We can now conclude by saying that we can find no ground, either in the Streets and Buildings Regulation Law, or in any other law or authority to which our attention has been drawn, to support the District Judge's opinion that the Law mentioned does not apply to the area of the respondent's lease. In our view the ordinary principles of the interpretation of statutes compel us to hold that it does apply. *On the facts found by the District Judge, the respondents should have been convicted of the offence with which they were charged.*

We shall remit the case to the District Court with that statement of our opinion.

[JACKSON, C. J., and GRIFFITH WILLIAMS, J.]

(June 2, 1951)

THE POLICE, *Appellants,*

v.

MICHAEL NICOLA ECONOMIDES & OTHERS, *Respondents.*

(Case Stated No. 58)

Autrefois acquit—Receiving—Meaning of control and disposition in Cyprus Criminal Code (now Cap. 13), sec. 294 (1)—Property of His Majesty (Theft and Possession) Law, 1946 (now Cap. 28) sec. 3 (1) (b)—Criminal Procedure Law, 1948 (now Cap. 14), sec. 67 (1) (b).

The accused were on 17 December, 1948, acquitted by the District Court of Famagusta on a charge under section 3 (1) (b) of the Property of His Majesty (Theft and Possession) Law, 1946, (now Cap. 28) of "that they unlawfully took upon themselves control of 20 pipes the property of His Majesty".

On the 22 February, 1949, in another prosecution against the same accused under the same section 3 (1) (b) on admittedly the same facts the District Court of Nicosia dismissed the charge on the ground of *autrefois acquit*, by virtue of section 67 (1) (b) of the Criminal Procedure Law, 1948 (now Cap. 14).

The prosecution appealed by way of Case Stated, contending that section 3 (1) (b) of the Property of His Majesty (Theft and Possession) Law, 1946—like section 294 (1) of the Cyprus Criminal Code—creates three distinct and separate offences: (1) Unlawfully receiving any article belonging to His Majesty. (2) Unlawfully taking upon oneself control of any such article. (3) Unlawfully taking upon oneself the disposition of any such article.

Held: The offence under the section is the same whichever of the permissible descriptions is chosen, as the section does not create three different offences but only one offence.

Decision of the District Court affirmed.

P. N. Paschalis, Crown Counsel, for the Appellants.

Lefkos Clerides, for the Respondents.

The facts sufficiently appear from the judgment of the Court which was delivered by:

JACKSON, C. J.: This is a case stated by one of the District Judges of Nicosia, at the request of the Attorney-General, relating to his dismissal of two charges against five accused persons on the ground of *autrefois acquit*.

Both charges were framed under section 3(1)(b) of the Property of His Majesty (Theft and Possession) Law, 1946. The first charge alleged that on the 16th April, 1948, the five accused men unlawfully took upon themselves the disposition of six iron pipes, the property of His Majesty, at Katokopia in the district of Nicosia. The second charge alleged that the same accused on the same date unlawfully took upon themselves the disposition of 14 pipes, the property of His Majesty, at Pano Zodhia in the same district.

On the 20th September, 1948, the same five accused had been charged before the District Judge at Famagusta with two offences under the same section. In that case the first charge alleged that on the 16th April, 1948, the accused, at Famagusta, stole 20 iron pipes, the property of His Majesty. The second charge alleged that at the time and place mentioned in the first charge, the accused unlawfully took upon themselves the control of 20 pipes, the property of His Majesty. The second charge was framed under paragraph (b) of the section, that is to say, the same paragraph under which the same accused were later charged before the District Judge of Nicosia.

On the 17th December, 1948, the District Judge of Famagusta having heard all the evidence tendered by the prosecution, discharged the third, fourth and fifth of the five accused and acquitted them on both charges on the ground that there was no case for them to meet on either charge. He later discharged the first and second accused, having heard their defence, and acquitted them on both charges, being apparently of the opinion that the evidence was generally unsatisfactory and contradictory and that it would not be safe for him to convict.

On the 22nd February, 1949, the District Judge of Nicosia dismissed both charges against the five accused on the ground of *autrefois acquit*. That plea is defined as a plea of previous acquittal on the same facts for the same offence. We are given to understand that the delay in bringing the case before us is due to the fact that the first and second of the five accused, who appear to have been regarded by the prosecution as the principal offenders, left Cyprus shortly after the charges against them were dismissed by the District Court of Nicosia and are still absent. It was apparently hoped by the prosecution that they might return but they have not done so.

