[1980–87 Gib LR 29]

MENEZ v. COLOMBO

SUPREME COURT (Davis, C.J.): May 19th, 1981

Public Health—litter—house or trade refuse—"house refuse" in Public Health Ordinance, s.59 is refuse from ordinary dwelling-house and expected from such house, therefore refuse from bar not included—definition of "house" in s.3 inappropriate in this context, because so wide as to include all premises

Public Health—litter—unauthorized deposit—person depositing refuse in public place for refuse collectors has reasonable time to remove it if not collected, as Government authorizes putting refuse on street for collection—if not removed, classed as "unauthorized deposit" under Public Health Ordinance, s.263(a)

The appellant was charged in the Magistrates' Court with depositing and leaving items in a public place so as to contribute to its defacement by litter, contrary to s.263(a) of the Public Health Ordinance 1950.

The appellant managed a bar on Main Street, Gibraltar. One morning he put a dustbin and eight cardboard boxes on the pavement outside for the refuse collectors, as was the usual practice. At around 9.30 a.m., the collectors emptied the bin but did not collect the boxes, which remained on the pavement until 10.45 a.m. when they were noticed by a police constable. The appellant was charged with littering and found guilty by the Magistrates' Court.

On appeal, he submitted that (a) the Government had consented to rubbish being left on the pavement for collection, whereas s.263(a) required both the deposit and the leaving of it to be unauthorized; and (b) the boxes were not "trade refuse" but "house refuse" which the Government had a legal duty to collect under s.58 of the Public Health Ordinance—the definitions of "house" given by s.3 of the Ordinance and s.2 of the Interpretation and General Clauses Ordinance 1962 being wide enough to include the bar he managed—and as the Government had a duty to collect it, he did not have a duty to remove it.

The Crown submitted in reply that (a) even if the Government consented to refuse being left out for collection, it did not consent to it being left after the time of collection, as the purpose of Part IX of the Ordinance (containing s.263) was to prevent the littering of public highways; the appellant therefore had a duty to remove the boxes and demand, under s.59(1), that the Government collect them, and his failure to do so

constituted a fresh "deposit" for the purposes of s.263(a); and (b) the refuse was trade refuse and not house refuse, as the legislature could not possibly have intended either of the definitions of "house" given in the Ordinances to apply in relation to s.58, as they were so broad as to encompass almost all residential and business premises and give s.59, relating to trade refuse, virtually no effect.

Held, setting aside the conviction:

(1) No offence had been committed under s.263(a) of the Public Health Ordinance 1950, as there had been no unauthorized deposit of refuse. The Government had consented to refuse being put on the streets for the purpose of collecting it, and the appellant was entitled to leave the boxes on the pavement for a reasonable time after the refuse collectors had visited before it constituted an offence under s.263(a). He had not left the boxes outside for an unreasonable length of time, as he was entitled to believe that the refuse collectors were going to collect all his refuse, and had been given no indication that the collectors were not planning to return later to pick up his boxes (paras. 28–29).

(2) The refuse was "trade refuse" and not "house refuse," and therefore the Government had no duty under s.58 to collect it. The definitions of "house" in s.3 of the Public Health Ordinance and s.2 of the Interpretation and General Clauses Ordinance 1962 were not appropriate, as the context clearly demanded otherwise. The legislature had intended s.59 of the Public Health Ordinance to have an effect of its own and a distinction should therefore be drawn between trade and house refuse. "House refuse" should be seen in this context as being refuse from an ordinary dwelling-house, of the kind ordinarily expected from such a house, and therefore refuse from the bar was not included within it (para. 18; para. 22).

Cases cited:

(1) *Courtauld* v. *Legh* (1869), L.R. 4 Ex. 126, considered.
(2) *Iron Trades Mutual Employers Ins. Assn. Ltd.* v. *Sheffield Corp.*, [1974] 1 W.L.R. 107; [1974] 1 All E.R. 182, followed.
(3) *Nokes* v. *Doncaster Amalgamated Collieries Ltd.*, [1940] A.C. 1014; [1940] 3 All E.R. 549, considered.
(4) *Rein* v. *Lane* (1867), L.R. 2 Q.B. 144, considered.
(5) *Vaughan* v. *Biggs,* [1960] 1 W.L.R. 622; [1960] 2 All E.R. 473, referred to.

