[TRIANTAFYLLIDES, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

1. LORDOS & ANASTASSIADES LTD.,
2. LORDOS & KASINOS LTD.,

Appellants.

v.

THE DISTRICT OFFICER OF LIMASSOL AND ANOTHER,

Respondents.

(*Criminal Appeals Nos.* 3528 *and* 3529).

Building—Building permit—Issued under section 3 *of the Streets and Buildings Regulation Law, Cap.* 96*—Is issued to the person applying therefor not as a licence in personam, but as a licence in rem—It does not lapse upon transfer of the ownership of the land on which the building operations are to take place, or have commenced taking place, but it runs with the land.*

Statutes—Construction—Principles applicable—Statutory provisions should be so construed as to harmonize with the provisions of the Constitution—Two alternative constructions equally open—The one which would lead to manifest public mischief, great inconvenience, grave hardship, unreasonableness, absurdity or injustice should be avoided.

Building—Building permit—Cannot be treated as an "advantage" in the sense in which such term is used in section 4 *of the Immovable Property (Tenure, Registration and Valuation) Law, Cap.* 224 *(as amended).*

Streets and Buildings Regulation Law, Cap. 96*—Construction of s.* 3(1) of the Law.

On August 7, 1972, a building permit was issued by respondent 2 to Chrysoulla Myrianthi and others, in relation to a field registered in their names and situated on the Limassol–Nicosia main road. This field had been sold to the appellant companies, prior to the issue of the building permit, by virtue of a written agreement dated June 5, 1972. On August 9, 1972 the field was transferred to the two appellants in equal undivided shares.

The building permit issued in the name of the previous owners was valid for one year, and before the expiration of the year the appellants, without applying afresh for a building permit in their own names, started erecting in the field a multi-storied building.

The appellants were prosecuted and convicted of the offence of erecting a building without permit, contrary to sections 3(7)(b) and 20 of the Streets and Buildings Regulation Law, Cap. 96, and each one of them was sentenced to pay a fine of C£20 and a demolition order was, also, made in respect of the building concerned.

The trial Court held that the building permit granted to the previous owners lapsed when the property concerned was transferred to the appellants.

Upon appeal counsel for the appellants challenged mainly the above finding.

What the Court had to decide in the appeal was whether a building permit issued under section 3 of Cap. 96 was a licence in rem or in personam or both; and in order to do this the Court had to construe the provisions of Cap. 96 and the Streets and Buildings Regulations (in the Subsidiary Legislation of Cyprus, Vol. 1 p. 307).

Held, (Hadjianastassiou, J. dissenting) that looking at our legislation and considering the relevant provisions in conjunction with each other the proper conclusion is that a building permit issued under section 3 of Cap. 96 is issued to the person applying for it not as a licence in personam, but as a licence in rem; that, in other words, it is issued in relation only to the proposed building operations on the land concerned, in accordance with plans submitted for the purpose; and that, therefore, it does not lapse upon transfer of the ownership of the land on which the building operations are to take place, or have commenced taking place, but it runs with the land (*Chilimintri* v. *The Municipal Corporation of Famagusta* (1969) 3 C.L.R. 159 at p. 162 considered).

Appeal allowed.

Per curiam: (1) Even assuming—though this is not so—that the wording of the relevant provisions of Cap. 96, and of the Regulations made thereunder, was, in any respect, ambiguous as regards the nature of a building permit then such provisions

should have been construed having in mind the consequences, respectively, of the possible alternative interpretations involved, and there should have been avoided that view which would have led to manifest public mischief, great inconvenience, grave hardship, unreasonableness, absurdity or injustice, though of course, sight is not lost of the fact that this is an approach to statutory interpretation which should be used with due care.

(2) A building permit cannot be properly treated as an "advantage" in the sense in which such term is used in Cap. 224. But, even if it could be so treated, it is to be noted that in section 4 of Cap. 224 there is to be found the exclusory expression "subject to the provisions ... of any other Law in force for the time being", and such a Law is Cap. 96, from the provisions of which it can be derived, by practically inevitable implication, that a building permit relates only to the land concerned, and therefore, it can be transferred together with such land without one having to resort to compliance with any of the provisions of Cap. 224.

Cases referred to:

Russel v. *Ministry of Commerce for Northern Ireland,* (1945) N.I. 184 at p. 188;

Kaminaros and Another v. *The Republic,* (1971) 3 C.L.R. 445 at pp. 448–449;

Christodoulou v. *The Republic* (1972) 3 C.L.R. 290 at p. 292;

Allen v. *Thorn Electrical Industries Ltd.,* [1968] 1 Q.B. 487 at p. 502;

Arthur Hill v. *The East and West India Dock Company,* [1884] 9 A.C. 448 at p. 456;

Simms and Others, v. *The Registrar of Probates,* [1900] A.C. 323, at p. 335;

Shannon Realties Limited v. *Ville De St. Michel,* [1924] A.C. 185, 192 at p. 193;

Holmes v. *Bradfield Rural District Council* [1949] 1 All E.R. 381 at p. 384;

Coutts & Co. v. *Inland Revenue Commissioners* [1953] A.C. 267 at p. 281;

Fry v. *Inland Revenue Commissioners* [1959] Ch. 86 at p. 105;

Richard Thomas and Baldwins, Ltd. v. *Cummings,* [1955] 1 All E.R. 285 at p. 290;

Kimpton v. *The Steel Company of Wales, Ltd.*, [1960] 2 All E.R. 274 at pp. 276, 277;

Mitchell v. *W.S. Westin, Ltd.*, [1965] 1 All E.R. 657 at p. 663;

Hanily v. *Minister of Local Government & Planning and Another* [1952] 1 All E.R. 1293 at p. 1296;

Chilimintri v. *The Municipal Corporation of Famagusta*, (1969) 3 C.L.R. 159 at p. 162;

Impalex Agencies Limited v. *The Republic* (1970) 3 C.L.R. 361;

Beswick v. *Beswick* [1967] 2 All E.R. 1197 at p. 1202;

South Eastern Railway Co. v. *The Railway Commissioners* [1880] 5 Q.B.D. 217 at p. 240;

Myers v. *Milton Keynes Development Corporation* [1974] 2 All E.R. 1096 at p. 1101;

Golden Sea-Side Estate Co. Ltd. v. *The Municipal Corporation, Famagusta* (1973) 2 C.L.R. 58.

Appeal against conviction.

Appeal against conviction by Lordos and Anastassiades Ltd. and Another who were convicted on the 15th November, 1973 at the District Court of Limassol (Criminal Case No. 5897/73) on one count of the offence of erecting a building without a permit, contrary to sections 3(1)(b) and 20 of the Streets and Buildings Regulation Law, Cap. 96 and were each sentenced by Chrysostomis, D.J. to pay a fine of £20. – and were further ordered to demolish the building within two months unless a permit was obtained.

A. Trantafyllides, for appellant 1.

A. Myrianthis, for appellant 2.

G. Cacoyiannis, for the respondents.

Cur. adv. vult.

The following judgments were read:–

TRIANTAFYLLIDES, P.: The appellants were found guilty, by a Judge of the District Court of Limassol, of the offence of erecting a building without a permit, contrary to sections 3(1)(b) and 20 of the Streets and Buildings Regulation Law, Cap. 96, and each one of them was sentenced to pay a fine of C£20; and a demolition order was, also, made in respect of the building concerned.

The salient facts of the case may be stated briefly as follows:–

On August 7, 1972, a building permit was issued by respondent

2 (which functions under the chairmanship of respondent 1) to Chrysoulla Myrianthi and others, in relation to a field registered in their names and situated on the Limassol–Nicosia main road, within the area of the respondent Improvement Board of Yermasoyia.

This field had been sold to the appellant companies by virtue of a written agreement dated June 5, 1972.

On August 9, 1972, the field was transferred to the two appellants in equal undivided shares.

The building permit issued in the name of the previous owners, as aforesaid, was valid for one year, and before the expiration of the year the appellants, without applying afresh for a building permit in their own names, started erecting in the field a multi-storied building. They took the view that the permit granted to the previous owners authorized them to do so; but the respondents were of the opposite view, and as a result, the charge on which the appellants were convicted was preferred against them.

