

1981 December 4

[LORIS, STYLIANIDES, PIKIS, JJ.]

THE DIRECTOR OF THE DEPARTMENT OF CUSTOMS,  
*Appellant-Plaintiff,*

v.

M. CHR. PLATANIS AND CO. LTD.,  
*Respondent-Defendant.*

(Civil Appeal No. 6020).

Statutes—Consolidation act—Construction—Reference to repealed  
legislation—Whether permissible—Presumption that consolidation  
acts do not intend to change existing Law—Customs and Excise  
Law, 1967 (Law 82/67)—Consolidating, *inter alia*, Customs  
5 Management Law, Cap. 315 and reproducing verbatim its  
provisions relating to period of limitation of customs prosecutions  
—Period of limitation under Cap. 315 suspended by section 2  
of the Suspension of Prescription Law, 1964 (Law 57/64)—  
Whether period of limitation under Law 82/67, also, suspended  
10 by Law 57/64.

Customs and Excise Law, 1967 (Law 82/67)—Customs prosecutions—  
Period of limitation under s. 176(3)—Whether suspended by  
the Suspension of Prescription Law, 1964 (Law 57/64).

The sole issue in this appeal was whether the suspension of  
15 the period of limitation, introduced by the Suspension of Pres-  
cription Law, 1964 (Law 57/64), applies to customs prosecutions  
under section 176 of the Customs and Excise Law, 1967 (Law  
82/67). A customs prosecution includes criminal as well as  
civil proceedings for the recovery of unpaid or short-levied  
20 duties (*see* section 176(1) of Law 82/67); and section 176(3)  
of the same Law provides that a customs prosecution becomes  
statute barred after the lapse of three years from the date on  
which liability for the payment of duties arises.

Law 82/67 was a consolidating enactment, and one of the Laws  
25 that it consolidated was the Customs Management Law, Cap.

315. Sub-sections 1, 2, 3 and 4 of s. 176 of Law 82/67 were a verbatim reproduction, respectively, of sections 220, 221, 222 and 223 of Cap. 315.

Counsel for the appellant submitted that Law 82/67, being a consolidating enactment, particularly in the area under consideration, should be read in the light of the relevant antecedent legislation and the presumption normally arising in the case of consolidating enactments that the legislature does not intend to alter the existing law; and inasmuch as the period of limitation under section 222 of Cap. 315, was suspended by s. 2 of Law 57/64, its successor in the consolidating enactment, s. 176(3), should likewise be read subject to a similar relaxation of prescription, in the absence of any indication that the legislature intended to change the law in this respect.

*Held*, that though the provisions of a consolidating enactment should be read and interpreted without recourse to antecedent legislation that is not consulted, unless the pertinent provisions of the consolidating enactment present substantial difficulties that classical methods of construction cannot resolve, there is a presumption that consolidating enactments do not intend to alter the existing law; that the suspension of prescription was, as from the year 1964, an important aspect of the policy of the law aimed to put a stop to the clock of statutory periods of limitations until conditions in the island improved and the necessary stability for the pursuit of citizens' rights returned; that it is most improbable that the legislature, by sanctioning the repeal and re-enactment of s. 223 of Cap. 315 intended to bring about any change in this area of the law; that the presumption that no change is intended in cases of consolidation becomes overwhelming where a change in the law would involve a deviation from the general policy of the law which was to suspend periods of limitation; that there were no valid reasons why the right to recover customs and excise duties should be placed on any different footing from other causes of action; that had this been in the contemplation of the legislature, they would say so expressly and make provision, *inter alia*, about the fate of customs liabilities that were incurred prior to the enactment of Law 82/67; that far from discerning any weakening of the general presumption that consolidating enactments do not aim to change the law, there are compelling reasons for giving full effect to this presumption; that, therefore, the suspen-

sion of the period of limitation, introduced by Law 57/64, applies to customs prosecutions under s. 176 of Law 82/67; accordingly the appeal must be allowed.

*Appeal allowed.*

5 Cases referred to:

*Suffolk Council v. Mason* [1979] 2 All E.R. 369;

*R. v. Governors of Brixton Prison* [1959] 1 Q.B. 268;

*Farrell v. Alexanders* [1976] 2 All E.R. 721;

*Gilbert v. Gilbert* [1928] P. 1.