Legislation construed:

Interpretation and General Clauses Ordinance 1962, s.2: The relevant terms of this section are set out at para. 16.

Public Health Ordinance 1950, s.3: The relevant terms of this section are set out at para. 13.
s.58: The relevant terms of this section are set out at para. 11.
s.59: The relevant terms of this section are set out at para. 12.
s.263(a): The relevant terms of this paragraph are set out at para. 6.

A.V. Stagnetto for the appellant;
E. Thistlewaite, Crown Counsel, for the Crown.

1 **DAVIS, C.J.:** The appellant appeared in the Magistrates' Court on February 26th, 1981 charged with an offence contrary to s.263(a) of the Public Health Ordinance 1950, in that on January 17th, 1981 he did deposit and leave cardboard boxes in the open air on Main Street, Gibraltar in such circumstances as to contribute to the defacement of Main Street by litter.

2 The appellant pleaded not guilty, but the learned Stipendiary Magistrate found him guilty and sentenced him to a fine of £50. On March 2nd, 1981, the appellant gave notice of appeal against the decision of the learned magistrate on the following grounds:

(a) that the conviction was against the weight of the evidence;

(b) that there was no evidence or no sufficient evidence upon which to found the said conviction;

(c) that the finding of the learned magistrate that the refuse which was the subject of the summons was trade refuse was wrong in law;

(d) that having regard to the specific provisions of s.263(a) of the Public Health Ordinance, the learned magistrate misdirected himself in holding that practice does not legalize an illegality;

(e) that the evidence showed that the depositing of the refuse was done by the consent of the owner, occupier, or other person or authority having control of the place in or onto which the refuse was deposited, and that the learned Stipendiary Magistrate failed to consider the provisions of s.263(a) of the Public Health Ordinance; and

(f) that he was not guilty of the offence.

3 The facts of this case are as follows. On January 17th, 1981, the appellant was the manager of the Gibraltar Arms Bar on Main Street. Between 8.30 and 9 a.m. that day, following his practice, the appellant placed the dustbin from the bar and eight empty cardboard boxes outside the bar, on the pavement of Main Street, for collection by the Government refuse collectors. The refuse collectors came to the bar at 9.30 a.m. They collected the refuse from the dustbin from the bar but they failed to remove the eight cardboard boxes.

4 By 10.45 a.m. the boxes had still not been removed, and remained on the pavement outside the bar. The boxes were observed on the pavement at 10.45 a.m. by P.C. Sacramento. He saw the appellant in the bar and apparently drew his attention to the boxes. The appellant told P.C. Sacramento that he (the appellant) had put the boxes outside at 9 a.m. so that the refuse collection lorry could take the boxes away, but that it had

not done so. In evidence the appellant stated that it was general practice to put rubbish on the pavement for collection. It was not disputed that on January 17th, 1981 there was no strike or industrial action in progress by the Government refuse collectors.

5 The learned Stipendiary Magistrate found as follows:

> "(1) That the refuse deposited on the street in this case was trade refuse and not house refuse; and
>
> (2) that practice does not legalize an illegality. It is not authorized by law to place litter on the highway whatever the practice or convenience of refuse collectors or occupiers of premises."

6 Section 263 of the Public Health Ordinance, insofar as relevant, reads as follows:

> "Any person who—
>
> (a) throws down, or drops or otherwise deposits in, into or from, any place in the open air to which the public are entitled or permitted to have access without payment and leaves any thing whatsoever in such circumstances as to cause, contribute to, or tend to lead to, the defacement by litter, debris, rubbish or offensive matter of any place in the open air (which expression shall include any covered place open to the air on at least one side and available for public use) unless that depositing and leaving was authorised by law or was done by the consent of the owner, occupier or other person or authority having control of the place in or into which the thing was deposited;
>
> . . .
>
> shall be guilty of an offence and liable on summary conviction to a fine of £50."

7 In this court Mr. Stagnetto for the appellant, with the consent of Crown Counsel and with leave, produced cuttings from the *Gibraltar Chronicle* of April 28th, 1981, dealing with the current industrial action in connection with the collection of refuse. Referring to proceedings in the House of Assembly, the article entitled "Refuse Crisis" contains the following passage: "The Minister [of Public Works] repeated his plea for the public to co-operate and asked traders to put refuse outside their own doors."

