1988 October 20

(DEMETRIADES, PIKIS, BOYADJIS, JJ.)

JOSEPH CHALHOUB,

Appellant,

v.

THE POLICE,

Respondent.

(Criminal Appeal No. 4988).

Construction of Statutes — Presumption that legislature used the words in their natural and ordinary meaning.

Words and Phrases: «Offer for sale» in section 3(1) of the Sale of Intoxicating Liquors Law, Cap. 144.

Construction of statutes — Criminal legislation — Whether a particular provision creates two or more offences or more than one alternative ways of committing the same offence — The Sale of Intoxicating Liquors Law, Cap. 144, section 3(1) — Creates only one offence.

Sentence — Exemplary punishment by reason of the way counsel for accused cross-examined witnesses — Wrong in law — Accused entitled to test case for prosecution (Art. 12.5 of the Constitution).

Sentence — Offering for sale intoxicating liquor, contrary to the Intoxicating Liquors Law, Cap. 144 — Application for relevant licence pending at the time and eventually received — First offender — Fine of £150.- and recognizance in the sum of £500.- to observe the law for three years — Fine reduced to £50 — Order for recognizance quashed.

Appellant was convicted on a charge of offering for sale intoxicating liquor without a retailer's licence, contrary to ss. 3(1) and 23 of the Sale of Intoxicating Liquors Law, Cap. 144; and was ordered to pay a fine of £150.- and enter into a recognizance in the sum of £500.- to observe the relevant law for a period of three years.

The facts founding the charge were that appellant served behind the bar of a restaurant on the shelves of which were exhibited

alcoholic drinks The area of the bar was illuminated, signifying readiness to serve customers who might ask for a drink

Counsel for the appellant argued that in this case there has not been an offer for sale, but simply an invitation to treat

Held, *dismissing the appeal against conviction* (1) The general rule is that words in a statute should be given their ordinary meaning, *unless the popular meaning of the word is expressly or, by necessary* implication, qualified by the Act «Offer» means «express readiness to do or provide if desired»

(2) In any case appellant's conduct is caught by the words of section 3(1) «have in his possession for sale» This is not another offence, but an alternative way of committing the same offence Consequently, even if the basic argument of counsel had been accepted, the conviction would still be upheld by applying the proviso

Held, further, allowing the appeal against sentence (1) The appellant is a first offender At the time of the commission of the offence, there was pending an application for a licence, which was eventually granted to him It appears that a heavier sentence was imposed by reason of the way his counsel cross-examined certain of the witnesses

(2) While implausible defences must be discouraged, their advance is not of itself a reason for imposing an exemplary punishment The accused is entitled to test the case for the prosecution in exercise of his defence rights guaranteed by Art 12 5 of the Constitution Sentence will be reduced to a fine of £50 Recognizance quashed

Appeal against conviction dismissed
Appeal against sentence allowed

Cases referred to

Fisher v Bell [1963] 3 All E R 731,

Keating v Horwood [1926] All E R Rep 88,

Wiles v Maddison [1943] 1 All E R 315,

Police v Economides and others, 20 (Part II) C L R 11,

R v Surrey [1932] 1 K B 452,

Vernan v Paddon [1973] 3 All E R 302

Appeal against conviction and sentence.

Appeal against conviction and sentence by Joseph Chalhoub who was convicted on the 12th February, 1988 at the District Court of Larnaca (Criminal Case No. 10898/87) on one count of the offence of offering for sale intoxicating liquors without a retailer's licence contrary to section 3(1) and 23 of the Intoxicating Liquors Law, Cap. 144 and was sentenced by Arestis, D.J. to pay £150.- fine and was further bound over in the sum of £500.- to observe the relevant law for a period of three years.

N. Panayiotou with A. Iacovides, for the appellant.

A. M. Angelides, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

DEMETRIADES J.: The judgment of the Court will be delivered by Pikis, J.

PIKIS J.: Appellant was convicted on a charge of offering for sale intoxicating liquor without a retailer's licence, contrary to ss. 3(1) and 23 of the Sale of Intoxicating Liquors Law, Cap. 144; and was ordered to pay a fine of £150.-- and enter into a recognizance in the sum of £500.-- to observe the relevant law for a period of three years.