10 Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Hadjiconstantinou, S.D.J.) dated the 1st November, 1979 (Action No. 1003/78) whereby plaintiff's claim for the amounts of £549.820 mils and £899.300 mils as  
15 unpaid or short-levied duties was dismissed.

*A. Frangos*, Senior Counsel of the Republic, for the appellant.

*D. Liveras*, for the respondent.

*Cur. adv. vult.*

20 LORIS J.: The judgment of the Court will be delivered by Mr Justice Pikis.

PIKIS J.: We are required to decide whether the suspension of the period of limitation introduced by the Suspension of Prescription Law 57/64, applies to customs prosecutions under  
25 s. 176 of the Customs & Excise Law 82/67. A customs prosecution includes, in accordance with s. 176(1) of Law 82/67, criminal as well as civil proceedings for the recovery of unpaid or short-levied duties. Section 176(3) provides that a customs prosecution becomes statute barred after the lapse of three  
30 years from the date on which liability for the payment of duties arises.

The present proceedings were instituted on 22.3.78 for the recovery of duties that became, as it was eventually admitted before the trial Court, payable on three separate occasions,  
35 notably, 1.3.1974, 15.3.1975 and 22.9.1978. Hadjiconstantinou S.D.J., ruled, in the face of conflicting submissions, that the

proceedings constituted a customs prosecution for the recovery of the amounts of £459.820 mils, £899.300 mils and £687.650 mils that became due on the dates aforementioned. Notwithstanding a submission made to the contrary the appellant conceded before us that this view of the law is well founded and made no attempt to challenge it. Although the expression "customs prosecution" is apt to mislead, because of the association of the word "prosecution" with criminal proceedings, s. 176(1), definitely encompasses both criminal and civil proceedings arising from failure to pay the customs duties envisaged by the law. 5 10

The learned trial Judge, having ruled that the proceedings properly amounted to a customs prosecution, decided that the claim for the amounts that became payable on the first two occasions, that is, 1.3.1974 and 15.3.1975, could not be recovered, holding that they became statute barred by virtue of the provisions of s. 176(3) of Law 82/67. He felt strengthened in this appreciation of the law, as stated in his judgment, from the consensus of opinion of counsel on the subject, who were apparently of one mind as to the effect of Law 57/64 on the fate of a customs prosecution subscribing to the view that Law 82/67, being a subsequent piece of legislation, could not be read subject to the provisions of a pre-existing enactment. Only a short passage in the judgment is devoted to this aspect of the case, wherefrom it appears that the trial Court accepted the soundness of the above proposition on the ground that the Customs and Excise Law of 1967 is:- 15 20 25

- (a) A special law, and
- (b) a subsequent enactment.

Therefore, it should be construed independently of the provisions of Law 57/64. 30

It was submitted for the appellant, and there was no impediment to so arguing for no estoppel arises from legal submissions, that the decision of the trial Judge on the implications of Law 57/64 on customs prosecutions is erroneous and, therefore, it should be reversed. Emphasis was laid on the fact that the pertinent provisions of Law 82/67, that is, sub-sections 1, 2, 3 and 4 of s. 176, are a verbatim reproduction of sections 220, 35

221, 222 and 223, respectively, of the Customs Management Law, Cap. 315, one of the laws that was consolidated, extended and amended by virtue of Law 82/67 and consequently repealed.

5 We were invited to hold that Law 82/67, being a consolidating enactment, particularly in the area under consideration, should be read in the light of the relevant antecedent legislation and the presumption normally arising in the case of consolidating enactments that the legislature does not intend to alter the existing law. And inasmuch as the period of limitation under 10 s. 222, Cap. 315, was suspended by s. 2 of Law 57/64 its successor in the consolidating enactment, s. 176(3), should likewise be read subject to a similar relaxation of prescription, in the absence of any indication that the legislature intended to change the law in this respect. In support of this submission, reference 15 was made to Craies on Statute Law, 7th ed., p. 362, where it is stated, on a review of case law, that consolidation is primarily aimed at the rearrangement of the law and not its alteration. Further support was derived from the provisions of s. 10(1) of the Interpretation Law, Cap. 1, laying down that in the event 20 of repeal and re-enactment reference to a provision of the repealed law, in any other enactment, shall be considered as referring to the relevant section of the new law. The chain of continuity in the law remains unbroken.