8 Although this report dealt with industrial action occurring well after January 17th, 1981, I understand that it is not disputed by the Crown that prior to January 17th the Government, as owners of Main Street and its pavements, had authorized or consented to the depositing and leaving of refuse outside the doors of dwelling-houses and premises, to facilitate

daily collection by the Government's refuse collectors. It therefore appears that on January 17th, 1981, contrary to finding (2) above of the learned Stipendiary Magistrate, occupiers of premises in Main Street (including the appellant) had lawful authority to deposit refuse on the pavement for the purpose of its daily collection, that authority being the consent of the Government as owner of the pavements, as required by s.263(a) of the Public Health Ordinance.

9 However, that is not the end of the matter. The Crown contends that as the eight cardboard boxes left by the appellant constituted trade refuse under s.59 of the Public Health Ordinance (as found by the learned Stipendiary Magistrate), the appellant committed the offence under s.263(a) of the Ordinance of which he was convicted by leaving the cardboard boxes on the pavement after 9.30 a.m. (when refuse collectors had emptied the bar's dustbin but had not removed the cardboard boxes) until 10.45 a.m., when the boxes were observed by P.C. Sacramento.

10 Mr. Stagnetto for the appellant maintained that the eight cardboard boxes were not trade refuse, but that they were house refuse under s.58 of the Ordinance, and that the Government was required under s.58(1)(a) to remove house refuse. Consequently the appellant, having the Government authority to deposit refuse outside the bar, and having no obligation to remove it himself—as this was the duty of the Government—had committed no offence under s.263(a) and had been wrongly convicted by the learned Magistrate.

11 Section 58(1) of the Public Health Ordinance, insofar as relevant, reads as follows:

> "The Government shall undertake the performance of the following services, that is to say—
>
> (a) the removal of house refuse . . . "

Section 58(2) provides that—

> "if the Government receives notice from the occupier of any premises requiring it to remove any house refuse from those premises and . . . without reasonable excuse, fails to comply with the notice within seven days, the occupier of the premises may recover summarily as a civil debt from the Government the sum of 25 pence for every day during which the default continues after the expiration of the said period."

12 Section 59 provides as follows:

> "(1) The Government shall at the request of the occupier of any premises remove from his premises any trade refuse and, if without reasonable excuse they fail to do so within seven days after the request, the occupier may recover from them summarily as a civil

debt the sum of twenty five pence for every day during which the default continues after the expiration of that period.

(2) The Government shall make reasonable charges for removing trade refuse under this section.

(3) Any question arising under this section as to what is to be considered as trade refuse or as to the reasonableness of any charges made by the Government may, on the application of either party, be determined by the magistrates' court."

13 Sections 58 and 59 of the Public Health Ordinance correspond largely to ss. 72 and 73 of the English Public Health Act 1936. Neither in the local Ordinance nor in the English Act is there any definition of "house refuse" or "trade refuse". Both statutes, however, contain definitions of the word "house." In s.3 of the Ordinance this is as follows:

"'house' includes every messuage, part of a messuage, house, part of a house, building and construction whatsoever (including military guard rooms) whether wholly or in part above or below the surface of the ground, inhabited or occupied either by day or by night by man, whether beneficially or otherwise, or intended to be so inhabited or occupied; and every store, cellar, vault, shop, warehouse, stable coachhouse, goatshed, tenement or other hereditament or premises whatsoever . . ."

In s.343 of the English Act, "house" is defined as follows: "house" means "a dwelling-house, whether a private dwelling-house or not."

14 My attention was drawn to the case of *Iron Trades Mutual Employers Ins. Assn. Ltd.* v. *Sheffield Corp.* (2). In that case the question was that of whether a considerable quantity of waste paper produced on its premises by the Insurance Association, and which under s.72(2) of the Act it had required the Corporation to remove, constituted house or trade refuse. The court, basing its decision on the definition of "house" in s.343 of the Act, held that the waste paper was not refuse one would normally expect from a dwelling-house occupied as such and therefore was not "house refuse" but trade refuse.

15 Mr. Thistlewaite for the Crown maintains that this decision should be applied in the present case, in view of the correlation between ss. 58 and 59 of the Gibraltar Ordinance and ss. 72 and 73 of the English Act. To Mr. Stagnetto's argument that the definition of "house" in s.3 of the Public Health Ordinance clearly includes the Gibraltar Arms Bar, Mr. Thistlewaite replies that due weight must be given to the words "unless the context otherwise requires" in the introductory words of s.3, and in s.58 and 59 the context clearly requires that the word "house" in "house refuse" should not be given the all-embracing meaning given to the word "house" by s.3, as that would render s.59 nugatory.