At the time of the conviction of the appellants, and of the making of the demolition order, the multi-storied building in question had not yet been completed, though about C£150,000 had already been expended in connection therewith by the appellants; and the appellants had entered into agreements with third parties to sell flats which form part of the said building.

The trial Court held that the building permit granted to the previous owners lapsed when the property concerned was transferred to the appellants; in other words, that it did not run with the land; and that, therefore, it did not provide lawful cover for the building operations on which the appellants had embarked.

It is this finding of the trial Court that counsel for the appellants have mainly challenged in this appeal.

It is common ground that a building permit is, in effect, a licence which enables a person to do some act which but for such permit it would be unlawful for him to do (see *Russel* v. *Ministry of Commerce for Northern Ireland*, (1945) N.I. 184, 188, referred to in Words and Phrases Legally Defined, 2nd ed., vol. 3, p. 158; also, Στασινοπούλου «Δίκαιον Διοικητικῶν Πράξεων», 1951, p. 146, Κυριακοπούλου «Ἑλληνικὸν Διοικητικὸν Δίκαιον», 4th ed., vol. B, p. 349).

In *Kaminaros and another* v. *The Republic*, (1971) 3 C.L.R. 445, the following were stated (at pp. 448–449):-

> " Whether and how a licence relates to a person or thing is a matter to be decided by construing the provisions of the relevant legislation; see, for example, in relation to licences for vehicles, Kyriacopoulos on Greek Administrative Law, 4th ed., vol. B., p. 350 (footnote 29), the decision of the Greek Council of State in Case 856/1957, as well as the decisions of the said Council in Cases 396/1963 and 798/1963 (reported in the Law Tribune—Νομικὸν Βῆμα— 1963, pp. 813–814)".

It was, consequently, held in that case that a road service licence issued under the Motor Transport (Regulation) Law, 1964 (Law 16/64), related to both the specific person to whom it was issued and to the specific vehicle in respect of which it was issued, that is to say it was neither solely a licence in personam ("προσωποπαγὴς") nor solely a licence in rem ("πραγματοπαγὴς") but it was both in personam and in rem.

The *Kaminaros* case, *supra*, was followed in *Christodoulou* v. *The Republic*, (1972) 3 C.L.R. 290, 292.

What we have to decide, therefore, is whether a building permit issued under section 3 of Cap. 96 is a licence in rem or in personam or both; and in order to do this it is of primary importance to construe the provisions of the relevant legislation, namely Cap. 96 and the Streets and Buildings Regulations (in the Subsidiary Legislation of Cyprus, vol. I, p. 307).

Before, however, proceeding to decide the above issue on the basis of the construction of our own legislative provisions it is, in my opinion, useful to have in mind, by way of general guidance, what is considered to be the nature of a building permit under some other systems of administrative law:

In Germany a building permit is considered to be a licence which runs with the land and which is, therefore, issued not only to the person applying for it, but, also, to the successors in title of such person in respect of the property in relation to which it is issued; in other words, the rights and duties under a building permit do not vest in the property owner to whom it is issued in his capacity as an individual, but in his capacity as the property owner, and, therefore, they are transmitted automatically by virtue of the transfer of the property to which the building permit

relates (see the French translation, in 1969, of Forsthoff's "German Administrative Law", 9th ed., p. 302, and the Greek translation, in 1932, of Fleiner's "German Administrative Law", 8th ed., pp. 140, 141).

In Greece, though a building permit is, as a rule, treated as a licence in personam, nevertheless the rights and obligations flowing from it can be transferred to a third person; this is so because of the provisions of the relevant legislation there (see Κυριακοπούλου, " Ἑλληνικὸν Διοικητικὸν Δίκαιον", *supra*, pp. 285, 286).

Looking at our own legislation in Cyprus, and considering the relevant provisions in conjunction with each other, I am of the opinion that the proper conclusion is that a building permit issued under section 3 of Cap. 96 is issued to the person applying for it not as a licence in personam, but as a licence in rem; in other words, it is issued, in relation only to the proposed building operations on the land concerned, in accordance with plans submitted for the purpose; and, therefore, it does not lapse upon transfer of the ownership of the land on which the building operations are to take place, or have commenced taking place, but it runs with the land; and my main reasons for this conclusion are, *inter alia*, the following:-

It is to be noted that there exists no provision in Cap. 96 which can be taken as indicating in any way that a building permit is a licence in personam, as it is done in some other statutes, such as, for example, in relation to a prospecting permit by means of section 13(3) of the Mines and Quarries (Regulation) Law, Cap. 270.

Also, a clear example of a licence in personam, in view of the taking into account of considerations personal to the individual concerned, is the licence granted under section 9 of the Architects and Civil Engineers Law, 1962 (Law 41/62).

It is very useful, too, to bear in mind the nature of the conditions that an appropriate authority may impose, under section 9(1)(b) of Cap. 96—now amended by the Streets and Buildings Regulation (Amendment) Law, 1974 (Law 13/74)—on issuing a building permit. None of these conditions can be treated as related to, or influenced by, any circumstances personal to the individual to whom the building permit is to be granted.

Furthermore, had a building permit not been a permit run-

ning with the land, but a permit which lapsed upon the transfer of the ownership of the land, on which a building was erected on the strength of such permit by the previous owner, it would be impossible to apply, in a rational manner, if at all, section 10(1) of Cap. 96, which provides that "No person shall occupy or use, or cause, permit, or suffer any other person to occupy or use, any building unless and until a certificate of approval has been issued in respect thereof by the appropriate authority"; because, if a building permit did not run with the land, the permit holder would be enabled to evade his obligations under section 10, in case of deviation from the terms of the permit, by simply transferring the land, with the completed building standing on it, to another person; and that other person, not being himself the permit holder, would not be in a position to obtain a certificate of approval, even if he was willing to make the necessary alterations to the building in question in order to bring it within the terms upon which the permit was initially granted, as he would have no locus standi in the matter, due to the permit having lapsed when the land was transferred to him.

Counsel for the respondents has tried to support his contention that a building permit is a licence in personam by saying that had it been a licence in rem then in the place of the expression "No person" in section 3(1) of Cap. 96 there would have been found the expression "No building"; and that the same would have been the case in relation to the opening words of section 10 of Cap. 96.

I do not think that this is a valid argument, because I cannot agree that the expression "No person" at the commencement of the said provisions of Cap. 96 was used with the particular object of indicating that such permit was a licence in personam; it was so used for the simple reason that it was obviously the proper expression to be used for drafting purposes, in spite of the building permit being a licence in rem.

Also, counsel for the respondents has pointed out that in some parts of the Streets and Buildings Regulations, for example in regulations 5(1) and 5(3), the word "owner" is to be found, and he tried to rely on such word in order to support his view that a building permit is a licence in personam, which does not run with the land. I do not think that the word "owner" has been used in any part of the said Regulations with any specific intention of determining the nature of a building permit; it has been used merely as a term indicating either the person applying for

a building permit (and who is the owner of the land concerned at the time of the application) or the person who is the owner of the land on which building works are taking place, irrespective of whether he is, also, the person to whom the permit was originally granted; and, in this connection, it is to be noted that in other parts of the same Regulations, for example in regulation 5(4), the expression "permit holder" has been used, instead of the word "owner".

It is useful, in this respect, to refer to *Allen* v. *Thorn Electrical Industries Ltd.*, [1968] 1 Q.B. 487, 502, where Lord Denning, M.R. said:-

> " The draftsman of this Act was, it was suggested, a learned pedant who used words with meticulous accuracy. I decline to accept this invitation. We are not the slaves of words but their masters. We sit here to give them their natural and ordinary meaning in the context in which we find them".

