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1962 *Present:* **Basnayake, C.J., Herat, J., and Abeyesundere, J.**

K. A. DON ALBERT, Appellant, *and* MUNICIPAL REVENUE INSPECTOR, Respondent

*S. C. 646/59—M. M. C. Colombo, 13*

*Municipal Councils Ordinance (Cap. 252)—Section 147—Power of Municipal Council to make by-laws thereunder—Scope—Offensive trade or business—Requirement of licence—Meaning of expression "trade or business"—Applicability of rule of interpretation* noscuntur a sociis.

The by-law making power conferred on the Municipal Council by section 147 of the Municipal Councils Ordinance is limited in the sense that the Council may declare only *trades or businesses* to be offensive or dangerous trades or businesses. The Council has no power to declare an activity which is not a trade or business to be an offensive or dangerous trade or business. If it does so the by-law would be *ultra vires*.

In construing the words "trade or business" the rule of interpretation *noscuntur a sociis* should be applied. The word "business" is coloured by the word "trade".

The by-law prohibiting a person from carrying on, without a licence in that behalf, the trade or business of storing of furniture does not apply to storing of furniture *per se*. It applies only to the storing of furniture of others for gain.

*David v. Municipal Sanitary Inspector* (1956) 59 N. L. R. 81, not followed.

APPEAL from a judgment of the Municipal Magistrate's Court, Colombo.

*H. W. Jayewardene, Q.C.*, with *L. W. de Silva, S. S. Basnayake* and *D. C. W. Wickremasekera*, for Accused-Appellant.

*H. V. Perera, Q.C.*, with *H. Wanigatunga* and *H. Mohideen*, for Complainant-Respondent.

*Cur. adv. vult.*



2—R 10455 (6/63)

November 5, 1962. BASNAYAKE, C.J.—

This appeal comes up for hearing before a Bench of three Judges on a reference made under section 48 of the Courts Ordinance in consequence of an order made under section 48A of that Ordinance in view of the conflict of judgments on the question arising for decision herein. At the end of the hearing we allowed the appeal and stated that we would deliver our reasons on a later date. We accordingly do so now.

The only question for decision on this appeal is whether the conviction of the appellant, for a breach of the by-law which prohibits a person from carrying on, without a licence in that behalf, the trade or business of storing of furniture, is right.

The appellant was tried on three charges all couched in the same phraseology except for the description of the specific act alleged in each of them. They read—

> "You are hereby charged that you did, within the jurisdiction of this Court, on the 30th day of December 1958 at No. 615 Maradana Road, Colombo, within the Municipal Limits of Colombo, without a licence from the Special Commissioner, Municipal Council, Colombo, in contravention of section 148 (1) of the Municipal Councils Ordinance, No. 29 of 1947, read with the by-laws made thereunder and published in Government Gazette No. 10697 of 30th July 1954, use premises No. 615 Maradana Road, Maradana, Colombo, for the business of (here is specified the nature of the use by the appellant) and thereby commit an offence punishable under section 148 (3) of the said Ordinance."

The different uses alleged in the charges are—

(*a*) *Charge 1*—"for the business of storing of furniture".

(*b*) *Charge 2*—"for the business of manufacture of furniture".

(*c*) *Charge 3*—"for the business of manufacture and storing of furniture".

He was acquitted of the charges of using the premises in question—

(i) for the business of manufacture of furniture, and

(ii) for the business of manufacture and storing of furniture,

but convicted on the charge of using the premises No. 615 Maradana Road "for the business of storing of furniture".

Although the learned Magistrate was inclined to follow the decisions in *Gunasekara v. Municipal Revenue Inspector* [1] and *De Silva v. Kurunegala Co-operative Stores Ltd.* [2], he held against the appellant as he felt he was bound to follow the case of *David v. Municipal Sanitary Inspector* [3].

Briefly the material facts are as follows:—The appellant was a dealer in furniture residing at No. 65 Avondale Road, Maradana, and carrying on business at No. 615 Maradana Road under the business name of Albert & Co. His sign-board was displayed on the front wall with the addition of the words "Furniture Dealers". He had been carrying on that business at the premises in question for the last 14 years. He did not make furniture himself, but he bought from those who made furniture and sold them at his shop. His suppliers were at Wellampitiya, Nugegoda and Moratuwa. He had a staff of five men—three to load and unload the furniture and assemble such furniture as reached him unassembled, and two to touch up any blemishes caused to the furniture in transit. Appellant's business premises consisted of a show-room facing the road, a small partly enclosed verandah behind it, and a room beyond the verandah. The show-room and the room behind had doors leading to the enclosed verandah. The furniture was displayed in the show-room, and as and when they were sold they were replaced from stocks held in reserve in the room behind. Revenue Inspector Vaz stated that on the occasion of his visit on 30th December 1958 he observed unrattaned chairs and unpolished furniture. The appellant denied it. There is no precise finding on this point.