16 As I understand him, Mr. Thistlewaite goes even further and contends that not only is the definition of "house" in s.3 of the Public Health Ordinance not applicable in interpreting s.58 on the ground that the context requires otherwise, but also that the definition of "house" in s.2 of the Interpretation and General Clauses Ordinance 1962 is for the same reason inapplicable. This definition reads as follows:

> "'house' includes every messuage, part of a messuage, part of a house, building, or other construction (including a military guard room) whether wholly or in part above or below the surface of the ground, inhabited or occupied whether by day or night by man, whether beneficially or otherwise, or intended to be so inhabited or occupied . . ."

17 This definition, although it omits the concluding words of the definition of "house" in s.3 of the Public Health Ordinance, is so wide as clearly to include trade, business and industrial premises as well as dwelling-houses. Accordingly Mr. Thistlewaite, as I understand him, submits that "house" should be interpreted simply as dwelling-house as in *Iron Trades Mutual Employers Ins. Assn. Ltd* v. *Sheffield Corp.* (2).

18 Mr. Stagnetto submitted that the definition of "house" in s.3 of the Public Health Ordinance was not as all-embracing as the Crown made out. He suggested that a factory, for instance, did not fall within the definition, and that factory refuse would therefore be trade refuse falling within s.59; it was therefore incorrect to say that applying the definition of "house" in s.3 to the words "house refuse" in s.58 would render s.59 entirely superfluous. In my view, however, even these are buildings "occupied by man," and therefore fall within the definition of "house" in both s.3 of the Public Health Ordinance and s.2 of the Interpretation and General Clauses Ordinance, as would all sorts of other premises normally associated with trade or industry.

19 I accept Mr. Thistlewaite's submission that to apply to s.58 the definition of "house" in either s.3 of the Public Health Ordinance or s.2 of the Interpretation and General Clauses Ordinance would have this effect of rendering s.59 largely, if not entirely, superfluous. In my view, this cannot have been the intention of the legislature. It appears to me that insofar as s.58 is concerned neither of these definitions of "house" applies, as the context clearly requires otherwise. I refer in this connection to *Craies on Statute Law*, 7th ed., at 98 (1971) citing Lord Simon, L.C. in *Nokes* v. *Doncaster Amalgamated Collieries Ltd.* (3) ([1940] A.C. at 1022):

> "If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the

> view that Parliament would legislate only for the purpose of bringing about an effective result."

20 See also in *Craies* the ensuing section headed "3. Exposition *ex visceribus actus*" (*op. cit.*, at 98–101), and the *dictum* of Blackburn, J. in *Rein* v. *Lane* (4) cited in *Craies* (*op. cit.*, at 100), which states (L.R. 2 Q.B. at 151):

> "It is, I apprehend, in accordance with the general rule of construction that you are not only to look at the words, but you are to look at the context, the collocation, and the object of such words relating to such matter, and interpret the meaning according to what would appear to be conveyed by the use of the words under the circumstances."

21 As argued by Mr. Thistlewaite in relation to Mr. Stagnetto's submission—citing the *dictum* of Cleasby, B. in *Courtauld* v. *Legh* (1) (L.R. 4 Ex. at 130) that "it is a sound rule of construction to give the same meaning to the same words occurring in different parts of an Act of Parliament"—that the definition of "house" in s.3 of the Public Health Ordinance should apply in s.58, due weight must be given to the words at the beginning of s.3, "unless the context otherwise requires." Where the context does so require this formula has the effect of superseding the rule enunciated by Cleasby, B. (see *Craies*, *op. cit.*, at 168–169).

22 Accordingly, on the assumption that the legislature clearly intended that s.59 of the Public Health Ordinance should have effect and that there should be a distinction between house refuse and trade refuse, I am of the view that "house refuse" should be given the meaning it was given in *Iron Trades Mutual Employers Ins. Assn. Ltd.* v. *Sheffield Corp.* (2), that is to say, following May, J. ([1974] 1 All E.R. at 186), that house refuse within s.58 of the Public Health Ordinance is refuse produced by a dwelling-house and of the kind that one would ordinarily expect a dwelling-house, occupied as such, to produce. It is not submitted that the Gibraltar Arms Bar is a dwelling-house. Consequently, in my view its refuse is trade refuse, as found by the learned Stipendiary Magistrate.

