[JACKSON, C. J. and GRIFFITH WILLIAMS, J.]
(April 2, 1951)

ATTORNEY-GENERAL, *Appellant*,

v.

THE ASBESTOS MINES LIMITED, *Respondents*.

(Case Stated No. 68)

Mining Lease—Building Permit—Streets and Buildings Regulation Law, 1946, Section 3.

The respondents are holders of a mining lease granted by the Governor for 99 years over an area of about 4½ square miles at Amiandos. On this land they built a house near the Nicosia—Troodos main road without obtaining a building permit under section 3 of the Streets and Buildings Regulation Law 1946. The mining lease contained a clause giving the respondents a right to erect buildings, and they contended that this exempted them from the necessity of applying for a permit under section 3 of the above named law.

Held: The Streets and Buildings Regulation Law 1946 is a statute of general application. There is nothing in it to suggest that Crown property is excluded. No obligation was created by the respondents' lease for the legislators to exclude it expressly from the operation of laws of general application. The said law applies to the land of the respondents and a building permit under section 3 should have been obtained.

C. Tornaritis, K.C., Solicitor-General, for the appellant.

J. Eliades with *A. Anastassiades* for the respondents.

The judgment of the Court was delivered by:

JACKSON, C. J.: This is a case stated by one of the District Judges of Limassol at the request of the Attorney-General. The respondents are the holders of a mining lease granted by the Governor, on the 9th August, 1934, for 99 years from that date, over an area of about 4½ square miles at Amiandos in the district of Limassol. In the period including October, 1950, the respondents built a house of about eight rooms within the area of their mining lease. The land on which the house was built borders, on two sides, on the main road from Nicosia to Troodos and the respondents were charged in the District Court of Limassol for having built the house without a permit from the Commissioner of the District.

The charge alleged that such a permit was required by section 3 of the Streets and Buildings Regulation Law, 1946. The material part of that section provides that no person shall erect a building without having first obtained a permit from the appropriate authority, and the section goes on to state that the appropriate authority for any area not being the area of a Municipal Corporation shall be the Commissioner of the district. The area of the mining lease is not within the area of a Municipal Corporation.

The defence was that the Streets and Buildings Regulation Laws do not apply to the area of a mining lease. In support of that contention it was argued for the respondents in the Court below that they were given the right to erect buildings on the area of their lease by clause 20 of the lease itself, that the appropriate authority to control the exercise of that right, and other rights of the respondents under the lease, was the Inspector of Mines and that if the right to erect buildings on the area of the lease was made subject also to the control of the Commissioner under the Streets and Buildings Regulation Laws, the respondents would lose some of their "vital powers" and that it would be difficult for them to function properly.

The District Judge dismissed the charge against the respondents, accepting their contention that the Streets and Buildings Regulation Law, 1946, did not apply to the area of a mining lease, and the question which this Court is now asked to answer is whether or not the District Judge was right in that opinion.

In giving his reasons for the view that he had formed the District Judge first referred to various clauses in the mining lease. One was clause 20 by which, as already mentioned, the respondents were given the right to erect buildings on the area of the lease "for the effectual working of the mine". The judge also referred to certain laws regulating mining rights in the island. The first of these was the Ottoman Mines Regulations Law of 2 Shaban, 1285, a date which corresponds to the year 1867. Reference was also made to the Mines Regulation Amendment Law of 1882 and to regulations made under a later amending law enacted in 1926. The District Judge concluded that full power to inspect buildings was given by the lease itself and by the laws and regulations which he had quoted and that "the rights and liabilities etc. of the contracting parties under the lease of a mine have been defined and explained at length and detail in the said laws and regulations".

If we have correctly understood the District Judge's argument up to that point, the general purport of it would seem to be that since complete control over the working of mines and connected operations, including the erection of buildings is provided by the mining laws and regulations, it was not to be supposed that the legislator could have intended, without expressly saying so, to apply to the area of a mining lease a later law of general application, such as the Streets and Buildings Regulation Law, by which a different control over the erection of buildings anywhere was established.

If that is a correct statement of the District Judge's view, we can say at once that if a special law has established a certain degree of control, for a special purpose over the erection of buildings in a particular area,

that fact would, by itself, provide no reason for concluding that the legislator could not have intended, by a later law of general application, to establish a different control, for a different purpose, over the erection of buildings in the same area. There is no inherent contradiction in the simultaneous existence of two different forms of control over the same act for different purposes. The discovery that such controls exist is an increasingly common experience in these days.