Section 148 of the Municipal Councils Ordinance No. 29 of 1947, now section 147 of the Municipal Councils Ordinance in the Revised Edition of the Legislative Enactments (hereinafter referred to as section 147) deals with a variety of matters. It prohibits the using, except under a licence from the Council, of any place within the Municipality for any of the following purposes, viz :—

(*a*) for boiling offal or blood ; or

(*b*) as a soap-house, oil-boiling house, dyeing-house, tannery, brick, pottery or lime kiln, sago manufactory, gunpowder manufactory, manufactory of fireworks ; or

(*c*) as a place of business from which either offensive or unwholesome smells arise ; or

(*d*) for any purposes which are calculated to be dangerous to life ; or

(*e*) as a yard or depot for hay, straw, wood, coal, cotton, bones, or inflammable oil ; or

(*f*) for any other trade or business which the Council may, by means of by-laws, declare to be an offensive or dangerous trade or business for the purposes of the section.

[1] *(1951) 53 N. L. R. 229.* [2] *(1955) 57 N. L. R. 430.*

[3] *(1956) 59 N. L. R. 81.*

We are here concerned not with the prohibitions imposed by the statute but with the by-laws declaring certain trades or businesses to be offensive or dangerous trades or businesses. The by-law making power is limited in the sense that the Council may declare only *trades or businesses* to be offensive or dangerous trades or businesses. It has no power to declare an activity which is not a trade or business to be an offensive or dangerous trade or business. If it does so the by-law would be *ultra vires*. Three by-laws have been made by the Municipal Council and published in Gazette No. 10,697 of 30th July, 1954. The first of them declares 51 trades or businesses specified therein to be offensive trades or businesses; the second declares 34 trades or businesses specified therein to be dangerous trades or businesses; and the third declares three trades or businesses specified therein to be dangerous and offensive trades or businesses. The by-law that calls for attention in the instant case is the first of them which reads—

> "The following trades or businesses are hereby declared to be offensive trades or businesses for the purposes of section 148 (now 147) of the Municipal Councils Ordinance No. 29 of 1947 (now Municipal Councils Ordinance)."

The 39th item in the list of trades or businesses appended to the above by-law reads: "Manufacture or storing of furniture or manufacture and storing of furniture".

The first question to be decided is the meaning and content of the expression "trade or business" in section 147. Each of these words according to the dictionary has a variety of meanings. The meaning of a word in a particular context has to be determined by reference to that context, especially the words associated with it. *Noscuntur a sociis* is a well-known rule of interpretation. This rule is thus stated in Maxwell on Interpretation of Statutes (10th Edition) at p. 332:

> "When two or more words which are susceptible of analogous meaning are coupled together *noscuntur a sociis*. They are understood to be used in their cognate sense. They take, as it were, their colour from each other, that is, the more general is restricted to a sense analogous to the less general."

Here the words "trade or business" are coupled together and the meaning of the word "business" is coloured by the word "trade". The context should be regarded as excluding all other meanings of the word except those that are compatible with its associate trade.

Learned counsel for the appellant contended that storing of furniture *per se* was not prohibited but what was prohibited was storing of furniture as a trade or business such as the storing of the furniture of others for gain. He submitted that the words "the following trades or businesses" in the by-law indicated that the declaration applied only to specified activities carried on as a trade or business. He relied on the cases of

*Gunasekara v. Municipal Revenue Inspector* (*supra*) and *De Silva v. Kurunegala Co-operative Stores Ltd.* (*supra*). It is common ground that the appellant did not store furniture for others for gain.

Learned counsel for the respondent contended that any activity carried on for the purpose of earning profits would come within the ambit of the expression " business " in section 147, and that although the appellant did not store furniture for others for gain, as the appellant's business involved the storing of furniture prior to sale for however short a time, the act of storing fell within the ambit of the expression " business " even though that activity by itself produced no profit. He relied on the following words of Jessel, Master of the Rolls, in *Smith v. Anderson*[1]:— " Anything which occupies the time and attention and labour of a man for the purpose of profit is business." The Master of the Rolls was merely adopting the definition of the word in the Imperial Dictionary which he described as a very good dictionary. In applying the dictionary meaning of a word to a given context due regard must be paid to the context in which it occurs. *Smith v. Anderson* was an action to have the Submarine Cable's Trust wound up on the ground that the trustees and the holders of Stock Certificates issued by them were carrying on business without being registered as a company under the Companies Act, 1862. The question for decision was whether the Trustees were carrying on business within the meaning of that expression in that Act. The Master of the Rolls held that they were. In appeal his finding was reversed. James L.J. said—

> " With all deference to the very clear opinion of the Master of the Rolls, I cannot concur in the construction which he has put upon the 4th section of the *Companies Act, 1862.* "

He proceeds later on in his judgment to say—

> " But supposing that the certificate holders do constitute an association, it appears to me that it cannot, in any practical sense of the word " business ", in any sense in which any man of business would use that word, be said that the association was formed for the purpose of carrying on any business, either by themselves or by any agent. " (p. 275).