The facts which it was sought to prove in the District Court of Famagusta in support of the two charges on which all the accused were acquitted in that Court can be summarised as follows:—

There was evidence that on the 16th of April, 1948, the second accused was engaged in transporting iron pipes in a military lorry from the harbour at Famagusta to the Royal Engineers' Depot some distance away. At about sunset on the same day he was said to have been seen at Pano Zodhia about 70 miles from Famagusta, with a military lorry loaded with iron pipes. A certain farmer at Pano Zodhia said that on the 15th April, 1948, the third, fourth and fifth accused agreed to sell him a number of iron pipes for a sum of £165 and that on the following day the third accused delivered 14 pipes to him from a military lorry driven by the second accused. The same farmer also said that on the same day he paid the first accused a sum of £115 in the presence of the third and fourth accused. Another farmer at Katokopia said that on the 15th April, 1948, the first and third accused agreed to sell him a number of iron pipes for £120 and that on the following day, the 16th April, the third and fourth accused delivered six pipes to him at his village and that he paid £105 to the first accused and got a receipt for the money signed by the first accused and also by the third and fourth. Evidence was given identifying these 20 pipes as the property of His Majesty.

At the hearing of the two charges against the same five accused by the District Judge of Nicosia it was not disputed by the prosecution that the two lots of 14 and 6 iron pipes mentioned in those charges were the same as the 20 pipes mentioned in the two earlier charges tried by the District Judge of Famagusta. Nor was it disputed that the evidence which would be given in support of the two charges in the District Court at Nicosia was the same as the evidence which had been given in the District Court at Famagusta. But the contention of the prosecution in the Court at Nicosia was that the charges in that Court, namely, that the accused had unlawfully taken upon themselves the disposition of the iron pipes at the two villages in that district, alleged different offences from the offence alleged in the second charge upon which the same accused had been acquitted at Famagusta. That charge alleged that the same accused had unlawfully taken upon themselves the control of the same pipes in the Famagusta district. The same contention has been repeated before us by the Crown Counsel.

The difference in the locality of the acts alleged would have no importance unless the offences charged in the Nicosia Court are in law different offences from the offence of which the accused had previously been acquitted at Famagusta. It did not matter that, at the earlier trial at Famagusta, unlawful control of the same 20 pipes was said to have begun in the Famagusta district and to have

continued, without a break, in the Nicosia district. The Court at Famagusta had jurisdiction to try an offence committed partly in that district and partly in the district of Nicosia.

Section 3(1)(b) of the Property of His Majesty (Theft and Possession) Law, 1946, under which the five accused were charged both at Famagusta and at Nicosia, reads as follows:—

"3(1). Any person who—

(b) Unlawfully receives or takes upon himself the control or disposition of any article or goods belonging to His Majesty.....

shall be guilty of an offence, etc."

The question therefore is whether an unlawful assumption of control under that paragraph is or is not a different offence from an unlawful assumption of disposition under the same paragraph.

Whatever meaning the word "unlawfully" at the beginning of the paragraph may be intended to bear, it is clear from the case that it was intended to bear the same meaning in the two charges in the District Court of Nicosia as in the second charge in the District Court of Famagusta. In both Courts the unlawfulness of the actions of the accused men was alleged to arise from knowledge that the pipes belonged to His Majesty and had been stolen. It was apparently for this reason that the District Judge of Nicosia expressed the view that the prosecution before him was, in effect, an attempt to get a second judge to come to a different conclusion on the same evidence which had previously been rejected by the judge at Famagusta. It would not have mattered, however, if the evidence tendered in both Courts had been the same, provided that the offences charged were different. In that event the elements constituting the two offences would also be different and might be expected to involve different findings of fact on the same evidence (*R.* v. *Baron*, 1914, 2 K.B., 570).

It was contended for the Crown that the words of paragraph (b) of section 3(1) of the Law under which the charges were framed in both Courts create three offences which are distinct and separate from one another, namely,—

(i) unlawfully receiving any article belonging to His Majesty;

(ii) unlawfully taking upon oneself the control of any such article;

(iii) unlawfully taking upon oneself the disposition of any such article.

It will be seen that, apart from the use of the word "unlawfully" at the beginning of the paragraph, the other words to which we have referred are the same as the words

used in section 294(1) of the Criminal Code, which relates to receiving stolen property. That sub-section reads as follows:—

> "294 (1). Any person who.....wilfully receives or takes upon himself, either alone or jointly with any other person, the control or disposition of any chattel, etc., knowing the same to have been feloniously stolen, etc., is guilty of a felony....."

It was argued for the Crown that the two penal provisions which we have quoted must be read in the same way and that, under both alike, receiving, taking upon oneself control and taking upon oneself disposition, are three separate and distinct offences. The argument for the Crown accordingly proceeded, not only upon the actual wording of paragraph (b) of section 3(1) of the Law under which the charges were framed, but also upon section 294(1) of the Criminal Code and it was not suggested that there can be any difference between the interpretations given to the two provisions on this particular point.

