a provision, not contradicted by any other provision in the same instrument, is to be disregarded, because we believe the framers of that instrument could not intend what they say, it must be one in which the absurdity and injustice of applying the provision to the case would be so monstrous that all mankind would, without hesitation, unite in rejecting the application.”

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In *Henning Jacobson v. Commonwealth of Massachusetts*, 49 L. ed. 643, Mr. Justice Harlan, in delivering the opinion of the Court, said at p. 648:-

“Undoubtedly, as observed by Chief Justice Marshall, speaking for the court in *Sturges v. Crowninshield*, 4 Wheat. 122, 202, 4 L. ed. 529, 550, ‘the spirit of an instrument, especially of a constitution, is to be respected not less than its letter; yet the spirit is to be collected chiefly from its words’. We have no need in this case to go beyond the plain, obvious meaning of the words in those provisions of the Constitution which, it is contended, must control our decision.” 5

In construing a Constitution the fundamental rule, to which all other rules are subordinate, is that it should be construed according to the intent of the framers. Courts have to find out the expressed intention from the words of the Constitution itself. They are not at liberty to give a speculative opinion and when the meaning of words is plain, it is not the duty of Courts to busy themselves with supposed intentions. The Privy Council in *Attorney-General for Ontario v. Attorney-General for Canada*, [1912] A.C. 571, at p. 583, observed:- 10 15

“In the interpretation of a completely self-governing Constitution, founded upon a written organic instrument -----, if the text is explicit, it is conclusive alike in what it directs and what it forbids but it is also plain that if words or phrases are used in a special sense, the literal meaning of the words should be qualified in that sense.” 20

In *River Weir Commissioners v. Adamson*, [1877] 2 A.C. 743, at p. 764, it was said:- 25

“In all cases, the object is to see what is the intention expressed by the words used. But, from the imperfections of language, it is impossible to know that intention without enquiring further 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; for the meaning of words varies according to the circumstances with respect to which they were used.” 30 35

A statute is *prima facie* to be construed as changing the law to no greater extent than its words or necessary intendment require. (*Secretary of State v. Bank of India*, (1938) 65 I.A. 286). A



Constitution or other enactment is not to be interpreted in a narrow and pedantic sense but liberally, and the interpretation to be placed should be such as would best effectuate the purpose rather than restrict or defeat it.

5 It is the duty of this Court to interpret the Constitution as it finds it and in accordance with the undisputed principle that effect must be given to the clear meaning of its provisions. (*Turhan M. Ozturk v. The Republic of Cyprus*, 2 R.S.C.C. 35, at p.39).

10 The Defence (Importation of Goods) Regulations, 1956, Notification 377, Supplement No. 3 to the Official Gazette No. 3943 of 10.5.56, were also continued in force by virtue of s.6 of the Supplies and Services (Transitional Powers) (Continuation) Law, Cap. 175A. In *Hussein Irfan & Others v. The Republic*,  
 15 3 R.S.C.C. 39, it was said:-

“These Regulations come within the ambit of ‘Law’ as defined in paragraph 5 of Article 188 and have continued in force under the said Article”.

20 The words of Article 188 material for the determination of this appeal are plain and unambiguous. The intention of the drafters of the Constitution springs clearly from the words they used. All laws, including public instruments, valid and in force on the date prior to the establishment of the Republic were saved and continued to be in force subject to the necessary modifications. We see no difference in the expression “made by  
 25 virtue of a Law” and “deemed to have been made under a Law and have effect under this Law.” The latter is the expression used in Cap. 175A. The Regulations were valid and in force on the date prior to Independence and they continued to be in force.  
 30 It is noteworthy that for two decades the Defence Regulations were being treated by the Courts as valid and applicable.

On 17th May, 1962, the Supplies and Services (Regulation and Control) Law, 1962 (Law No. 32/62) was enacted. To a certain extent it makes similar, though not identical, provisions as the  
 35 Defence Regulations in question. Law 32/62 is not inconsistent with the Regulations or Law, Cap. 175A. Therefore, the later Law has not repealed by implication the previous Law and the Regulations. (*Maxwell on Interpretation of Statutes*, 12th Edition, pp. 191-193; *Craies on Statute Law*, 7th Edition, p.

366; *Halsbury's Laws of England*, 3rd Edition, Volume 36, p. 466).

A later Law with provisions similar, though not identical, to a previous Law does not abolish the latter. If the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one that the two cannot stand together, the earlier is abrogated by the later. (*Kutner v. Phillips*, [1891] 2 Q.B. 267, per A. L. Smith, L.J., at p. 272). 5

In *Watson v. Winch*, [1916] 1 K.B. 688, Lord Reading, C.J., had this to say at p. 690:- 10

“In this particular case a further point arises. — The repealing statute, i.e., the Local Government Act, 1888, has made other provisions for bicycles. It would be odd that a by-law should exist dealing with bicycles in streets under a local Act concurrently with another code possibly inconsistent with it. As by the Local Government Act, 1888, bicycles are to be dealt with as ‘carriages’ under the Highway Acts and provisions enabling local authorities to make by-laws regulating the use of bicycles are repealed, the clear intention of the Act is to substitute the provisions of the Highway Acts for previously existing by-laws and to repeal the by-laws, in accordance with the rule that when a later statute is passed inconsistent with an earlier the later prevails and the earlier is pro tanto repealed”. 15 20

In the circumstances of this case neither the provisions of Article 188 of the Constitution nor any of the principles of interpretation of statutes militate against the continuation in force of Cap. 175A and the Regulations in question. 25

The Courts lean against the repeal of Laws.

The enactment of Law 32/62 with provisions similar and/or akin to Law Cap. 175A do not in any way affect the validity of Cap. 175A. 30

For the aforesaid reasons this appeal fails and it is hereby dismissed with no order as to costs.

*Appeal dismissed. No order as to costs.* 35