

Jan. 15

GEORGHIOS
KYRIAKIDES

F.

THE MAYOR,
DEPUTY MAYOR,
COUNCILLORS
AND TOWNSMEN
OF NICOSIA
TOWN.

that are privately owned and to which the public resort merely for the purpose of buying an article and carrying it away.

It is clear from those parts of the bye-laws to which counsel on both sides have referred us that the word "includes" is sometimes used restrictively and sometimes not restrictively, so that we think that no inference can be drawn from placing any reliance on the meaning of the word "includes".

On the facts of the present case as found we are of opinion that the premises on which the offence was alleged to have been committed was not a place of public resort, either according to the ordinary meaning of that phrase or to the meaning assigned to it in the interpretation bye-law.

In view of our opinion the conviction and sentence must be set aside.

1955
March 3

THE
ELECTRICITY
AUTHORITY
OF CYPRUS

G.

COSTAS
PARTASSIDES,
VASSOS
PAPADOPOULLOS,
ETC.

[HALLINAN, C.] and GRIFFITH WILLIAMS, J.]
(March 3, 1955)

THE ELECTRICITY AUTHORITY OF CYPRUS,

Appellant.

v.

COSTAS PARTASSIDES, VASSOS PAPADOPOULLOS,
ETC., AS THE APPROPRIATE AUTHORITY FOR THE
MUNICIPAL AREA OF LIMASSOL, UNDER
THE STREETS AND BUILDINGS
REGULATION LAW, CAP. 165,

Respondents.

(Case Stated No. 99)

Repeal by implication—Streets and Buildings Regulation Law (Cap. 165), sec. 3—Building permits required by Electricity Authority.

Under powers conferred by the Electricity Law (Cap. 82) and the Electricity Development Law (No. 23 of 1952) the Electricity Authority erected a building within the Municipal area of Limassol. The Authority was convicted under sec. 3 of the Streets and Buildings Regulation Law (Cap. 165) for erecting the building without a permit from the Municipal authority.

Held: The controls established by the Laws, Cap. 82 and No. 23 of 1952, did not by implication repeal or prevent the application of the provisions of Cap. 165 to the building erected by the Authority as those controls were not of a nature to ensure the carrying out of the objects and purposes of Cap. 165 especially with regard to the zoning and widening and straightening of streets. The decision of the Magistrate was correct.

*City and South London Railway Coy. v. L.C.C., 1891,
60 L.J., Q.B.D., 149*

distinguished.

Case stated by the appellant from the judgment of the District Court of Limassol (Case No. 1495/54).

Sir Panayiotis Cacoyannis for the appellant.

J. Potamitis with *Chr. Demetriades* for the respondent.

The facts of the case are set out in the judgment of the Court which was delivered by:

HALLINAN, C. J.: This case concerns a charge brought by the Municipal Council of Limassol (as the appropriate authority under the Streets and Buildings Regulation Law, Cap. 165) against the Electricity Authority of Cyprus for erecting a transformer station within the Municipal area and failing to obtain a permit under section 3 of that Law. The learned Magistrate found that the transformer was a building within the meaning of that word as defined by section 2 of Cap. 165. He also found that this building was a work which the Electricity Authority was empowered to execute under the Electricity Law (Cap. 82) and the Electricity Development Law No. 23 of 1952. It was submitted on behalf of the Electricity Authority that these laws under which it exercised its powers by necessary implication excluded the application of the Streets and Buildings Regulation Law to works executed by the Electricity Authority. The Magistrate held that the operation of the Streets and Buildings Regulation Law was not excluded and convicted the Electricity Authority under section 3 and section 20 of Cap. 165.

It was argued for the Electricity Authority that the manner in which that Authority is to execute the works which it is authorized by statute to undertake is strictly controlled by the statutes Cap. 82 and the Law of 1952; and furthermore that these controls are adequate to ensure that the objects of the Streets and Buildings Regulation Law will be achieved without the necessity for securing a permit under Cap. 165. Counsel for the Authority has referred us to section 14 of Cap. 82 (which relates to orders by the Governor empowering the undertakers to carry out works according to prescribed terms and conditions), to section 28 (which requires the undertaker to submit plans of all works to the Governor and to have such plans approved) and to section 67 (which provides for the inspection of the works and installations of an undertaker.) We have also been referred to the Electricity Regulations 11, 16 and 17 made under Cap. 82.

As against this argument it must be remembered that repeal by implication is not favoured. In Maxwell on Interpretation of Statutes, 9th Edition, p. 173, authority is cited for the proposition that "a sufficient Act ought not to be held to be repealed by implication without some strong reason."