There are many English cases in which, upon an indictment for receiving stolen goods, knowing them to have been stolen, courts have considered the essentials of the act of receiving. It has been repeatedly laid down that some form of possession is essential. But manual possession is not necessary. The possession may be constructive and it is sufficient if the goods are in the actual possession of a person over whom the prisoner has a control, so that they would be forthcoming if he ordered it. It has been said that there must be a control over the goods by the receiver. The English cases from which those rules are derived are mentioned in Archbold, 32nd Edition, at pages 755 to 757 and in Russell on Crime, 9th Edition, at pages 1052 to 1057. The rules are well established and no particular case need be quoted here in support of them. It is enough for our present purpose to say that upon a charge for receiving stolen goods it is necessary to prove that the goods were in the control of the receiver. If the goods were in his physical possession, his control over them may be presumed from that fact though the presumption may be rebutted. If the goods were not in his physical possession, it is a question of fact whether they were in his control or not. But control, whether exclusive or joint, is the test of possession and possession, either actual or constructive, is an essential of receiving.

In English law, therefore, it is clear that receiving stolen goods, knowing them to have been stolen, and taking control over stolen goods, with the same knowledge, are not two different offences. The offence is receiving and control is an essential of that offence. If there was control there was receiving and if there was no control there was no receiving. It is impossible to separate one from the other.

In our view it is equally impossible to separate the act of receiving from the taking of control in the interpretation of section 3(1)(b) of the Property of His Majesty (Theft and Possession) Law, 1946, or of section 294(1) of the Criminal Code.

In England an indictment for receiving stolen goods, framed under section 33 of the Larceny Act, 1933, always states that the person charged "did receive" the goods, whether it is intended to prove actual possession or constructive possession arising from control. In Cyprus, on the other hand, in an information or charge framed under section 294 (1) of the Criminal Code, it appears to be the practice that the offence charged is never expressed as "receiving", even when the stolen goods are found in the physical possession of the receiver. Except in the rare cases in which "disposition" of stolen goods may be alleged, the charge invariably states that the accused person took upon himself the control of the goods, and this form is used whether it is intended to prove actual possession or constructive possession arising from control. Yet, in either case, the offence is receiving and could equally well be so described.

The word "receive", as used in this connection, has been given a special meaning by a long series of decisions in the English courts and it seems at least possible that the avoidance of that word in Cyprus practice has arisen from some past uncertainty as to its special meaning. Consequently, since section 294(1) of the Code has made available what may appear to be a wider term, though in law it is not, the supposedly wider term is used for safety. It may also have been the purpose of the legislator to avoid doubts as to the meaning of the word "receive" by providing an alternative description of the offence for use in circumstances to which it is appropriate. But the taking of control over stolen goods is not a different offence from receiving them. It is not even a different part, or aspect, of the same offence. It is the same offence and the same part of it.

It remains to consider whether a different offence from that of receiving or taking control of stolen goods is created by the words in section 294(1) of the Criminal Code which refer to a person who takes upon himself the disposition of property which he knows to have been stolen. No English authorities will help us here. As we have already said, it has not been suggested that, on this particular point, there can be a different construction of the same words in section 3(1)(b) of the Law of 1946 under which the accused were charged.

The actual words used in the sub-section of the Code are "any person who.....receives or takes upon himself..... the control or disposition of any" goods knowing them to have been stolen.....

The words used in conjunction are "the control or disposition" and the word "or" is commonly used to con-

nect two words denoting the same thing (See Shorter Oxford Dictionary.)

There are certain statutes, particularly Acts relating to taxation, in which the word "disposition" means a transfer of property, however effected. But reference to the Shorter Oxford Dictionary will show that the word, in its ordinary signification, can as readily mean a power to dispose of as the act of disposing. And one of the meanings given for the word "disposal" is "control". These meanings appear in the common phrases "at (or in) one's disposition" and "at one's disposal".

If we understood the Crown Counsel correctly, he maintained that the word "disposition", in the context which we have quoted, necessarily meant a disposal, or handing over, of the stolen goods, such as, for example, the sale of the iron pipes in the Nicosia District by the accused in this case. If that were so, it would seem strange indeed that the draftsman should have used the peculiar and unusual phrase "takes upon himself the disposition" (of goods) if he only meant "sells, or transfers or disposes of", and nothing else. In section 3 (1) (c) of the Law of 1946, the paragraph immediately following the one under which the accused were charged with having taken on themselves the disposition of the pipes, a person is said to commit an offence if, in certain conditions, he "sells, exchanges" or "hands over" the property of His Majesty. It would appear, therefore, that when the legislator intended to specify a sale or transfer of some kind, ordinary plain words were used which have that meaning. The draftsman did not repeat the peculiar phrase used in the immediately preceding paragraph, presumably because it has a different meaning.