Even assuming—though this is not so—that the wording of the relevant provisions of Cap. 96, and of the Regulations made thereunder, was, in any respect, ambiguous as regards the nature of a building permit, then such provisions should have been construed having in mind the consequences, respectively, of the possible alternative interpretations involved, and there should have been avoided that view which would have led to manifest public mischief, great inconvenience, grave hardship, unreasonableness, absurdity or injustice; though, of course, I do not lose sight of the fact that this is an approach to statutory interpretation which should be used with due care (see Halsbury's Laws of England, 3rd ed., vol. 36, p. 408, para. 617).

In *Arthur Hill* v. *The East and West India Dock Company*, [1884] 9 A.C. 448, 456 it was said by Earl Cairns:-

> " It appears to me that both of those constructions to which I have referred, the construction contended for by the appellant and the construction placed upon the section by James L.J., are possible constructions; and where there are two constructions, the one of which will do, as it seems to me, great and unnecessary injustice, and the other of which will avoid that injustice, and will keep exactly within the purpose for which the statute was passed, it is the bounden duty of the Court to adopt the second and not to adopt the first of those constructions".

In *Simms and others*, v. *The Registrar of Probates*, [1900] A.C. 323, 335, it was stated by Lord Hobhouse that:-

> " It is quite true, as Bundey J. intimates when he is pointing out the severity of the law, that Courts must nevertheless construe it according to its true meaning. But where there are two meanings each adequately satisfying the language, and great harshness is produced by one of them, that has legitimate influence in inclining the mind to the other".

In *Shannon Realties, Limited* v. *Ville De St. Michel*, [1924] A.C. 185, 192, 193, Lord Shaw of Dunfermline said:-

> " Where the words of a statute are clear they must, of course, be followed; but, in their Lordships' opinion, where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system".

In *Holmes* v. *Bradfield Rural District Council*, [1949] 1 All E.R. 381, 384, Finnemore, J. said the following:-

> " The mere fact that the results of a statute may be unjust or absurd does not entitle this Court to refuse to give it effect, but, if there are two different interpretations of the words in an Act, the Court will adopt that which is just, reasonable and sensible rather than that which is none of those things".

In *Coutts & Co.* v. *Inland Revenue Commissioners*, [1953] A.C. 267, 281, Lord Reid said:-

> " In general, if it is alleged that a statutory provision brings about a result which is so startling, one looks for some other possible meaning of the statute which will avoid such a result, because there is some presumption that Parliament does not intend its legislation to produce highly inequitable results."

The above dictum was cited with approval in *Fry* v. *Inland Revenue Commissioners*, [1959] Ch. 86, 105.

In *Richard Thomas and Baldwins, Ltd.* v. *Cummings*, [1955] 1 All E.R. 285, 290, Lord Reid stated:-

> " The fact that the interpretation for which the respondent

contends would lead to so unreasonable a result is, in my opinion, sufficient to require the more limited meaning of 'in motion' to be adopted unless there is some very strong objection to it, and none was suggested. It is true that the Factories Act is a remedial statute and one should, therefore, lean towards giving a wide interpretation to it, but that does not justify interpreting an ambiguous provision in a way which leads to quite unreasonable results."

The above dictum was cited with approval in *Kimpton* v. *The Steel Company of Wales, Ltd.*, [1960] 2 All E.R. 274, 276, 277, and was followed, also, in *Mitchell* v. *W.S. Westin, Ltd.*, [1965] 1 All E.R. 657, 663.

It suffices, I think, to give the following examples of how inconvenient, harsh and really unjust it would be, in the absence of the clearest possible legislative texts pointing to the contrary conclusion, to treat in Cyprus, in the context of our existing legal system, a building permit as a licence in personam, and not as one in rem, which lapses when the person to whom it has been issued ceases to be the owner of the land concerned: Let us assume that a building permit is issued to someone and, later on, while the building works are in progress, he dies; if the building permit is to be treated as a licence in personam, not running with the land, then his heirs would not be entitled to continue the building works on the strength of the building permit issued to him, but would normally have to apply for a new one. Or, let us assume that a number of persons, who happen to be co-owners of an area of land, secure in their joint names, as co-owners, a building permit in relation to such area, and, then, they decide, for purposes of better estate management, to form a company of which they become the only shareholders, and they transfer the land in question to the company; in such a case if the permit does not run with the land the company would not be entitled to build on the strength of it, but would have to apply afresh for a building permit.

It might be pointed out, at this stage, that under the aforementioned agreement of June 5, 1972, for the sale of the land involved in the present proceedings to the appellant companies, the vendors, to whom the building permit had been granted, retained an interest in the building project concerned, and it is clear, from the whole tenor of such agreement, that it was intended to be an arrangement by means of which the said

vendors were to be enabled financially to develop the land in question, by becoming involved in a building project to be undertaken by the appellant companies; it would, indeed, be harsh, unjust and unreasonable to hold, in the absence of any definite and unambiguous legislative provision to the contrary, that the object of such a venture on the part of the vendors was defeated because, as the venture involved the transfer of the land concerned to the appellant companies, the relevant building permit lapsed as a result of such transfer.

Another way in which counsel for the respondents has sought to support his view that a building permit granted under Cap. 96 is a licence in personam, and it does not run with the land, was to refer to the provisions of section 28(1) of the Town and Country Planning Law, 1972 (Law 90/72), even though such Law was not in force at any time material to the present proceedings; he has submitted that the said section 28(1) shows that when the Legislature intends to lay down that a building permit runs with the land it states this in express terms.

Section 28(1) of Law 90/72 reads as follows:-

"28.(1) Ἄνευ ἐπηρεασμοῦ τῶν διατάξεων τοῦ παρόντος Μέρους ὡς πρὸς τὴν ἀνάκλησιν ἢ τροποποίησιν πολεοδομικῆς ἀδείας, πᾶσα χορήγησις πολεοδομικῆς ἀδείας πρὸς ἀνάπτυξιν ἀκινήτου ἰδιοκτησίας ἐνεργεῖ πρὸς ὄφελος τῆς ἀκινήτου ἰδιοκτησίας καὶ ἁπάντων τῶν κατὰ καιροὺς ἐχόντων ἐν αὐτῇ συμφέρον προσώπων, ἐκτὸς καθ' ἣν ἔκτασιν ἄλλως προβλέπει ἡ ἄδεια:

Νοεῖται ὅτι ἡ οὕτω χορηγουμένη πολεοδομικὴ ἄδεια λήγει καὶ στερεῖται κύρους κατόπιν τῆς παρελεύσεως χρονικοῦ διαστήματος τριῶν ἐτῶν ἀπὸ τῆς ἡμερομηνίας τῆς εἰδοποιήσεως περὶ τῆς χορηγήσεως αὐτῆς ἢ τοιούτου μακροτέρου χρονικοῦ διαστήματος οἷον ἤθελεν ὁρισθῆ ἐν τῇ ρηθείσῃ εἰδοποιήσει, ἐκτὸς ἐὰν ἐντὸς τοῦ ρηθέντος τριετοῦς ἤ, ἀναλόγως τῆς περιπτώσεως, μακροτέρου χρονικοῦ διαστήματος ἡ ἀνάπτυξις οὐσιαστικῶς ἤρξατο καὶ τελῇ ὑπὸ ἐνεργὸν ἐκτέλεσιν κατὰ τὸν χρόνον ὅτε ἡ ἄδεια ἔδει νὰ λήξῃ."

("28.(1) Without prejudice to the provisions of this Part as to the revocation or modification of planning permission, any grant of planning permission to develop immovable property shall, except in so far as the permission otherwise provides, enure for the benefit of the immovable property and of all persons for the time being interested therein:

Provided that a planning permission so granted shall expire and be of no effect after the lapse of a period of three years from the date of the notice of the grant thereof or such longer period as may be specified in the said notice, unless within the said three-year or longer period, as the case may be, the development shall have been substantially commenced and be in active progress at the date when the permission was due to expire").

This is a provision very similar to section 33(1) of the Town and Country Planning Act, 1971, in England (see Halsbury's Statutes of England, 3rd ed., vol. 41 (1971), pp. 1571, 1624, 1625) which reads as follows:-

"33. *Provisions as to effect of planning permission* (1) Without prejudice to the provisions of this Part of this Act as to the duration, revocation or modification of planning permission, any grant of planning permission to develop land shall (except in so far as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being interested therein."