The Judge went on to consider the maxim "*Generalia specialibus non derogant*" and he repeated the well established rule that a general later law does not abrogate an earlier special law by mere implication. Authorities were quoted for that proposition. But it was not suggested that there was any conflict between the earlier mining laws and regulations and the later law controlling the construction of streets and buildings and the regulations made under that law. It was not suggested that any part of the earlier special laws would be abrogated if the later general law were deemed to extend to the same area. What was suggested was that rights lawfully acquired by the respondents under a lease executed by the Governor under the authority of the mining laws would be abrogated if the control established by the Streets and Buildings Law were applied to the area of the respondents' lease.

One instance given by the respondents was said to arise under clause 20 of the lease. By that clause the Governor, in effect, said to the respondents, "You may erect buildings on the area of your lease for the working of your mine". Later came the Streets and Buildings Law, 1946, which, if it is applicable to the area of the respondents' lease, says to them, in effect, "You shall not erect any buildings on the area of your lease, even though you want to do so only for the working of your mine, unless the Commissioner of the district allows you to do so." That, said the respondents, and the Judge appears to have agreed with them, would be an abrogation of rights acquired under the mining laws and therefore the later general law, which results in that abrogation, cannot have been intended to apply to the area over which those rights were given.

Two questions arise. The first is whether or not any abrogation of rights would result from the application of the later law to the area of the respondents' lease. The second question is whether or not, if an abrogation of rights would result, the legislator can be supposed to have intended, when enacting the later law, to diminish the respondents' prior rights to that extent.

As to the first question, it is clear that the imposition of an obligation on the respondents to apply for a permit from the Commissioner to erect any building will not necessarily prevent them from erecting any building which they are authorised to erect by clause 20 of their lease.

The respondents referred to certain provisions of the Streets and Buildings Regulations, 1946, which, they said, are clearly inapplicable to buildings erected in the area of a mining lease for the purpose of working the mine. Other provisions of the regulations were mentioned which could only be complied with by the owner of the land on which the proposed building is to be erected. It is true that, by section 4 of the Streets and Buildings Regulation Law, a permit under section 3 to erect a building may not be issued by the appropriate authority, in this case the Commissioner, unless the proposed building accords with the provisions of the regulations. But regulation 64 empowers a Commissioner to dispense with all or any of the regulations, as he may think fit, "having regard to the particular circumstances of any case or the general conditions obtaining in the area." That provision effectively disposes of any objection to the application of the Law to the area of a mining lease on the ground that the regulations made under it could not be observed by the holders of a lease of that kind. The provision shows, indeed, that it was clearly contemplated by the rule-making authority that there would be particular cases and particular areas to which some, or even all, of the regulations could not apply.

It was not suggested by the respondents that there was anything in the Streets and Buildings Regulation Law itself which necessarily diminished the rights of the respondents under clause 20 of their lease, other than an obligation to obtain the permission of a new authority, who had no concern with mines, to exercise those rights. This requirement, they said, might involve delay and other difficulties and their interests might suffer in consequence. Other powers of control were given to the Commissioner under the Law and, though these were permissive, the respondents might suffer damage if the Commissioner behaved unreasonably in exercising them.

The Law gives a right of appeal against the decision of the appropriate authority, in this case the Commissioner, on a number of matters, including the refusal of a permit to erect buildings and, in any case, the possibility that an authority may use his powers unreasonably gives no ground for saying that it could not have been intended that he should have them. The Inspector of Mines could no doubt create considerable difficulties for the respondents if he behaved unreasonably in the exercise of the powers that he admittedly has.

It should now be clear that, in so far as the respondents' rights to erect buildings, under clause 20 of their lease, are concerned, the only necessary and inescapable effect of the application of the Streets and Buildings Regulation Law to the area of their lease would be an obligation to apply to a new authority for permission to exercise those rights. If that can be said to

be an abrogation of those rights, it remains to be considered whether or not the legislator, in enacting that particular law, must be taken to have intended to diminish them to that extent.

The Law is clearly a law of general application. The definition of "appropriate authority" in section 3(2) expressly covers the whole of the Island and, while the controls established doubtless have their main effect in municipalities and their surroundings, we can find nothing in the Law itself which suggests that the legislator must have intended to exclude any particular areas from its operation. No point of conflict with any other law has been brought to our notice which would support that conclusion. Nor, in our opinion, is there any such abrogation of the respondents' rights under clause 20 of their lease that the legislator cannot be supposed to have intended to make it.

As we have already said, there is no inherent contradiction in the establishment of separate controls over the same act for different purposes. It must be remembered, moreover, that the particular building the erection of which gave rise to this case is a building on a plot which is bordered on two sides by one of the principal main roads in the Island. In our view it would have been a strange omission if the legislator had intended to exclude buildings in such a position from the kind of control established by the Streets and Buildings Regulation Law.

So far we have been considering that part of the respondents' argument which is based on clause 20 of their lease. But they referred also to clause 31 which, they said, was necessarily in conflict with section 11 of the Streets and Buildings Regulation Law.

