[VASSILIADES, P., L. LOIZOU, HADJIANASTASSIOU, JJ.]

STAVROS ERAKLIDES,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 3234).

Mines and Quarries (*Regulation*) *Law, Cap.* 270 (*as amended*)—*Conviction for removing sand and shingle without licence from a place on the foreshore quite close to the sea-water set aside—Sections* 37 (2) *and* 43 (2) *of the Law—Law applicable is the Foreshore Protection Law, Cap.* 59 *specially enacted for the protection of the foreshore from activities like the one in question—Latter special Law prevails over the former general Law viz. Cap.* 270 (supra).

Foreshore Protection Law, Cap. 59—*A special Law enacted for the purpose of protecting the foreshore, regulating and controlling removal of sand, gravel, shingle etc. therefrom—Section* 3.

Statutes—Construction—The rule generalia specialibus non derogant.

Observations *regarding sentencing.*

The Appellant was convicted of removing and obtaining sand and gravel from a place on the foreshore quite close (three or four metres) to the sea-water without a permit from the Inspector of Mines contrary to sections 37 (2) and 43 (2) of the Mines and Quarries (Regulation) Law, Cap. 270 (enacted in 1953). It was not disputed that the definition of the words "quarry" and "quarrying" in section 2 of the statute is in itself wide enough to cover obtaining sand and gravel from the foreshore (it being "neither a mine nor merely a well or borehole"). But it was argued on behalf of the accused that the only Law applicable to the present case was the Foreshore Protection Law, Cap. 59 (as amended), being the Law specially enacted (in 1934) for the protection of the foreshore against, *inter alia,* activities such as the one under consideration. Section 3 of the latter Law enables the District Officer of the District within which the foreshore is found, to prohibit absolutely or

subject to conditions or restrictions imposed by him, the removal, *inter alia,* of sand, shingle, gravel or any such material from the foreshore (within a distance of one hundred yards from high water mark) by publishing a notice to that effect in the Official Gazette. Acting in contravention of such notice is an offence punishable with imprisonment not exceeding three months or a fine not exceeding one hundred pounds or to both such imprisonment and fine. Had the part of the foreshore in question in this case been covered by a notice under section 3, the Appellant clearly could not act in the way he did without committing the offence prescribed in the section. But as there was no such notice at the material time, the learned trial Judge held that the general statute is applicable *i.e.* the Mines and Quarries (Regulation) Law, Cap. 270, the special statute (Cap. 59) being applicable only to those parts of the foreshore which are prescribed in the notice published from time to time in the Official Gazette by the District Officer concerned under section 3 of the statute, Cap. 59, *supra*; and the learned trial Judge convicted the accused of the offence as charged.

It is against this conviction that the accused took the present appeal on the ground that the trial Judge erred in law for the reason stated above. On the other hand, counsel for the Respondents submitted that both statutes (*i.e.* Cap. 270 and Cap. 59, *supra*) are applicable to the removal of sand etc. etc. from the foreshore (as that would also amount to "quarrying" under Cap. 270).

Allowing the appeal and setting aside the conviction, the Court:-

Held, (1). We are clearly of opinion that the Law applicable to a case such as this, is the special Law (Cap. 59) in force for the protection of the foreshore. Reading each of these two statutes, we have no difficulty in holding that the intention of the legislature is as stated above.

(2) (a) The Foreshore Protection Law Cap. 59 (enacted in 1934 and amended thereafter) is a special law to regulate the taking and receiving of sand and other such material from the foreshore; and the Mines and Quarries (Regulation) Law Cap. 270 (enacted in 1953 and amended in 1955 and 1956) is a general law to regulate the working of mines and quarries. Without the statutory definition in section 2 of Cap. 270 (*supra*), the taking and removal of sand etc. etc. from the foreshore, could hardly be described as "quarrying".

(b) It may be observed that it is a well established rule of statutory interpretation that *generalia specialibus non derogant* (see Maxwell on the Interpretation of Statutes 11th Edn., 1962, p. 168; see also *Hinis* v. *The Police* (1963) 1 C.L.R. 14, at p. 25 et seq.; and *Petrides* v. *The Republic,* 1964 C.L.R. 413, at p. 425 et seq.).

(3) The appeal must succeed; conviction quashed.

Appeal allowed.