It has for long been the position in England, even before 1971, that a planning permission relates to the land and not to the particular owner of such land (see, *inter alia*, *Hanily* v. *Minister of Local Government & Planning and Another*, [1952] 1 All E.R. 1293, 1296); and by means of section 28(1) of Law 90/72 this notion was introduced into the Law of Cyprus in explicit terms; but that this was done in 1972, in relation to a planning permission for town planning purposes, does not mean that the opposite was the position under Cap. 96 in relation to a building permit, when there is nothing in Cap. 96 to indicate that a building permit is a licence in personam, and when all indications are to the contrary, namely that it is a licence in rem.

Counsel for the respondents has referred us, too, to section 4 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, as it was re-enacted by section 2 of the Immovable Property (Tenure, Registration and Valuation) (Amendment) Law, 1960 (Law 3/60), and he has argued that a building permit is an "advantage" within the meaning of such provision and, therefore, in view of what is stated therein, a building permit cannot be transferred otherwise than in accor-

dance with the provisions of Cap. 224, with the inevitable result that it does not run with the land.

In the first place, I am not of the view that a building permit can be properly treated as an "advantage" in the sense in which such term is used in Cap. 224. Secondly, even if it could be so treated, it is to be noted that in section 4 of Cap. 224 there is to be found the exclusory expression "subject to the provisions... of any other Law in force for the time being", and, in my view, such a Law is Cap. 96, from the provisions of which it can be derived, by practically inevitable implication, that a building permit relates only to the land concerned, and, therefore, it can be transferred together with such land without one having to resort to compliance with any of the provisions of Cap. 224.

Finally, as it has been stressed by counsel for the appellants, if it were to be decided that a building permit does not run with the land then this would result in a great limitation of the right to property, as such right is safeguarded under Article 23 of the Constitution; and it is a well-settled principle that, so far as possible, statutory provisions should be so construed as to harmonize with the provisions of the Constitution, and not in a way inconsistent or incompatible with them; and, in this respect, it is useful to refer to the case of *Chilimintri* v. *The Municipal Corporation of Famagusta*, (1969) 3 C.L.R. 159, 162, where, in relation to the possibility of renewing a building permit more than once under section 5 of Cap. 96, the following were stated:-

> " Moreover, section 5 has to be construed bearing in mind that it is part of legislation restricting one of the fundamental rights and liberties safeguarded under our Constitution—the right to property—and, therefore, it should, in case of doubt, be interpreted in favour of the citizen; so, in the absence therein of any express prohibition of a second renewal of a building permit it must be taken that such a course is not excluded thereunder."

With all the foregoing considerations in mind I have reached the conclusion that the proper course is to treat the building permit granted to the predecessors in title of the appellants as having run with the land concerned, when such land was transferred to the appellants, and, therefore, that they were not guilty of the offence of building without a permit. Consequently, this appeal has to be allowed and the conviction of the

appellants has to be set aside, together with the sentence imposed as a result of the conviction.

STAVRINIDES, J.: I agree with the judgment just delivered by the President of the Court and I have nothing to add.

HADJIANASTASSIOU, J.: The appellants were convicted at the District Court of Limassol on November 15, 1973, on a single count charging them with the offence of erecting, suffering or allowing to be erected, a building without a permit, contrary to ss. 2, 3(1)(b) and 20 of the Streets and Buildings Regulation Law, Cap. 96, and were sentenced to pay £20 each, and a demolition order was made in respect of the building in question. The particulars of the offence were that the accused in the month of January, 1973, and on a date or dates to the prosecution unknown, at Yermasoyia in the District of Limassol, did within the Improvement Area of Yermasoyia, erect or suffer or allow to be erected on plots Nos. 295.2 and 295.3, sheet/plan 54/51, covered by Registration No. 20162 dated August 9, 1972, a building to wit, the foundations and part of the concrete frame of a block of flats without a permit in that behalf first obtained from the appropriate authority to wit, the Improvement Board of Yermasoyia.

The appellants now appeal against both the conviction and the order for demolition, and the points of substance raised by the notice of appeal are:-

(1) That the verdict of the trial Court is wrong in that, having regard to the nature of the building permit, such permit attaches to the land and not to the person, the grant of a building permit being an administrative act in rem and not in personam;

(2) the Court erred in law in deciding that the building permit is personal because Cap. 96 refers to the "permit holder"; and because the "permit holder" is the owner of the property so that if the property is transferred, the building permit attaches to the land, and the new owner becomes also "the permit holder";

(3) once a "building permit" is property within the meaning of Article 23 of the Constitution, because it affects the value of the land to which it is attached, the Court ought to have given such a construction to Cap. 96 as to bring it in accordance with the Constitution and particularly Article 23 thereof;

(4) once the trial Court has not rejected evidence relating to the prevailing administrative practice that the local authorities were recognizing the new owner as lawfully building on the strength of the permit granted to the previous owner, such administrative practice is consistent with the correct construction of Cap. 96, and it was properly relevant and applicable in these proceedings. Furthermore, it was said, that such administrative practice forms a source of administrative law, which is binding on the administration and is also consistent with the principles of common law; and

(5) that the trial Court applied wrong criteria in deciding to order a demolition once it did not have before it, on behalf of the prosecution all relevant matters, in order to enable the Court to exercise its discretion properly, and that the sentence of demolition is manifestly excessive and disproportionate to the gravity of the offence on the facts and circumstances as found and accepted by the trial Court; and particularly in view of the practice, the undisputed bona fides of the appellants, and especially because the respondent failed to apply for a provisional order to suspend the building operations.

The facts of this case can be summarised as follows:-

On August 7, 1972, a building permit, valid for one year from the date of its issue, was issued by the appropriate authority, the Improvement Board of Yermasoyia, to Chrysoulla N. Myrianthi and others, who were the registered owners of the land in question for the erection of a block of flats at an estimated cost of £250,000. On August 9, 1972, the holders of the permit to build, transferred the land into the names of the accused companies, which are land developers. It is to be added that the said transfer did not include any other right or privilege or an easement or advantage whatsoever from the previous owners to the new owners. Furthermore, it appears from the agreement in writing that on June 5, 1972, the appellants agreed to buy the land in question for the sum of £52,000, and in the contract of sale there was a specific term that the vendors were obliged to secure a building permit before the contract was concluded. In fact, the land in question was transferred into the names of the appellants when the permit was issued to the previous owners, and on the same date of the

declaration of sale, a mortgage was affected in favour of the previous owners.

In October, 1972, the appellants started building operations on the strength of the permit granted to the previous owners, relying as they said on a previous administrative practice. In fact, during the trial, counsel on behalf of the appellants, succeeded in introducing evidence as to the practice followed by other appropriate authorities, in permitting the new owner to carry on building operations on the strength of the original permit issued to the previous owners.

The trial Court, after considering the relevant evidence, and the provisions of Cap. 96, came to the conclusion that a building permit does not attach or run with the land, and that it is only personal to the holder. Furthermore, the Judge dealt with the evidence adduced, as to the practice followed by other licensing authorities, and said that the evidence was irrelevant because it emanated from a misapprehension of the law and could not in any way qualify the provisions of the law. Finally, the Court arrived at the conclusion that the prosecution proved their case beyond reasonable doubt, and found the appellants guilty of the charge of erecting a building without a permit. Each accused was sentenced to pay £20 fine and a demolition order was made for the building in question.

It is said that in a modern state it is often found desirable to subject specified activities to some form of Governmental control. The purposes of such control will vary. Sometimes control is imposed for the purpose of collecting revenue; sometimes the type of activity may be such that it is desirable in the public interest to restrict the number of persons who exercise it, or control may be considered desirable so as to ensure that the activity is carried on in a particular manner in the interests of public health, the safety or the protection of local amenities. In practice, one of the commonest methods whereby controls can be imposed is the licence. The individual who desires to carry on a particular activity e.g. to start business as a cab driver or carry out developments on his land, may be required to obtain a licence from the relevant local or central Government agency. In circumstances where the legislature considers such a control should be imposed the need to obtain a licence is provided for in a statute, but the form of a licence and the conditions on which a licence may or may not be issued in the particular instance, are either settled by the Government agency

concerned or laid down as a matter of policy by the legislature, often in the same authority of subordinate legislation. (*Impalex Agencies Limited* v. *The Republic* (*Minister of Commerce and Industry*), (1970) 3 C.L.R. 361).

