[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

MICHAEL ATHANASSI,

Appellant,

v.

THE POLICE

Respondents.

(*Criminal Appeal No.* 3471).

Water—Running water—Fraudulent asportation of—Fraudulent appropriation of running water—Contrary to section 279 (2) *of the Criminal Code, Cap.* 154*—Disconnecting water pipe from meter—With a view to avoiding the payment of the relevant water charges to the Village Water Commission—Prescribed by the bye-laws made under the Water (Domestic Purposes) Village Supplies Law, Cap.* 349 (*enacted in July* 1948)*—Appellant rightly convicted of the offence under section* 279 (2) *of the Criminal Code* (supra)—*Maxim* generalia specialibus non derogant *having no application in the present case.*

Stealing running water—Fraudulent asportation—Section 279 (2) *of the Criminal Code, Cap.* 154 *notwithstanding the existence of a later special law Cap.* 349 (supra)*—See further* (supra); *see also* infra.

Stealing running water—Maximum sentence provided 5 *years' imprisonment—Section* 279 (2) *of the Criminal Code—Sentence imposed in this case* £60 *fine—Not excessive.*

Statutes—Interpretation—Application of statutes—Repeal by necessary implication—Principles applicable—Maxim generalia specialibus non derogant*—Application of the maxim—Section* 30 (1) *of the Water (Domestic Purposes) Village Supplies Law, Cap.* 349 *and bye-laws made thereunder—Cannot be construed as having repealed by implication the provisions of the earlier statute* (i.e. *section* 279 (2) *of the Criminal Code, Cap.* 154).

Generalia specialibus non derogant*—Application of the maxim—See* supra.

The Appellant was convicted in the District Court of Kyrenia of the fraudulent appropriation of running water of the value

of £4, the property of the Village Water Commission of Ayios Georghios, contrary to section 279 (2) of the Criminal Code, Cap. 154, and sentenced to pay £60 fine (maximum penalty provided: 5 years' imprisonment). The Appellant took this appeal both against conviction and sentence. The *modus operandi* in this case as found by the trial Court was that the accused (now Appellant), having disconnected the water pipe from the meter attached to it, was, thus, diverting running water to his own use without paying to the said Village Water Commission the water charges prescribed under the Regulations or Bye-Laws made under the Water (Domestic Purposes) Village Supplies Law, Cap. 349.

It was argued on behalf of the Appellant that the matter is covered by the special statute just referred to Cap. 349, enacted on July 29, 1948, to the exclusion of the earlier general law *viz.* section 279 (2) of the Criminal Code, Cap. 154 (*supra*). In support of his contention learned counsel relied on the maxim *generalia specialibus non derogant*. It is to be noted that the maximum penalty provided for offences against the later special Law (*viz.* Cap. 349, *supra*) is a fine of £10 (as compared with 5 years' imprisonment under said section 279 (2) of the Criminal Code, *supra*). It was further argued by counsel for the Appellant that the conviction is against the weight of evidence and that, in any event, the sentence of £60 fine was excessive.

Dismissing the appeal both against conviction and sentence, the Court:-

Held, (1). In the light of the principles laid down in the authorities regarding the maxim *generalia specialibus non derogant* and germane matters (see *infra*) and looking at the provisions of section 30 (1) of the Water (Domestic Purposes) Village Supplies Law, Cap. 349 (*supra*) and the bye-laws made thereunder, it seems to us that the said statute (Cap. 349) cannot be construed to have repealed by implication section 279 (2) of the Criminal Code (*supra*) as there is no inconsistency in the two statutes standing together. Nor does the later statute (Cap. 349) show an intention of the legislature to restrict or alter the provisions of the earlier law (*i.e.* the Criminal Code, Cap. 154, section 279 (2)). The mere fact, of course, that under section 30 (3) of the later law, contravening any bye-law is an offence punishable on summary conviction with a fine up to £10, does not mean that the right or remedy of the Village Commission is taken away dealing with an offender under section 279 (2)

who has stolen running-water, the property of the Commission. *Note: Authorities relied upon by the Court* (supra):