But grammatical arguments are seldom convincing except to the converted and, in any case, ordinary principles of legal interpretation require that if a statute is to be taken to create a specific punishable offence, plain words must be used to create it. It is enough to say of the argument from language that it gives no support to the Crown Counsel's contention but is definitely against it. In our view, the ordinary interpretation of the two words, disposition and control, as used in the particular context which we have discussed, indicates that they have the same meaning.

There are not, therefore, three descriptions of the offence defined by section 294 (1) of the Code but only two; one is receiving and the other is taking control or disposition. Under either description the offence is the same.

It may be more helpful to enquire whether there is any reason of substance to suppose that the offence committed by a person who actually sells or transfers stolen goods, knowing them to have been stolen, is different from the offence committed by a person who, with the same knowledge, retains the goods which he has received, or

over which he has taken control, and does not pass them on.

We are not here considering the case of a person who, knowing that goods have been stolen, negotiates a sale of them for the thief, or for a receiver, but never himself has the goods in his possession or under his control and consequently is not himself a receiver. That is not this case. In this case the evidence was that the sales had been negotiated on the day before the pipes were stolen and the charges in the Court at Nicosia, like those in the Court at Famagusta, related to what happened on the following day. It was alleged that on that day the pipes were stolen by one of the accused and were brought, in the joint control of all of them, from Famagusta to the two villages in the Nicosia district and there were sold on behalf of them all. The offence for which the prosecution sought to have the five accused tried in Nicosia was the sale of the stolen pipes in the Nicosia district and it was argued that this had been acquitted in Famagusta, that is to say, a different offence from the offence of taking control of the stolen pipes in both districts. That offence, as we have shown, is really the offence of receiving. The question therefore reduces itself to this. If a receiver of stolen goods sells or otherwise disposes of them, does he commit a new offence, different from the offence which he has already committed as a receiver?

A person who receives stolen goods knowing them to have been stolen, may do so in order to keep them for himself, knowing that he is getting them more cheaply than he could in the open market or that such goods are not available there. If he is a professional receiver, a "fence", he probably intends to sell them, knowing that he can undersell the legitimate market and still make a good profit for himself. If the Crown Counsel's argument is right, the receiver in the first example commits only one offence and the receiver in the second example commits two and could be separately charged for each of them and punished separately.

It seems to us that the question has only to be stated in that way to answer itself and we can find nothing in the language of either of the two statutory provisions which we have examined in this case, or in the nature of the offence which either provision defines, to support a conclusion that more than one offence is defined by either.

It follows that, in our opinion, both the offences with which the accused were charged in the District Court of Nicosia under section 3(1)(b) of the Property of His Majesty (Theft and Possession) Law, 1946, were the same as the offence with which the same accused had been charged in the District Court of Famagusta, under the same provision of the same Law, and acquitted.

When we had heard counsel on both sides, we stated our opinion that the decision of the District Judge should

be confirmed and we said we would give our reasons for that opinion later. We have now done so.

We wish to add a few general observations because the discussion in this case necessarily raised questions of wider application and involved the broad interpretation of an important section of the Criminal Code.

An English statesman and philosopher, the late Arthur James Balfour, once remarked that the business of judges and counsel is the elaboration of the obvious. It must be admitted that the argument which we have felt compelled to develop in this case fully merits that description. We could not, indeed, have brought ourselves to spin it out to such a length if it had not seemed possible that the misconception which, in our opinion, underlay the proposition advanced by the Crown Counsel, may extend more widely.

We have mentioned what appears to be the established practice in the framing of charges or informations under section 294 (1) of the Criminal Code and the apparent preference for a particular description of the offence which the sub-section defines, whether that description is appropriate to the evidence to be given in the particular case or not. We must not be taken to suggest that there is any definite error in that practice. There is not. Nor would there be any error if in every charge under the sub-section it were stated that the accused "did receive", whether it was intended to prove actual possession or constructive possession through control. A description of the offence in any of the words used in the sub-section is, of course, permissible. What is important is that it should be understood that, whichever of the permissible descriptions is chosen, the offence is the same and that the sub-section does not create three different offences but only one. It is of less importance, but desirable if it could be achieved, that when a choice is made between permissible descriptions the reasons for the choice should be understood.

It is easy to see why the sub-section specifies as an alternative to "receive", the taking of "control", and we have already indicated possible reasons. But we are unable to see any good reason for the inclusion of the word "disposition". It would have been interesting to learn the source from which that word was taken when it was incorporated in the sub-section in the Criminal Code, but no information on that point could be given to us. In our opinion it adds nothing to the definition of the offence which the sub-section gives without it and this case has shown that it is liable to mislead. If in the future it appears in charges and informations under the sub-section even more rarely than it has appeared in the past no harm will be done.