According to the late Professor Kyriakopoulos on Greek Administrative Law, 1961 4th edn. Vol. 'B', p. 348 regarding the question of a licence:

" Αἱ ἄδειαι. 'Η ἄδεια συνιστᾶ μέσον, δι' οὗ τὸ κράτος ἀσκεῖ ἐπίβλεψιν ἐφ' ὡρισμένων ἐνεργειῶν τῶν ἀτόμων. Ὑπάρχουσιν ἐνέργειαι, αἱ ὁποῖαι ἐπιτρέπονται εἰς τὸ ἄτομον ἐξ αὐτῆς τῆς ἐλευθερίας του, τὴν ἐνάσκησιν ὅμως τούτων, ὡς δυναμένων νὰ ἐπιδράσωσιν ἐπιβλαβῶς ἐπὶ τοῦ συνόλου, ἐξήρτησεν ὁ νομοθέτης ἐκ προηγουμένου ἐλέγχου καὶ ἐγκρίσεως τῆς ἀρχῆς. Οὕτως ὁ νόμος, ὅπως παρεμποδίσῃ ἐνδεχομένην τοιαύτην ἐπιβλαβῆ ἐπίδρασιν, ἐξήρτησεν τὴν ἐνάσκησιν ὡρισμένων ἐνεργειῶν ἐκ προηγουμένης ἀδείας. Κατ' ἀκολουθίαν, ἄδεια εἶναι ἡ ἄρσις ἐν ἀτομικῇ τινι περιπτώσει ὡρισμένης γενικῆς ἀπαγορεύσεως.

'Η ἄδεια λοιπὸν προϋποθέτει τὴν ὕπαρξιν γενικῆς ἀπαγορεύσεως, ἐπιτρέπει δ' εἰς ὡρισμένον πρόσωπον νὰ ἐνασκήσῃ ἐνέργειαν, ἥτις ἀπορρέει ἐξ αὐτῆς ταύτης τῆς ἐλευθερίας του, καὶ τὴν ἄσκησιν τῆς ὁποίας παρακωλύει εἰς τοὺς ἄλλους ἡ ὑφισταμένη γενικῆς φύσεως ἀπαγόρευσις. Ὅθεν, ἡ ἄρσις τῆς ἀτομικῶς ὑφισταμένης ἀπαγορεύσεως δὲν ἀποτελεῖ ἄδειαν, διότι ἐν τῇ ἐννοίᾳ αὐτῆς ἔγκειται ἡ διατήρησις τοῦ κανόνος τῆς ἀπαγορεύσεως, καθ' ἣν στιγμὴν ὁ ἀδειοῦχος ἐξαιρεῖται ταύτης. Ἐξ ἄλλου, πρὸς τὴν ἄδειαν δὲν πρέπει νὰ συγχέηται ἡ παραχώρησις, διότι δι' αὐτῆς ὁ ἰδιώτης ἀποκτᾶ δικαίωμα, τὸ ὁποῖον δὲν ἐκέκτητο προηγουμένως, ἐνῶ ἡ ἄδεια ἀναγνωρίζει, ὅτι οὐδεὶς λόγος ὑφίσταται παρακωλύων τὴν ἐνάσκησιν ἐνεργείας, ἣν παρέχει αὐτῷ ἡ ἐλευθερία του. Παραδείγματα ἔστωσαν αἱ πρὸς ἄσκησιν ὡρισμένου ἐπαγγέλματος ἀπαιτούμεναι ἄδειαι, ὡς τοῦ ἀρτοποιοῦ, ξενοδόχου, ἠθοποιοῦ, αἱ ἄδειαι οἰκοδομῆς, ὑλοτομίας, λειτουργίας τυχηρῶν παιγνίων, ἱδρύσεως πάσης βιομηχανίας καὶ ἐπεκτάσεως ὑφισταμένης, ἢ λειτουργίας μηχανολογικῶν ἐγκαταστάσεων· αἱ ἀστυνομικαὶ ἄδειαι. Ἐνταῦθα ἀνήκουσι καὶ ἡ ἄδεια ἱδρύσεως φαρμακείου, δυναμένη νὰ χορηγῆται μόνον εἰς ἐπιστήμονας φαρμακοποιούς, κεκτημένους τὰ νόμιμα προσόντα ἀσκήσεως τῆς φαρμακευτικῆς, ἡ ἄδεια ὁδηγοῦ αὐτοκινήτου, χορηγουμένη κατόπιν ἐξετάσεων περὶ τῆς ἱκανότητος τοῦ αἰτοῦντος, ἡ ἄδεια προβολῆς

κινηματογραφικῆς ταινίας. Ἄρθ. 5 ἐπ. ν. 4767/1930. Ἄρθ. 1 ἀ. ν. 445/1937. Σ.Ε. 479/1949 κ.ἄ.."

(" Licences. A licence constitutes the means whereby the state exercises supervision over certain acts of the individuals. There are acts, which are permitted to the individual by virtue of his freedom, but as the exercise of such acts, is capable of affecting injuriously the whole population the legislator rendered them subject to previous control and approval by the administration. Thus the law, rendered the exercise of certain acts subject to a licence previously obtained, for the purpose of preventing such impending injurious affection. Consequently, a licence is the removal of a certain general prohibition in an individual case.

A licence, therefore, presupposes the existence of a general prohibition and it allows a certain person to exercise an act, which emanates from his freedom itself and the exercise of which by others is being hindered by the existing general prohibition. Thus, the removal of the prohibition existing individually does not constitute a licence, because within its meaning there lies the maintenance of the rule of prohibition, whilst the licence holder is exempted therefrom. On the other hand a licence should not be confused with a concession, because by a concession an individual acquires a right, which he had not possessed beforehand, whilst a licence, recognizes that there exists no cause preventing the exercise of an act, which is vested in him by his freedom. Examples were the licences required for the exercise of a certain trade, such as that of baker, hotel keeper, actor, building permits, timber-felling permits, operation of games of chance permits, permits for establishing of any industry and extending an existing one, or permits for operating mechanical installations; police permits. In this category there are included also the permit to establish a pharmacy, which is capable of being granted only to scientists chemists, who possess the qualifications by law required for the exercise of pharmaceutics, a driving licence which is granted after examinations on the ability of the applicant, and a permit for cinema performances. Article 5 of Law 4767/1930. Article 1 of Law 445/1937. Council of State 479/1949 etc.").

According to Stassinopoulos, in his well-known text-book on the Law of Administrative Acts 1951 p. 146:-

"(αα) Αἱ ἄδειαι δὲν ἱδρύουν δίκαια, ἀλλ' ἐπαναφέρουν εἰς ἰσχὺν ὑπάρχοντα ἤδη δίκαια, τῶν ὁποίων τὴν ἄσκησιν παρεκώλυε μέχρι τοῦδε ὑφισταμένη ἀπαγόρευσις γενικῆς φύσεως. Ὅθεν, ἄδεια εἶναι ἡ ἐν τῇ ἀτομικῇ περιπτώσει ἄρσις γενικῆς ἀπαγορεύσεως. Τοὐναντίον, ἡ ἄρσις ἀτομικῶς ὑφισταμένης ἀπαγορεύσεως δὲν ἀποτελεῖ ἄδειαν, διότι ἐν τῇ ἐννοίᾳ τῆς ἀδείας ἔγκειται ἡ ὡς πρὸς τὰ λοιπὰ πρόσωπα διατήρησις τοῦ κανόνος τῆς ἀπαγορεύσεως, καθ' ἣν στιγμὴν ὁ ἀδειοῦχος ἐξαιρεῖται ταύτης. Ἄδειαν ἐπίσης δὲν ἀποτελεῖ ἡ χορήγησις ἰδιαιτέρων δικαίων ὑπὲρ ὡρισμένου πολίτου, διὰ τὴν ἀπόκτησιν τῶν ὁποίων δὲν θὰ ἤρκει ἡ ὡς πρὸς τοῦτον ἄρσις τῆς γενικῆς ἀπαγορεύσεως. Οὕτως ἡ χορήγησις ἀδείας εἰσαγωγῆς ἐμπορευμάτων κατὰ τὸν νόμον 5426 ἀποτελεῖ ἄρσιν τῆς γενικῆς ἀπαγορεύσεως τῆς ἰσχυούσης ἐπὶ τῶν λοιπῶν περιπτώσεων, ἐνῷ ἡ χορήγησις διπλώματος εὑρεσιτεχνίας κατὰ τὸ ἄρθρ. 21 τοῦ νόμου 2537 ἀποτελεῖ τι πλέον τῆς ἄρσεως ἀπαγορεύσεως, ἤτοι χορήγησιν δικαίων καὶ εὐχερειῶν, αἵτινες καθιστῶσι πλεονεκτικὴν τὴν θέσιν τοῦ δικαιούχου."