Blackpool Corporation v. *Starr Estate Co.* [1922] 1 A.C. 27, at p. 34, per Lord Haldane; *Seward* v. *'Vera Cruz'* [1884–85] 10 A.C. 59, at p. 68, per Lord Selborne L.C.; *Barker* v. *Edger* [1898] A.C. 748, at p. 754, per Lord Hobhouse; *Walker* v. *Hemmant* [1943] K.B. 604, at pp. 605–606; *Hinis* v. *The Police* (1963) 1 C.L.R. 14; *Petrides and Others* v. *The Republic*, 1964 C.L.R. 413; cf. also Maxwell on Interpretation of Statutes, 12 edn. at p. 196.

(2) (A) The weight of evidence cannot, unlike its admissibility, be determined by strict rules; it depends mainly on common sense, logic and experience. There can be no canon for weighing evidence and drawing inferences from it. Each case presents its own peculiarities, and in each, common sense and shrewdness must be brought to bear upon the facts elicited. Cf. *Lord Advocate* v. *Lord Blantyre* [1878–79] 4 App. Cas. 770, at pp. 791–792, per Lord Blackburn.

(B) Having read the whole of the evidence adduced in this case, we are satisfied that there was sufficient evidence from which the trial Court could draw the inference that he—the accused, now appellant—in order to avoid paying for the full quantity of the water used, disconnected the pipe from the meter; and once the water remained the property of the Commission until it has passed the meter, the action of the Appellant constituted a felonious asportation punishable under section 279 (2) of the Criminal Code, Cap. 154.

Appeal (both against conviction and sentence) dismissed.

Cases referred to:

Lord Advocate v. *Lord Blantyre* [1878–79] 4 App. Cas. 770, at pp. 791–792, per Lord Blackburn;

Ferens and Another v. *O' Brien* [1883] 11 Q.B.D. 21, at p. 22;

R. v. *White* [1852–55] VI Cox C.C. 213;

R. v. *Firth* [1867–71] XI Cox C.C. 234;

Blackpool Corporation v. *Starr Estate Co.* [1922] 1 A.C. 27, at p. 34, per Lord Haldane;

Seward v. *'Vera Cruz'* [1884–85] 10 A.C. 59, at p. 68, per Lord Selborne, L.C.;

Barker v. *Edger* [1898] A.C. 748, at p. 754, per Lord Hobhouse;

Walker v. *Hemmant* [1943] K.B. 604, at pp. 605–606;

Hinis v. *The Police* (1963) 1 C.L.R. 14;

Petrides and Others v. *The Republic*, 1964 C.L.R. 413.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Michael Athanassi who was convicted on the 12th June, 1973 at the District Court of Kyrenia (Criminal Case No. 1310/72) on one count of the offence of fraudulent appropriation of running water contrary to section 279 (2) of the Criminal Code Cap. 154 and was sentenced by Pitsillides, S.D.J. to pay a fine of £60.—and £6.— costs.

A. Protopapas, for the Appellant.

N. Charalambous, Counsel of the Republic, for the Respondents.

The judgment of the Court was delivered by:–

HADJIANASTASSIOU, J.: This is an appeal from the judgment of the District Court of Kyrenia, dated May 28, 1973, which convicted the Appellant of the fraudulent appropriation of running water of the value of £4.500 contrary to s. 279 (2) of the Criminal Code Cap. 154. He was sentenced to pay a fine of £60 and ordered to pay also £6 costs.