Cases referred to:

Eraclides v. *The Police* (1970) 2 C.L.R. 1;

Hinis v. *The Police* (1963) 1 C.L.R. 14, at p. 25 et seq.;

Petrides v. *The Republic,* 1964 C.L.R. 413, at p. 425 et seq.;

Mirachis v. *The Police* (1965) 2 C.L.R. 28;

Karaviotis and Others v. *The Police* (1967) 2 C.L.R. 286;

Tattari v. *The Republic* (1970) 2 C.L.R. 6, at p. 11 et seq.

Appeal against conviction.

Appeal against conviction by Stavros Eraklides who was convicted on the 30th January, 1971 at the District Court of Nicosia sitting at Morphou (Criminal Case No. 2855/70) on one count of the offence of quarrying for sand and shingle without a licence contrary to sections 37(2) and 43(2) of the Mines and Quarries (Regulation) Law, Cap. 270 and was sentenced by Hji Constantinou, D.J. to thirteen days' imprisonment and a previous order binding him over was ordered to remain in force.

Chr. Artemides with *E. Markidou* (*Mrs.*) for the Appellant.

Cl. Antoniades, Counsel of the Republic, for the Respondents.

The judgment of the Court was delivered by:–

VASSILIADES, P.: In the light of the discussion during the argument and after hearing submissions from counsel on both sides, we think that the position is quite clear. The confusion in this prosecution which led to the error in the judgment,

seems to have arisen from the very wide definitions put on the words "quarry" and "quarrying" in section 2 of the Mines and Quarries (Regulation) Law, Cap. 270.

Taking into account, as one must do, the object for which these two laws—The Foreshore Protection Law, Cap. 59 and the Mines and Quarries (Regulation) Law, Cap. 270—were enacted and the intention of the legislator as manifested in their respective provisions, there can be no doubt, we think, that the Foreshore Protection Law was enacted for the purpose of protecting the foreshore and regulating, *inter alia*, activities such as the one under consideration in this case, i.e. the removal of sand and gravel from the foreshore; while the Mines and Quarries (Regulation) Law was enacted for the purpose of generally regulating and controlling the working of mines and quarries; or, perhaps more accurately, for the purpose of consolidating and improving the then existing legislation in that connection, described in the Schedule to section 48 of the statute.

The Appellant, a lorry-driver 50 years of age, was prosecuted for piling up and removing sand and shingle from a particular place on the foreshore, quite close to the sea-water, where the Serachis river flows into the sea; 3–4 metres from the sea-water, according to the prosecution witness who reported the matter. When the police approached and informed the Appellant that he was going to be reported with a view to prosecution, he said that as the Police were after him he would give up and go away. The Police then left, leaving the Appellant behind. They could not tell the Court what happened after they left.

At the close of the case for the prosecution, Mrs. Markides for the defendant submitted that there was no case for her client to meet. Counsel referred to the Foreshore Protection Law, Cap. 59, and submitted that that was the law governing specially this matter, being the law in force for the protection of the foreshore against, *inter alia*, activities such as the one under consideration. In support of her submission counsel referred to *Eraclides* v. *The Police* (1970) 2 C.L.R.1, where the same Appellant challenged a similar conviction, handling throughout the proceedings personally his case, without professional assistance; and failing to take the point now raised, either at the trial or in his notice of appeal. This Court, however, dismissing both defendant's appeal against

conviction and the Attorney-General's appeal against sentence, had this to say in that case:–

> " We find it unnecessary to deal in detail with the long address of the Appellant which gave us considerable difficulty owing to the fact that without professional assistance he was obviously unable to handle the matter; especially to distinguish between what was relevant and what was irrelevant to the case.
>
> Learned counsel for the prosecution on the other hand, could not give us a satisfactory reason why was this prosecution taken under the Mines and Quarries (Regulation) Law, Cap. 270; and not under the Foreshore Protection Law, Cap. 59, which is the Law intended to protect the foreshore, where such protection is considered necessary. Be that as it may, however, we find it unnecessary to deal with the matter in the present appeal, as it has not been taken at the trial or raised in the notice of appeal. Section 144 of the Criminal Procedure Law, Cap. 155, provides that in dealing with an appeal, the Supreme Court shall hear and determine the appeal only on the grounds set out in the notice of appeal, unless the case falls within the proviso to the section".

The trial Judge, after considering the matter, overruled the submission; and called upon the accused for his defence. In a reasoned ruling, the Judge took the view that the Foreshore Protection Law (as amended by Law No. 17 of 1964) is applicable only to those parts of the foreshore which are prescribed in the notice published in the Official Gazette from time to time under section 3(1) of the statute, by the District Officer concerned; and is not applicable to other parts of the foreshore. In fact the Judge referred to such a notice, published on July 31, 1970, (about three weeks after the offence herein) under No. 631, which covered other parts of the foreshore in that coast; but did not include the place where the Appellant was found to be taking sand.