("aa) Licences do not establish rights but they restore already existing rights whose exercise has hitherto been hindered by the existing prohibition of a general nature. Therefore, a licence is the removal of a general prohibition in an individual case. On the contrary, the removal of an individually existing prohibition does not constitute a licence, because the meaning of the licence lies in the maintenance of the rule of prohibition with regard to the remaining persons whilst the licence holder is exempted therefrom. There does not also constitute a licence the grant of particular rights in favour of a certain citizen, for the acquisition of which there would not have sufficed the removal of the general prohibition in so far as he is concerned. Thus the grant of an import licence under Law 5426 constitutes a removal of the general prohibition applicable to the remaining instances, whilst the grant of a patent under Article 21 of Law 2537 constitutes something more than the removal of a prohibition, that is grant of rights and easements, which render the position of the beneficiary advantageous.")

According to the late Professor S. A. De Smith on the Judicial Review of Administrative Action, 1968 2nd edn., on p. 208:-

" A licence or permit has often been characterized as a

'privilege'; granting, refusing or revoking a privilege is not taking a decision which affects 'rights' ".

In the Words and Phrases Legally Defined, 2nd edn., Vol. 3 on p. 158, it is stated:-

" The word licence has a well recognised signification in English law. According to our law a licence properly so called is merely a permission granted to a person to do some act which but for such permission it would be unlawful for him to do. Being in its nature a mere personal privilege and nothing more than a mere personal privilege —a privilege personal to the individual licensee—such a licence cannot be transferred by him to anyone else and it dies with the person to whom it was given ..... There are, of course, different types of licence. A man may grant another licence to use the grantor's property in some particular way. Or a statute may authorise the granting of a licence to carry on some trade or business which the statute does not allow to be carried on without such a licence. But whatever may be the type of licence, the presumption is that it is purely personal privilege, that it is not capable of being assigned or transferred by the licensee to anyone else, and that it comes to an end on the death of the licensee. No doubt one frequently hears the phrase 'transfer of a licence' especially in connection with the law relating to the sale of intoxicating liquors. But it is well established that even in this connection the phrase, though convenient is nevertheless quite inaccurate and misleading. What is referred to as a transfer of a publican's licence is not in strict law a transfer at all. A licence to sell intoxicating liquors is a personal privilege granted to a named individual. And what the assignee of licensed premises gets is a new licence and not the old licence transferred... When one finds the word 'licence' used in a statute the presumption is that it is intended to designate a purely personal privilege, a privilege not capable of being assigned or transferred by the licensee to any-one else and which comes to an end on the death of the licensee. *Russel* v. *Ministry of Commerce for Northern Ireland*, (1945) N.I. 184 per Black, J., at pp. 188, 193."

In Greece, a building permit is considered as a personal privilege, and according to Kyriakopoulos, Op. cit, at pp. 285 and 286:-

" Διαδοχὴ λόγῳ τοῦ ἐμπραγμάτου χαρακτῆρος χωρεῖ ἐπὶ

παντὸς δημοσίου δικαιώματος, τὸ ὁποῖον ἡ δημοσία διοίκησις ἀναγνωρίζει, λαμβάνουσα ὑπ' ὄψιν ὡρισμένον πρᾶγμα καὶ ὄχι τὸ πρόσωπον τοῦ δικαιούχου. Οὕτως, ἡ δημοσία διοίκησις χορηγεῖ ἄδειαν λ.χ. ἱδρύσεως ἀρτοποιείου, κυκλοφορίας αὐτοκινήτου κλπ. Προκειμένης χορηγήσεως ἀδείας ἱδρύσεως ἀρτοποιείου, ἡ ἀρχὴ ἐπεκτείνει τὴν ἔρευναν αὐτῆς μόνον εἰς τὴν τοποθέτησιν τῆς ἐγκαταστάσεως, τὸ εἶδος, τὴν ἰσχὺν τῶν κινητήρων, τὴν παραγωγικότητα τοῦ ἀρτοποιείου κ.ἄ.ὅ. Ὁμοίως, προκειμένης χορηγήσεως ἀδείας ἱδρύσεως βιομηχανικοῦ καταστήματος. Τὴν ἀρχὴν δὲν ἐνδιαφέρει ὁ αἰτῶν τὴν χορήγησιν τοιαύτης ἀδείας· διὸ καὶ ἡ ἄδεια θεωρεῖται, ὅτι δὲν ἀφορᾷ εἰς τὸν αἰτήσαντα προσωπικῶς, ἀλλ' ὡς ἀπονεμηθεῖσα, ἐπίσης, καὶ εἰς τὰ οὐχὶ εἰσέτι γνωστὰ πρόσωπα, τὰ ὁποῖα μετ' αὐτὸν ὡς καθολικοὶ ἢ εἰδικοὶ διάδοχοι κατὰ τὸν Α.Κ. θὰ ἔχωσι τὴν κυριότητα τοῦ ἀρτοποιείου.

Πρὸς τὰς τοιαύτας ὅμως ἀδείας δὲν ἐπιτρέπεται νὰ συγχέωνται ὅσαι χορηγοῦνται προσωπικῶς εἰς ὡρισμένον ἰδιώτην, ἔστω καὶ ἐν ἀναφορᾷ εἰς ὡρισμένον πρᾶγμα, ὡς λ.χ. ἡ ἄδεια ἱδρύσεως κλινικῆς ἢ ἐκπαιδευτηρίου, ἧς ἡ μεταβίβασις ἐπιτρέπεται μόνον κατόπιν ἀποφάσεως τῆς ἁρμοδίας ἀρχῆς. Ἡ ἄδεια οἰκοδομῆς θεωρεῖται κατ' ἀρχὴν προσωπική, ἂν καὶ τὰ ἐκ ταύτης ἀπορρέοντα δικαιώματα δύνανται νὰ μεταβιβασθῶσιν εἰς τρίτον· διότι, κατὰ τὸν νόμον, θεωρεῖται ὡς οἰκοδομῶν 'ὁ αἰτήσας καὶ λαβὼν ἐπ' ὀνόματί του τὴν ἄδειαν, ὅστις καὶ ἐν περιπτώσει μεταβιβάσεως τῶν ἐκ τῆς ἀδείας ταύτης ἀπορρεόντων δικαιωμάτων, δὲν ἀπαλλάσσεται τῆς εὐθύνης, ἂν δὲν προβῇ εἰς τὴν τοιαύτην μεταβίβασιν δι' ἐπισήμου πράξεως καὶ δὲν κοινοποιήσῃ αὐτὴν εἰς τὴν ἐπὶ τῆς χορηγήσεως τῶν ἀδειῶν ἁρμοδίαν ὑπηρεσίαν'."