James L.J. was supported by both Brett L.J. and Cotton L.J. in his disapproval of the meaning given to the word " business " in that context. The question whether separate activities which were parts of a large organisation conducted for the purpose of gain were by themselves businesses did not arise for consideration in *Smith's* case. But the judgments of the Court of Appeal emphasise the fact that in deciding whether a particular activity is a business or not you have to examine its object and scope and consider what is the substance of the transaction,

[1] *15 Ch. D. 258.*

and the mere fact that gain results from a particular arrangement or activity does not make that arrangement or activity a business. Those judgments also emphasize the importance of the principle that in interpreting words in a given context importance must be attached to the sense in which they are used in that context.

In the instant case it appears to have been assumed that the act of maintaining stocks of more than one unit of the same article of furniture for the purpose of replacing those sold from time to time, or to meet a demand for a number of pieces of furniture of the same kind, comes within the ambit of the expression " storing ". But where stocks of goods are maintained by a trader for the purpose of meeting the day to day demands of his trade, it seems inappropriate to describe the maintaining of such stocks as " storing ". The word " storing " signifies stocking for some length of time and not stocking for the day to day needs of a retail business.

The number of activities that goes to make up a business would depend on its nature. A retail trader would have to buy, transport, stock, and sell his goods. He may even import direct some of the goods he sells. Similarly as in the instant case a furniture dealer would buy, transport, stock and sell his furniture. Even if he improved the furniture he bought by giving them a better polish than the manufacturer gave them or improved the upholstery, the act of polishing or improving the upholstery would not be a business so long as the polishing and upholstering are ancillary to the main business. Whether a business consisting of many ancillary activities is one business or a number of separate businesses under one direction has to be determined by an examination of the various activities. In the instant case the activities of stocking, polishing, touching-up, assembling, repairing where necessary such damage as occurred in transit, were all parts of one business—dealing in furniture. We uphold the submission of counsel for the appellant that the prohibition in the by-law does not apply to storing of furniture *per se*. It applies only to the storing of furniture of others for gain.

The question whether an ancillary activity falls within the ambit of the expression business in section 147 was considered in the case of *The Chairman, M. C., Colombo v. Silva* [1]. In that case the accused was a building contractor who carried on business on a large scale. He was charged with—

1. keeping a timber yard, and
2. keeping a timber sawing depot

in breach of the Ordinance and its by-laws. In his premises he had a large yard 200 feet by 150 feet in extent with several sheds built upon it. In the yard and the sheds he prepared the material needed for the buildings he had contracted to construct, and a considerable amount of carpentry work was involved. There were two steam-driven saws and a

[1] *(1917) 4 C. W. R. 150.*

platform for hand-sawing. He had timber all over the yard, in the sheds and near the sawing benches. There were also finished door and window frames. It was not disputed that all these were activities ancillary to the accused's business of building contractor. This Court held that those activities did not fall within the prohibition. The question whether a *business* ancillary to a *main business* fell within the ambit of section 147 appears to have come up for consideration in the case of *Jayasekara v. Silva*[1] and it was held that an ancillary business did ; but that case did not decide the point that was decided in *The Chairman, M. C., Colombo v. Silva (supra)* whether ancillary or subsidiary activities which *per se* are not trades or businesses but are only activities feeding the business admittedly carried on falls within the ambit of the expression "business". In *Jayasekara's* case (*supra*) Bertram A.C.J. does not appear to have considered the previous case of *The Chairman, M. C., Colombo v. Silva,* nor does it appear that he gave his mind to the question of ancillary operations which are not independent businesses in themselves, for he says :

> "I do not think it is necessary to consider whether any particular *business* is the *main business* carried on upon the premises or is only a subsidiary *business.*"

*The Chairman, M. C., Colombo v. Silva* does not appear to have been cited at the argument of *David v. Municipal Sanitary Inspector* (*supra*) which is in conflict not only with that case but also with the case of *Gunasekara v. Municipal Revenue Inspector* (*supra*) and *De Silva v. Kurunegala Co-operative Stores, Ltd.* (*supra*). With deference to my brother Weerasooriya I wish to say that in adopting Jessel's definition of business he appears to have not only overlooked the *noscuntur a sociis* rule but also not taken into account the opinions of the Lord Justices of Appeal who disagreed with the interpretation of Jessel M. R.

In our opinion the case of *David v. Municipal Sanitary Inspector* has been wrongly decided and the cases of *The Chairman, M. C., Colombo v. Silva, Gunasekara v. Municipal Revenue Inspector,* and *De Silva v. Kurunegala Co-operative Stores Ltd.* have been rightly decided and should be followed.

HERAT, J.—I agree.

ABEYESUNDERE, J.—I agree.

*Appeal allowed.*

[1] *5 C. W. R. 255.*