25 For the respondents it was submitted that Law 82/67 had a fresh start and should not be read subject to the provisions of any previous enactment. Had the legislature so intended, they could be expected to say so expressly and must be presumed to have had in mind the provisions of Law 57/64. Their omission 30 to make the provisions of s. 176(3) subject to those of Law 57/64 is, in the contention of counsel for the respondents, fatal to the case of the Director; consequently, the appeal should be dismissed.

35 Our answer in the end, must depend on the interpretation of Law 82/67, particularly the intention of the legislature, as may be gathered from the nature of the enactment and the provisions of the law.

We are primarily concerned with a consolidating enactment, that is, a statute aiming to piece together scattered legal provisions in the interests of clarity and coherence. Notwithstanding

the use of the word "codify" in the long title, the expression is not used as a term of art for, manifestly, what was intended and achieved, was the consolidation of the Customs & Excise Legislation and not its codification. Codification is accurately used as stated in Maxwell on the Interpretation of Statutes, 12th ed., p. 25, when the legislator purports to subsume in the code both the pre-existing statutory provisions, as well as the common law rules relating to the matter. 5

Law 82/67 embodied into one enactment laws relating to customs and excise, extending and amending at the same time the relevant law. The long title of the law, that may be legitimately consulted in order to ascertain its purposes (see, *Suffolk County Council v. Mason* [1979] 2 All E.R. 369), clearly suggests that one of the principal aims of the law was to consolidate the legislation on the subject under consideration, that is, customs and excise duties. Also it extended and amended the law in certain respects streamlining the law to present needs. The laws consolidated are specified in s. 196 and are set out in the third schedule to the law. One of them is the Customs Management Law, Cap. 315, wherefrom the provisions of s. 176 are taken and reproduced. Not a moment's interruption occurred in the application of the relevant provisions of Cap. 315. 10 15 20

Judicial approach to the interpretation of the provisions of consolidating enactments has changed over the years. Unlike the approach of the Courts in the past (see, *R. v. Governors of Brixton Prison* [1959] 1 Q.B. 268), the provisions of a consolidating enactment are read and interpreted without recourse to antecedent legislation that is not consulted, unless the pertinent provisions of the consolidating enactment present substantial difficulties that classical methods of construction cannot resolve. (See, *Farrell v. Alexanders* [1976] 2 All E.R. 721 (H.L.)). However, the new approach has not done away with or weakened the presumption that gained approval long ago, that consolidating enactments are presumed not to intend to alter the existing law (see, *inter alia*, *Gilbert v. Gilbert* [1928] P. 1). This presumption is founded on good sense and reflects the intention of the legislature that normally accompanies a consolidating enactment. Of course, the strength of this presumption is bound to vary from enactment to enactment, particularly if consolidation is associated with the extension 25 30 35 40

and the amendment of the law. In an appropriate case, the legislature may be presumed to intend different things in respect of different parts of the legislation, but, certainly, the presumption is bound to be particularly strong in areas of the law that are merely reproduced. After all, if things are left as they are, the natural inference is that no change is intended.

The suspension of prescription was, as from the year 1964, an important aspect of the policy of the law aimed to put a stop to the clock of statutory periods of limitations until conditions in the island improved and the necessary stability for the pursuit of citizens' rights returned. We consider it most improbable that the legislature, by sanctioning the repeal and re-enactment of s. 223 of Cap. 315 intended to bring about any change in this area of the law. The presumption that no change is intended in cases of consolidation becomes overwhelming where a change in the law would involve a deviation from the general policy of the law which was to suspend periods of limitation. Nor were there any valid reasons why the right to recover customs and excise duties should be placed on any different footing from other causes of action. Had this been in the contemplation of the legislature, we would anticipate that they would say so expressly and make provision, *inter alia*, about the fate of customs liabilities that were incurred prior to the enactment of Law 82/67. Far from discerning any weakening of the general presumption that consolidating enactments do not aim to change the law, there are compelling reasons for giving full effect to this presumption. In our judgment, all three claims for recovery of duties are sustainable, and we so find.

In the result, the appeal is allowed. There will be no order as to costs, bearing in mind that the point taken up on appeal was not properly raised before the trial Court. Judgment for plaintiff accordingly.

*Appeal allowed. No order as to costs.*