(" Succession due to the realty of the character is possible in the case of every public right, which is recognised by the public administration by taking into consideration a certain thing and not the person of the beneficiary. Thus, the public administration grants permits e.g. for the establishment of a bakery, and for the circulation of a motor car etc. When granting a licence for the establishment of a bakery, the administration only extends its inquiry into the placing of the installations, the species, the motive power, the productivity of the bakery etc. The same applies when granting a licence for the establishment of a factory. The Administration is not concerned with the applicant for the licence; and for this reason the licence is considered that it does not refer to the applicant personally, but as having

being granted, also, to the persons who are not known yet, and who after him as entire or special successors according to the Civil Code will have the ownership of the bakery.

It is not permitted that these licences should be confused with those provisionally granted to a certain individual, even in relation to a certain thing, as for example a licence to establish a clinic or training centre whose transfer is permitted only upon a decision of the competent authority. A building permit is on principle considered as personal though the rights emanating therefrom can be transferred to a third person; because, under the Law, as the person who is building is considered 'the person who has applied and has been granted the licence in his name, and who even in case of transfer of the rights emanating therefrom, is not relieved from responsibility, if he does not execute such transfer by an official act and does not give notice thereof to the authority which is competent for the grant of licence'.")

In Germany, the position in accordance with the late Professor Forsthoff, on the Law of Administrative Act, 1969, is that as a rule the rights and obligations in administrative law are of a personal nature and cannot be assigned... The personal character of the rights and obligations under public law renders them incapable of being subject to succession. They disappear upon death... The agreements under Civil Law, such as those relating to public burdens in case of change in the ownership of immovable property remain within the effect of civil law only and... same as any legal title is of no effect regarding the relationship to administrative law. It is to be added that the acquisition of ownership of property is accompanied by the automatic transfer of certain rights and obligations under the public law, though this does not constitute an exception to the principle expounded earlier. In reality, this concerns rights and obligations which do not belong to the owner as a person, but with rights and obligations in rem, such as a building permit, the authorization for certain installations in accordance with Article 16 et seq. of the law relating to Commerce and Industry..,

But with respect to such view, I do not think that it can be considered as helpful or indeed as authority in order to solve the problem as to whether a building permit is a personal privi-

lege or that it runs with the land. That I am right in this stand, I find further support from Professor Fleiner, where his view is expounded in his textbook on the Administrative Law 1932 at pp. 140–141, and he deals with the question as to whether a building permit continues to remain in force without any other formalities even for the new owner of the building site in question, though he specifically says that such view is doubted. But, Professor Fleiner goes on to state that the principle that a building permit remains in force even with the new owner of the land is recognised clearly by the Building Law of Baden, 1970. In conclusion, I would reiterate that in the Continent the whole matter is regulated mostly by legislation, and as it appears from the view of Professor Fleiner, the principle is doubted in the absence of legislation.

Having reviewed the position in Greece and in Germany relied upon by counsel for the appellants, I think I would make it quite clear that I derive no help from those countries in solving the problem before me.

In Cyprus, we have no direct authority regarding what is the nature of a building permit, but as to what is a licence we have the case of *Kaminaros and Another* v. *The Permits Authority* (1971) 3 C.L.R. 445. In that case which was decided under the provisions of the Motor Transport (Regulation) Law, 1964 (Law No. 16/64) the question was whether the licences issued to the buses lapsed on the change in the ownership of the vehicles in question and whether a new one was required. Triantafyllides P., in answering that question came to the conclusion that because there was a change in the ownership of the vehicles concerned, the licence lapsed and a new one had to be applied for, and said at pp. 448–449.

> " Whether and how a licence relates to a person or thing is a matter to be decided by construing the provisions of the relevant legislation; see, for example, in relation to licences for vehicles, Kyriacopoulos on Greek Administrative Law, 4th ed., vol. B., p. 350 (footnote 29), the decision of the Greek Council of State in Case 856/1957, as well as the decisions of the said Council in Cases 396/1963 and 798/1963 (reported in the Law Tribune—Nomikon Vima—1963, pp. 813–814).
>
> As is to be derived from the whole of our own relevant legislation (see, especially, sections 7 and 8 of Law 16/64)

the legal position regarding road services licences issued under Law 16/64 appears to be that which is stated in the aforementioned paragraph (b) of the advice given by the Attorney-General.

It follows that when the buses concerned were transferred, in 1967, by the applicants to the company—the interested party—the road service licences which had been issued earlier to the applicants, in respect of these buses, lapsed."

Having analysed the legal position in a number of countries as to what is a licence, I think I should turn now to consider what was the intention of the law makers in Cyprus and I cannot do better than to quote from the judgment of Lord Reid in *Beswick* v. *Beswick* [1967] 2 All E.R. 1197 at p. 1202.

" In construing any Act of Parliament we are seeking the intention of Parliament, and it is quite true that we must deduce that intention from the words of the Act. If the words of the Act are only capable of one meaning we must give them that meaning no matter how they got there. If, however, they are capable of having more than one meaning we are, in my view, well entitled to see how they got there".

The question, therefore, one has to ask oneself is this: Is a building permit in rem or in personam? It seems to me that in order to answer this point I must turn to the provisions of our own legislation in order to see whether it is susceptible to one or more interpretations. Section 3(1)(b), which is mandatory, says that "No person shall erect, or suffer or allow to be erected a building or demolish or reconstruct or make any alteration, addition or repair to any existing building, or suffer or allow any such demolition or reconstruction or any such alteration, addition or repair to be made without a permit in that behalf first obtained from the appropriate authority...".

Section 4(1) lays down that the proposed works must comply with the Law and Regulations and provides a remedy with regard to permits not so complying.

Subsection 2 of section 4 provides that on the application of any interested person or of the Attorney-General, if it is proved to the satisfaction of the Court that a permit granted .... is not in accordance with the provisions of the law .... the Court may (a) "order that, within such time as may be specified in the order, any work or matter carried out or done under such permit shall

be pulled down or removed or so altered as to comply with the provisions of the Law and the Regulations in force for the time being; (b) order that the appropriate authority or any individual member of any such authority who held office at the time of the grant of the permit, whether such members are still holding office or not ... shall pay to the holder of the permit affected by an order made under paragraph (a) hereof, such compensation for any loss or damage sustained by such holder in consequence of anything done under such order, as the Court may direct: Provided that no compensation shall be ordered to be paid under this paragraph, if in the opinion of the Court the holder of the permit by his conduct or otherwise had contributed directly or indirectly to the grant of the permit concerning which the application is made".

There is no doubt that a permit under s. 5 shall be valid for one year from the date of the issue thereof, and the proviso says that "if the work or other matter is not completed within that period, the permit shall be renewable at any subsequent time if not conflicting with any Regulations in force at the time of such renewal, upon payment of the fee prescribed for the original permit or of two pounds whichever is the less. The permit so renewed shall be valid for one year from the date of renewal".

Then I turn to section 20 which deals with the question of offences and penalties imposed on any person who contravenes the terms or conditions of his permit under sections 3, 10, 6, 9 and shall be liable to a fine not exceeding £50.

Subsection 2 of section 20 provides that "When an offence is committed under subsection (1), each of the following persons shall be deemed to have taken part in committing the offence and be guilty of the offence and may be charged and tried with actually committing it and may be punished accordingly, that is to say:–

"(i) every person who actually does the act or makes the omission which constitutes the offence;

(ii) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;

(iii) every person who procures, aids or abets another person in committing the offence;

(iv) every person who solicits or incites or endeavours to persuade another person to commit the offence;

(v) every person who does any act preparatory to the commission of the offence".

And under subsection 3, "In addition to any other penalty prescribed by this section, the Court, before which a person is convicted for any offence under subsection (1), may order –

"(a) that the building or any part thereof, as the case may be, in respect of which the offence has been committed shall be pulled down or removed within such time as shall be specified in such order, but in no case exceeding two months, unless a permit is obtained in respect thereof in the meantime from the appropriate authority:

Provided that such authority may, in granting such permit, impose such terms and conditions as to it may seem fit and the provisions of section 4 of this Law shall apply to every such permit".