Section 3 (as in force at the material time) enables the District Officer of the District within which the foreshore is found, to phohibit absolutely or subject to restrictions or conditions imposed by him, the removal (*inter alia*) of sand, shingle, gravel or any such material from the foreshore (within a distance of one hundred yards from high water mark) by publishing a

notice to that effect in the Official Gazette of the Republic. Acting in contravention of such notice, is an offence under sub-section 3 of the section in question, punishable with imprisonment not exceeding three months or to a fine not exceeding one hundred pounds or to both such imprisonment and fine. It is perfectly clear, we think, that had the part of the shore in question, been covered by a notice under section 3, the Appellant could not act in the way he did, without committing the offence prescribed in the section.

Taking the view that the Foreshore Protection Law, Cap. 59, was not applicable to the facts in this case, the trial Judge proceeded to consider whether the charge preferred against the Appellant under sections 37(2) and 43(2) of the Mines and Quarries (Regulation) Law, Cap. 270, was well founded. Taking into account that the Foreshore Protection Law was enacted in 1934, while the Mines and Quarries (Regulation) Law was enacted in 1953; and that the definition of the words "quarry" and "quarrying" in section 2 of the latter statute was wide enough to cover obtaining sand and gravel from the foreshore (it being "neither a mine nor merely a well or borehole") the Judge held that the charge was well founded. He convicted the Appellant as charged; and in view of his previous convictions for illegal quarrying, the Judge sentenced the Appellant to thirteen days' imprisonment.

Against that conviction, the Appellant took the present appeal on the ground that the trial Court erroneously interpreted and applied the Mines and Quarries (Regulation) Law to the facts of this case. It was contended for the Appellant that there being a special law for the protection of the foreshore against the taking and removing sand and gravel, the general law regulating mining and quarrying is not applicable in such cases, even if by stretching the statutory definitions one could bring the case within the statute.

Mr. Antoniades, on the other hand, argued that both statutes are applicable to the removal of sand from the foreshore (as that would also amount to "quarrying" under the Mines and Quarries (Regulation) Law). He submitted that a permit for the removal of sand from the foreshore could be issued either by the District Officer under the Foreshore Protection Law, or by the Inspector of Mines under the Mines and Quarries (Regulation) Law. Therefore, he argued, a prosecution lies

under either statute for the removal of sand without a government permit.

We are clearly of opinion that this argument is ill founded; and that the law applicable to a case such as this, is the special Law in force for the protection of the foreshore. Reading each of these two statutes as a whole, we have no difficulty in holding that the intention of the legislature is as stated earlier in this judgment. The Foreshore Protection Law, Cap. 59, is a special Law (enacted in 1934 and amended in 1954, 1957, 1961 and 1964) to regulate the taking and removing of sand and other such material from the foreshore; and the Mines and Quarries (Regulation) Law, a general Law (enacted in 1953 and amended in 1955 and 1956) to regulate the working of mines and quarries. Without the statutory definition referred to above, the taking and removal of sand from the foreshore, could hardly, we think, be described as "quarrying".

It may be observed here, that it is a well establish ed rule of statutory interpretation that *generalia specialibus non derogant*; or, as stated in Maxwell on the interpretation of statutes (11th Ed. (1962) at p. 168) –

> " where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such words, without any indication of a particular intention to do so".

We would also refer in this connection, to *Ioannis Hinis* v. *The Police* (1963) 1 C.L.R. 14 at p. 25 et seq.; and to *Georghios Petrides* v. *The Republic*, 1964 C.L.R. 413 at p. 425 et seq.

We, therefore, hold that this appeal must succeed; and that the conviction of the Appellant must be quashed.

It is unfortunate that upon this conviction the Appellant had to serve a sentence of imprisonment which has already expired. The question of sentence was not raised in the appeal and we do not wish to deal with it. But it is, we think, very regrettable that the attention of the trial Judge was not drawn to observations and statements regarding sentencing made by this Court in cases such as *Mirachis* v. *The Police* (1965) 2

C.L.R. 28; *Karaviotis and Others* v. *The Police* (1967) 2 C.L.R. 286; *Tattari* v. *The Republic* (1970) 2 C.L.R. 6 at p. 11 et seq. We leave the matter at that.

Appeal allowed. Conviction quashed and sentence set aside.

Appeal allowed.