* See page 4 of this volume.

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The objects and purpose of the general Law must be examined to see whether the controls imposed by the special Laws are sufficiently wide to achieve the purpose of the general Law. The objects and purposes of the Streets and Buildings Regulation Law can be gathered from a perusal of sections 8, 12 and 14. Section 8 shows that these objects include considerations as to health and safety of persons who may occupy a building for which approval is sought; and the amenities and safety of the area in which the building is to be erected. Section 12 relates to the widening and straightening of the streets; and section 14 relates to the defining of zones for industrial or residential purposes. We are not satisfied that the control over the works executed by the Electricity Authority under Cap. 82 and the Law of 1952 are of a nature to ensure that the objects and purposes of Cap. 165 will be achieved, more especially with regard to zoning and to the widening and straightening of streets.

It was further argued by the appellants that the strict application of the provisions of Cap. 165 to the Electricity Authority would produce absurdity and inconvenience. Counsel submitted that a pole or pylon would be a building within the meaning of Cap. 165 and (if the decision in the present case was correct) would require a building permit—which would be inconvenient and even absurd. However, in holding that a transformer cannot be erected without a permit under Cap. 165, we do not necessarily hold that the erection of a pole (if a building within the meaning of Cap. 165) would also necessitate a similar permit. It was also submitted that certain provisions in Regulation 5 of the Streets and Buildings Regulations made under Cap. 165 would make it difficult, if not impossible, for the Electricity Authority to obtain a permit to erect certain buildings. From a perusal of this Regulation we are not satisfied that any such difficulty will arise, but even if it did, the proper remedy would be to have the Regulation amended—we would not be justified in holding that the Electricity Authority should be exempted from the application of Cap. 165 merely because a regulation made under that Law gave rise to difficulties in its application to the Authority.

It only remains to consider two authorities cited by Counsel. The first is the case of the *City and South London Railway Company v. the London County Council*, 1891, 60 L.J., Q.B.D., 149. A special Act passed in 1887 enabled the Railway Company to construct and maintain line and *inter alia* all necessary buildings within an area delineated on deposited plans and to use the land delineated on the deposited plans for this purpose. Pursuant to these powers the Railway Company erected a station building which infringed a building line constituted under the Metropolis Management Act, 1862, as amended by the Act of 1890. It was held that the provisions of the special Act prevented the operation of the Metropolis Management Act of 1862, as amended by the Act of 1890, to the

buildings which the Railway Company had erected. This case can be distinguished without difficulty from the case now before us. The Laws under which the Electricity Authority operate have no geographical limits within Cyprus whereas Parliament in the case of the Railway Company had specifically delineated the geographical area over which it was giving powers to the Railway Company. It was reasonable to hold that the Parliament intended the Railway Company to have powers to erect buildings within any part of the area delineated on the deposited plans; but it cannot be said that the Legislative Authority when conferring statutory powers on the Electricity Authority to execute works all over Cyprus, necessarily intended that its installations could be executed anywhere without regard to the Streets and Buildings Regulation Law.

The other case to which we have been referred is Case Stated No. 68, *The Attorney-General v. The Cyprus Asbestos Mines Limited*, which was decided in this Court on the 2nd April, 1951. The Mining Company in this case had obtained a lease of an area of about 4½ sq. miles from the Governor. The Company had erected a house within the area of their lease without obtaining a permit from the Commissioner of the District under Cap. 165. As in the present case, it was argued that the controls established by the terms and conditions of the lease and by the Mines Regulations (Amendment) Law, 1925 (Cap. 223) and the Regulations made thereunder were sufficient to ensure that the purposes and objects of the Streets and Buildings Regulation Law should be complied with and therefore the provisions of that Law requiring a permit were *pro tanto* repealed in the application of that Law to the mining lessees. The District Court held that the provisions of Cap. 165 did not apply to the building erected by the Mining Company, but, upon a Case Stated, this Court held that it could find no ground either in the Streets and Buildings Regulation Law or in any other Law or authority to support the finding of the District Judge. In the opinion of the Supreme Court "There is no inherent contradiction in the simultaneous existence of two different forms of control over the same act for different purposes", and the Court was of opinion that the objects and purposes of the controls under the Mining Laws were different to those under the Streets and Buildings Regulation Law.

We agree with the learned Magistrate in the present case that his decision should follow the decision in the Case Stated No. 68, as the controls established by the Electricity Law and the Law of 1952 offer no guarantee that they will fulfil the purposes for which the Streets and Buildings Regulation Law was passed.

For these reasons in our opinion the decision of the Magistrate on the point of law is correct and therefore there is no reason why his determination should be disturbed.

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