The facts founding the charge were that appellant served behind the bar of a restaurant on the shelves of which were exhibited alcoholic drinks. The area of the bar was illuminated, signifying readiness to serve customers who might ask for a drink. His conduct amounted, as the trial Court found, to offering for sale alcoholic drinks to customers of the restaurant. The facts did not establish, in the contention of counsel, conduct amounting to an offer to sell. Premising his arguments on the law of contract and the distinction made in that area of the law* between an offer and an invitation to treat, he invited us to overrule the trial Court and hold that the offence remained unproven. We were asked to interpret the expression «offer for sale» in the context of s.3(1) of Cap. 144, as confined to conduct involving a concrete offer to a particular person or persons. Counsel found support for this view in the decision in *Fisher v. Bell*** where the Court held that the

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* *(Chitty on Contract General Principles, 24th ed., pp. 22-23, para.43).*

** *[1963] 3 All E.R. 731 (a decision of the Divisional Court).*

display of a prohibited article*, a flick knife, in the window of a shop, did not amount to an offer to sell but an invitation to treat The legislature should, in the opinion of the Court, be credited with knowledge of the general principles of the law of contract and on that account be deemed to have fashioned the law with awareness of the distinction between an offer to sell and an invitation to treat

In *Fisher*, the Court distinguished two earlier cases, namely, *Keating v Horwood*** and *Wiles v Maddison**** that supported a contrary view to the one taken by the Court in *Fisher* In *Keating*, the Court found that a baker's van driven on the rounds, carrying bread ordered and bread for sale, constituted both an offering and an exposure for sale In *Wiles*, supra, the Court espoused the view that there was an offering for sale whenever an article is offered for sale by display in a shop-window without anybody having seen the offer or anyone making an offer for its purchase. It is significant to note that in the case of *Fisher* the Court doubted, in the first place, whether the evidence before the Court established that the knife in question answered the description of the prohibited weapon The general rule is that words in a statute should be given their ordinary meaning. Put in other words, the legislature is deemed to have intended words used in a statute to bear that meaning unless the popular meaning of the word is expressly or, by necessary implication, qualified by the Act According to the *Concise Oxford Dictionary*, 7th ed., p 706, one of the meanings of the verb «offer» is, «express readiness to do or provide if desired.» *The Sale of Intoxicating Liquors Law* does not provide a definition of the expression «offer for sale». Moreover, s 3(1) does not qualify the ordinary meaning of the expression directly or by necessary implication. The man in the street would, we believe, rightly construe the conduct of the appellant as involving an offer for the sale of intoxicating liquors Whether display of liquor in the window of a restaurant would have the same effect, is a question we need not decide in this case We confine ourselves to holding that the conduct of the appellant amounted to offering for sale intoxicating liquor

Furthermore, even if we held otherwise and found that the conduct of the appellant fell short of an offering for sale, his action

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*(s 1(1) — Offensive Weapons Act 1959)

**[1926] All E R Rep 88

***[1943] 1 All E R 315

would nonetheless be caught by another provision of s.3(1) laying down an alternative way of committing the offence of selling intoxicating liquors without a retailer's licence, namely, «have in his possession for sale»; s.3(1) created one offence, that of selling intoxicating liquors without a retailer's licence.

Numerous cases establish that only one offence is created whenever the legislature instances several alternative ways of committing an offence. Different tests have been propounded* to determine whether acts specifically prohibited by statute constitute separate offences or merely instances of a broader category of prohibited conduct. The foremost consideration is whether the specific prohibitions constitute different manifestations of the broader subject of the enactment. To determine this the Court must in turn inquire whether there is any intrinsic difference between the blameworthiness of the acts instanced and further whether one or more mischiefs are sought to be suppressed. In this case the answer to both questions is in the negative. What the legislature intended to prohibit was the sale of intoxicating liquors without a retailer's licence and acts associated therewith. Consequently, even if we were to find that the conduct of the appellant did not amount to an offering for sale, we would still uphold the conviction by applying the proviso to s.145(1)(b) of the Criminal Procedure Law - Cap. 155, on grounds of absence of any substantial miscarriage of justice.

Sentence: Appellant challenges the sentence as manifestly excessive. At the time of the commission of the offence reply was awaited to an application for a retailer's licence, a licence that was in due course issued. Moreover, the appellant was a first offender. Counsel for the Republic joined in the submission that the sentence was manifestly excessive.

It is evident from the reasons given in support of the decision affecting sentence, that the learned trial Judge was unfavourably impressed by the conduct of the defence, particularly suggestions made in the course of cross-examination of witnesses for the prosecution that the bottles that were stored on the shelves and exhibited on the bar-counter might contain a liquid substance other than alcoholic liquor, such as tea or water. This suggestion

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* *(See, The Police v. Economides and Others, 20 (Part II) C.L.R. 11, R. v. Surrey [1932] 1 K.B. 452; Veman v. Paddon [1973] 3 All E R. 302; the subject is discussed in Criminal Procedure in Cyprus, pp. 48-51).*

had been made notwithstanding the labeling of the bottles and the place where they were stored. While implausible defences must be discouraged, their advance is not of itself a reason for imposing an exemplary punishment as we are inclined to construe the punishment passed on the appellant. The accused, we must stress, is entitled to test the case for the prosecution in exercise of his defence rights guaranteed by article 12.5 of the Constitution, rights associated with the presumption of innocence safeguarded by para.4 of article 12.

The fine is reduced to £50.-- and the order for entering into a recognizance is quashed.

Appeal against conviction is dismissed.
Appeal against sentence is allowed as above.