Thus it appears that under the general principles of Criminal Law and particularly s. 20 of our law the person upon whom a duty is imposed not to contravene the provisions of the permit is the person to whom the said permit was granted and who would be authorizing the building operations and upon whom the penalties provided in section 20 can be imposed for any contravention, and not the person to whom the land was transferred. Needless to add that in accordance with the definition section 2 of the Interpretation Law Cap. 1, "person" includes a company.

Having had the benefit of able argument by both counsel, and having regard to the whole of our legislation, I have reached the conclusion that the intention of our Law makers can be deduced from the words of our law, which are capable of one meaning only, that is, that a building permit is a licence in personam and not in rem. As I cannot really think that there is any ambiguity in the expression "no person shall erect or suffer or allow to be erected a building... without a permit", as used in our Law, I would affirm the decision of the trial Judge for the reasons I have advanced and dismiss the contentions of counsel on grounds 1 and 2 of the appeal.

But in deference to counsel concerned and because this appeal raises a question of general importance, I think I would add that

there is another reason why a building permit does not run with the land even if it could be considered as an easement or an advantage within the meaning of the provisions of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, because s. 11(1) says that "... No easement or any other right or advantage whatsoever shall be acquired over the immovable property of another except...." Then sub-section 2 says that "No person shall exercise any right of way or any privilege, liberty, easement or any other right or advantage whatsoever over the immovable property of another except where the same—(a) has been acquired as in subsection (1) of this section provided; or (b) is exercised under the provisions of any Law in force for the time being; or (c) is exercised under a licence in writing from the owner thereof". See also s. 4 (as amended by s. 2 of Law 3/60).

There was a further argument by counsel for the respondent in support of the decision of the trial Judge that a building permit is a licence in personam and not in rem, under the provisions of Cap. 96, and therefore does not run with the land. Reference was made to the provisions of s. 28(1) of the Town and Country Planning Law, 1972 (Law 90/72) which makes it quite clear that "Without prejudice to the provisions of this Part as to the revocation or modification of planning permission, any grant of planning permission to develop immovable property shall, except in so far as the permission otherwise provides, enure for the benefit of the immovable property and of all persons for the time being interested therein:

Provided that a planning permission so granted shall expire and be of no effect after the lapse of a period of three years from the date of the notice of the grant thereof or such longer period as may be specified in the said notice, unless within the said three-year or longer period, as the case may be, the development shall have been substantially commenced and be in active progress at the date when the permission was due to expire."

I think I should add that like everything else, the law needs to be kept up to date, and indeed, a great deal of it needs to be brought up to date in the first place. But, regretfully, our law Cap. 96, has not been brought up to date although no doubt the need or the necessity for modern legislation was felt long time ago, and in my view, when the new Law 90/72 was enacted

it filled a gap and Cyprus is now following the countries which had introduced proper town and country planning legislation much earlier. This new Law 90/72, was modelled on the British Town and Country Planning Act, 1971, and section 28(1) is similar to section 33(1) of the English Act.

But this new legislation has far more wider implications than Cap. 96, and in my view section 28(1) cannot be used or throw light upon the meaning of the provisions of Cap. 96 because it was not in force at the material time, and for reasons not known to us, no date for its commencement has been fixed as yet.

With this in mind, I think I would also add that in innumerable cases the Courts in England and, indeed, in this country, with a view to construing an Act, have invariably considered the law as it existed before the passing of the new law, and reviewed the history of legislation upon the particular subject. As Lush, J., said long ago in *South Eastern Railway Co.* v. *The Railway Commissioners*, [1880] 5 Q.B.D. 217, at p. 240, "While we are to collect what the legislature intended from what it has said, we must look, not at one phrase or one section only, but at the whole of the Act, and must read it by the light which the state of the law at the time... throw upon it".

As I have said earlier in this judgment, having looked into the whole consolidated law, I found nowhere in those provisions that it was the intention of the law makers that a building permit shall enure for the benefit of immovable property and of all persons for the time being interested therein. But it was said by the majority of this Court that in England, even before 1971, the position was that a planning permission related to the land and not to the particular owner of such land, and they relied on *Hanily* v. *Minister of Local Government & Planning and Another*, [1952] 1 All E.R. 1293 at p. 1296.

I must state at the outset that the *Hanily* case (*supra*) was based and decided on difficult provisions of the 1947 Act. In that case as it appears from the motion to quash the compulsory purchase order and a confirmation order made under s. 43(1) and (2) of the Town and Country Planning Act, 1947 "The applicant was the owner of a piece of land which, on July 14, 1950, was made the subject of a compulsory purchase order by the Central Land Board under s. 43(1) and (2) of the Town

and Country Planning Act, 1947. On Dec. 20, 1950, the order was confirmed by the Minister of Town and Country Planning (later the Minister of Local Government and Planning). The applicant contended that the orders were invalid because (i) at the time they were made there was no valid planning permission for the development of the land under Part III of the Town and Country Planning Act, 1947, since the persons who had applied for the permission were not the owners of the land and had no interest in it sufficient to support the application...".

In that case it was argued, *inter alia*, by counsel that the only person who can make such an application is the owner of the land or a prospective purchaser who had the owner's consent.

It was clear in that case that the applicant knew nothing at all about the application for planning permission and Parker J., had this to say at page 1296 with regard to this point:-

> " There is, however, in my view, nothing in Part III of the Act providing expressly or even impliedly that the applicant must be the owner or somebody applying with the owner's consent. If one looks at the matter before this difficult section—s. 43—became part of the law, it was clearly to any owner's advantage that planning permission in respect of his land should be given and it mattered not to him who obtained that permission. Once permission was obtained it would enhance the value of his land and he would be the last person to complain. It seems to me that under Part III of this Act anybody who genuinely hopes to acquire the interest in the land can properly apply for planning permission. It is said that the implication generally in ss. 18 to 23 of the Act of 1947 is that the person applying should be the owner or somebody with the owner's consent. I get very little help from those sections. It seems to me that more help is to be derived from the fact that the only person who is contemplated as an aggrieved person able to appeal to the Minister under s. 16 is a person who has himself applied for planning permission."

With the greatest respect to the majority, this case does not solve the problem as to whether a building permit attaches to the land under the law of Cyprus and as I said earlier, this law

on which the said decision was based is an entirely different law from ours.

In *Myers* v. *Milton Keynes Development Corporation*, [1974] 2 All E.R. 1096, Lord Denning, speaking about the difficulties of the 1947 Act, said at p. 1101:-

> " In 1947 there came the Town and Country Planning Act 1947 with all its great changes. No one was allowed to develop his land by building on it, or by making any material change in the use of it, unless he obtained permission from the planning authority: see s. 12. If his land was acquired compulsorily, he only received compensation for its existing use value. He got nothing for its potentiality as building land. Even if it was dead-ripe land, he got nothing for it except existing use value: see s. 51(2)(4). This gave rise to no end of difficulties."

The learned trial Judge, having considered the contentions of both counsel, and having addressed his mind to the observations made in *Golden Sea-Side Estate Co. Ltd.* v. *The Municipal Corporation Famagusta*, (1973) 2 C.L.R. 58, regarding the test to be followed for making a demolition order, came to the conclusion that the magnitude of the repercussions to the accused in the case in hand, was not a reason from refraining, in the proper exercise of his discretionary powers, in granting the order complained of.

Having considered and reviewed some of the authorities on this question, and having regard to the particular facts and circumstances of the case in hand, as well as that because the appropriate authority failed to seek an order to prevent further building operations, I have reached the view that had the trial Judge given more importance to the totality of the circumstances before him he could have reached the opposite view he had taken in this case. However, I would like to make it clear that in view of the majority judgment that a building permit attaches to the land, I do not think that it is necessary to proceed to give further reasons, and, therefore, I have decided not to interfere with the exercise of the discretion of the trial Judge, in spite of the fact that the *Golden Sea-Side Estate Co.* (*supra*) is distinguishable on the facts.

For the reasons I have endeavoured to advance, I would dismiss the appeals.

TRIANTAFYLLIDES, P.: In the result, these appeals are allowed by majority; the conviction of the appellants is set aside, as well as the sentence imposed in consequence thereof.

Appeals allowed.