The facts are these:– The Appellant who is 33 years of age comes from the village of Ayios Georghios of the district of Kyrenia and owns a small lemon tree grove which is adjacent to the church yard of the village. The accused, who lives in a hut erected in that grove had secured water for domestic purposes, the property of the Village Water Commission of Ayios Georghios. The water was brought from a spring by means of underground pipes laid down by the Commission. A meter was placed on the pipe of the Appellant, and like any other consumer of water he was supplied water on payment of a fixed price of £1 for the first 20 tons; and when more water was used, he was charged more money, in accordance with the regulations made under the Water (Domestic Purposes) Village

Supplies Law, Cap. 349, which came into force on July 29, 1948. There is no doubt that the purpose of the water meter was to enable the Commission to check the water used by each consumer, and the said meter was sealed to the pipe by means of wire.

On July 23, a certain Hjicostis—a member of the Village Commission—visited the place of the Appellant, who was away at the time, and noticed that the water meter was disconnected, having been unscrewed from the pipe, and a rubber hose was fitted on that pipe with the result that the water was running into the lemon trees of the accused. Needless to add, because of the disconnection of the meter, the water which was irrigating the lemon trees was not recorded, and it was therefore consumed free of charge.

The matter was reported to the police by Hjicostis and P.C. Psaras, together with another police constable 1033, visited the Appellant at his tavern which was not far away from the place of his residence. When the accused was informed of what was going on, he returned together with the police to his place, and when he was asked as to whom the rubber hose belonged, he admitted that it belonged to him. Then P.C. Psaras cautioned him and when the Appellant was asked again who fitted it on the water supply pipe, his reply was " they put it there, but I don't know who". However, when giving evidence the accused denied both that the rubber hose was his and that the police asked him who fitted the rubber hose on to the pipe. The accused further stated that he never instructed his nephews to irrigate his grove.

It was mainly contended before the trial Judge by counsel that the accused ought to have been given the benefit of the doubt, particularly so, because of his explanations that in the vicinity there were both boy scouts and soldiers who were taking water from the tap of the church, and who might have interfered with the water meter.

The trial Judge, after weighing the evidence before him including the fact that boy scouts and soldiers were camping in the vicinity, drew the inference that the Appellant fitted the rubber hose on the water supply pipe, intending to obtain the water, the property of the Commission, without paying, and convicted him of the offence of fraudulent appropriation of running water.

What is said mainly by counsel for the Appellant here is twofold: His first point is that the finding of the trial Court was contrary to the weight of the evidence. We think we ought to reiterate what has been said before that the weight of evidence cannot like its admissibility be determined by arbitrary rules, since it depends mainly on common sense, logic and experience. For weighing evidence and drawing inferences from it, there can be no canon. Each case presents its own peculiarities, and in each, common sense and shrewdness must be brought to bear upon the facts elicited. Cp. *Lord Advocate* v. *Lord Blantyre*, [1878–79] 4 App. Cas. 770 at pp. 791–792, per Lord Blackburn.

Having read the whole of the evidence adduced in this case, we are satisfied that there was sufficient evidence from which the Court could draw inference from it—once the accused has contracted with the Commission to pay for the water consumed —that he, the accused, in these circumstances, in order to avoid paying for the full quantity of the water used, disconnected the pipe from the meter without the knowledge or consent of the Commission; and once the water remained the property of the Commission until it has passed the meter, it constituted a felonious asportation.

In the light of the facts and circumstances of this case, the Appellant, in our view, was rightly found guilty of fraudulent appropriation of running water because, as it has been said long ago, there may be larceny of water. (*Ferens and Another* v. *O'Brien* [1883] 11 Q.B.D., 21 at p. 22). It is clear that the water was not put into the possession of the Appellant, but was all along in the possession of the Commission, and that the Appellant in this case took it away, or diverted it to his own use, having an *animus furandi*. If authority is needed, we think that *R.* v. *White* [1852–55] VI Cox C.C. 213 provides the answer. Lord Campbell, L.J., dealing with the question of larceny of gas, had this to say:–

> " I think that the conviction ought to be affirmed, and that the direction of the learned Recorder was most accurate. Gas is not less a subject of larceny than wine or oil; but is there here a felonious asportation? No one who looks at the facts can doubt it. The gas, no doubt, is supplied to a vessel which is the property of the prisoner, but the gas was still in the possession of the company. Then, being in the possession of the company, and their property, it is

> taken away *animo furandi* by the prisoner. If the property remains in the company until it has passed the meter, which is found—to take it before it has passed the meter constitutes an asportation. If the asportation was with a fraudulent intent, and this the jury also have found—it was larceny .