By clause 31 of their lease the respondents may, subject to the approval of the Lessor, "construct and maintain such new roads ... leading to, from or on" the area of their lease "as may be necessary for the purposes of this Deed."

It may be noted here, though it was not the subject of comment by either side, that clause 31 extends to roads outside the area of the lease as well as to roads within it. The argument which the respondents base on this particular clause would therefore seem to imply the exclusion of the Streets and Buildings Regulation Law, not only from the area of the lease, but also from, at any rate, roads constructed for the purposes of the lease outside that area.

In so far as the Law mentioned might possibly introduce the necessity of application to a new authority for permission to construct roads, we have already indicated, in dealing with clause 20 of the lease, that even if this did result, it would give no reason, in our opinion, for a conclusion that the Law was not intended to apply to the exercise of rights under the lease.

But the conflict upon which the respondents mainly relied, in connection with clause 31, was a supposed conflict with section 11 of the Law. This section provides that every street (or road or path) constructed under a permit granted under section 3 shall, when a certificate of approval has been given, become a public street (or road or path) and, if outside a municipal area, shall come under the control of the Government and shall be maintained at Government expense. Section 3 forbids the construction of streets or roads or paths without a permit from the appropriate authority, in this case the Commissioner.

The respondents say that it cannot have been intended that the roads which they construct for the purposes of their mining operations should thereafter become public roads. They also claim that they have the right to maintain the roads that they construct. If the question were simply one of maintenance, it may be doubted whether the lessees would have complained that the expense of maintaining their roads would be borne by the Government instead of by them. It must be supposed that their argument relates rather to the provision of section 11 of the Law by which, as they say, their roads would become public roads.

On this point the Solicitor-General argued that section 3 of the Law, which requires a permit for the construction of streets, roads, paths, footways, etc., must be taken to apply only to the construction of such streets and roads, etc., as it is intended or contemplated that the public shall or will use. There is no express limitation in the section but it seems clear that some limitation must be read into it. It can hardly have been intended that if, for example, a man makes a footpath from one part of his private garden to another, he must get a permit to do so and that, when his work has been approved, all the consequences of section 11 shall follow; that the public can come into his garden and use his path and the Government will keep it in order for him.

We are not required, in this case, to express any opinion on the limits of section 3 of the Law in relation to the construction of streets, roads or paths. It is sufficient for us to say that we are not satisfied that any abrogation of the respondents' rights under clause 31 of their lease would necessarily be entailed by the application of the Streets and Buildings Regulation Law to the area of their lease.

It may be remarked, in passing from this particular point, that clause 32 of the respondents' lease reserved to the lessor, and to any one authorised by him, the right to enter upon the area of the lease and to make roads, railways and tramlines over and through it.

We have now considered all the arguments for the respondents which, according to the statement of the

case, were put before the District Court Judge and which appear to have led him to his conclusion.

Two new points were made in the argument for the respondents before us. One was that the Streets and Buildings Regulation Law applies only to privately owned property and the area of the respondents' lease is the property of the Crown. The second was that the application of the Law to Crown property is expressly excluded by section 22. That section provides that nothing in the Law shall apply to the Government or to any department of the Government.

As to the second point, it is sufficient to say that the Law applies to acts done, that is to say, in the words of the long title of the Law, to "the construction of streets and the erection of buildings". The Law has nothing to do with the ownership of property and the only effect of section 22 is to exclude the application of the Law to acts of the kinds described when they are done by the Government or by any department of the Government.

As to the first point, there is nothing in the Law to suggest that Crown property is excluded from its application. It is a statute of general application and, as we have pointed out, express provision is made, by the definition of "appropriate authority" in section 4, for its application to areas all over the island. Provision is also made, by regulation 64 of the Regulations in 1946, for their modification according to the needs of areas in different stages of development. It would not be reasonable to suppose that if, for example, the Governor granted a lease of Crown land for building purposes, possibly in a municipal area, buildings erected by the lessee would be free from the control of the Law and any control which it was desired to retain would have to be provided in the lease itself.

There was also a suggestion that because the lease, by clause 2, specifies certain Laws to which the licence to mine was to be subject, the lease could not be made subject to other laws unless express provision is contained in them.

Apart from any question whether the list of laws in that clause is exclusive or not, we can hardly suppose the respondents' advocates to maintain that the legislator would be obliged, by that clause in the respondents' lease to make express provision in every subsequent Law of general application to bring the area of the respondents' lease within it. The argument is really the same as the argument already considered, namely, that if a subsequent law of general application abrogates rights given by a lease granted under an earlier special law, it may be necessary to consider whether there is any reason to suppose that the legislator could not have intended to diminish those rights to that extent. There is nothing new in that point.

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.