See also *R.* v. *Firth* [1867–71] XI Cox C.C. 234.

The second point taken by counsel for the Appellant is that the trial Judge erroneously interpreted and applied the law, once there is a special law and that the general law is inapplicable by virtue of the rule *Generalia specialibus non derogant.* We have considered this contention of counsel, and we are of the opinion that s. 279 (2) of the Criminal Code, which deals with fraudulent appropriation of running water, and which is within the offences allied to stealing, is unaffected by the words of the Water (Domestic Purposes) Village Supplies Law and the bye-laws made thereunder, because an earlier special law is not abrogated by a later law by mere implication and because it does not cover the same territory. The Appellant relies on the maxim *Generalia specialibus non derogant,* a principle which has been stated thus by Lord Haldane L.C. in *Blackpool Corporation* v. *Starr Estate Co.* [1922] 1 A.C. 27 at p. 34:–

> " It is that wherever Parliament in an earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute the legislature lays down a general principle, that general principle is not to be taken as meant to rip up what the legislature had before provided for individually, unless an intention to do so is specially declared .

Lord Selborne, L.C. in *Seward* v. *'Vera Cruz'*, [1884–85] 10 App. Cas. 59 at p. 68, put the principle a little differently when he said:–

> " If anything be certain it is this, that 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 general words without any indication of a particular intention to do so".

Lord Hobhouse, delivering the judgment of the Privy Council, in *Barker* v. *Edger* [1898] A.C. 748 at page 754 said:–

> "The general maxim is, '*Generalia specialibus non derogant*'. When the Legislature has given its attention to a separate subject, and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms".

See, also, *Walker* v. *Hemmant* [1943] K.B. 604 at pp. 605–606; *Ioannis Georghiou Hinis* v. *The Police* (1963) 1 C.L.R. 14; and *Georghios Petrides and Others* v. *The Republic*, 1964 C.L.R. 413. On the question of repeal by implication, see also Maxwell on Interpretation of Statutes, 12 edn., at p. 196.

It seems to us, in the light of all these principles, and looking at the provisions of s. 30 (1) of the Water (Domestic Purposes) Village Supplies Law, Cap. 349 and the bye-laws made thereunder, that it cannot be construed to have repealed by implication s. 279 (2) of the Criminal Code Cap. 154, as there is no inconsistency in the two statutes standing together. Nor does the later law show an intention of the legislature to restrict or alter the provisions of the earlier law regarding sentencing. The mere fact, of course, that under s. 30 (3) of the later law it is in effect made an offence punishable on summary conviction of any person contravening by an act or omission of any by-law with a fine up to £10, that does not mean that the right or remedy of the village commission is taken away dealing with an offender under s. 279 (2) when the offender has taken water, the property of the commission, fraudulently.

For these reasons, we are of the view that the contention of counsel fails and we would affirm the conviction of the Appellant.

The last point taken by counsel for the Appellant is that the fine of £60 is manifestly excessive because the Appellant is a first offender. There is no doubt that the trial Judge has taken into consideration this fact in imposing the fine on the Appellant, but in our view, once this fact has been taken into account and because the legislature has thought fit to provide a punishment for an offender of fraudulently using running

water up to a period of five years' imprisonment, we do not think that the amount of fine in the circumstances of this case is manifestly excessive or wrong in principle, even if one of the members of the Court might have passed a different one had he been the trial Judge. The appeal, therefore, fails and is dismissed.

1974
Febr. 12
—
MICHAEL ATHANASSI
v.
THE POLICE

Appeal dismissed.