23 If the eight cardboard boxes were trade refuse falling within s.59 of the Public Health Ordinance, was the appellant guilty of an offence under s.263(a) of the Ordinance, given that the Government as owners of the pavement had given its consent to the depositing of refuse on it for the purpose of its collection?

24 Mr. Thistlewaite for the Crown submits that the Government authorized the deposit of refuse on the pavement merely for the purpose of its collection every morning. Section 263 falls within Part IX of the Public Health Ordinance, which relates to public highways, and Mr. Thistlewaite

submits that this section is clearly not intended to encourage the deposit of litter and refuse in open spaces (including pavements) to which the public has access. On the contrary, the whole object of the section is to prevent the deposit of refuse on the public highways and in other open spaces, in the interests of public health. Accordingly, as soon as the appellant realized that the Government refuse collectors, although they had emptied the bar's dustbin, had failed to remove the eight cardboard boxes, he should have taken the boxes inside again and, as provided by s.59(1) of the Ordinance, exercised his right to request that the Government remove the boxes.

25 The Crown contends that the appellant's failure to remove the boxes after he had realized that the refuse collectors had not removed them constituted an offence under s.263(a). It is clear from paragraph (a) that both the depositing and the leaving of refuse should have been consented to—in this case by the Government as owner of the pavement—in order to avail the appellant of a defence to a charge of contravening s.263(a). In this case, the Crown maintains, the Government did not consent to the leaving of the boxes on the pavement by the appellant once the refuse collectors had been, collected the bar's other refuse from the dustbin, and gone without removing the cardboard boxes. Accordingly, the leaving of the boxes on the pavement constituted a fresh and unauthorized deposit and leaving of refuse on the pavement and an offence under s.263(a), for which, the Crown submits, the appellant was rightly convicted.

26 Paragraph (a) of s.263 of the Public Health Ordinance follows closely the wording of s.1(1) of the English Litter Act 1958. Mr. Stagnetto referred to the case of *Vaughan* v. *Biggs* (5). This related to a contravention of s.1(1) of the Litter Act 1958 by depositing and leaving a derelict car in a public open space without authority. Lord Parker, C.J., after referring to the provisions of s.1(1) of the Litter Act 1958 said ([1960] 2 All E.R. at 474):

> "Observe that there are two ingredients there, the throwing down, dropping or otherwise depositing and the leaving. It is quite clear that not only the depositing but the leaving is necessary, because it was not intended that an offence should be committed if somebody deposited litter and immediately cleared it up. Accordingly, although the act constituting the offence consists of throwing down, dropping or otherwise depositing, it is only an offence if it is not removed . . . the offence is not committed unless both of these things, the depositing and the leaving, occur."

27 Mr. Stagnetto submits on this authority that there must be both a depositing and a leaving of refuse in order to constitute an offence under

s.263(a) of the Public Health Ordinance. In the present case the depositing of the boxes took place at 8.30 a.m. and the boxes were left on the pavement by the appellant, but in so doing the appellant committed no offence under s.263(a) because the Government had authorized such a deposit of refuse to facilitate collection by the refuse collectors. Even the leaving of the boxes on the pavement after the refuse collectors came and went could not constitute an offence under s.263(a), as there was no fresh deposit, and in the appellant's submission mere leaving could not by itself constitute both a fresh deposit and a leaving as suggested by the Crown. In any event, Mr. Stagnetto argued, the appellant was under no duty to bring the boxes inside again after 9.30 a.m. when the refuse collectors left without taking the boxes—even if he had in fact seen this, which was not established—as, for all the appellant knew, the refuse collectors might be returning within a short time to collect the boxes.

28 In my view, the appellant was entitled to leave the cardboard boxes on the pavement for a reasonable time. It is established that on January 17th there was no industrial action in progress in relation to refuse collection. The appellant had deposited on the pavement outside the Gibraltar Arms Bar, as authorized by the Government, a dustbin and eight cardboard boxes. All this constituted trade refuse. I have not been told in the course of this appeal what the arrangements were for the collection of refuse entered into between the Government and the occupiers of trade premises, but it would certainly appear that the appellant was entitled to expect the government refuse collectors to take away all his trade refuse—the contents of the dustbin and the eight cardboard boxes alongside. It seems clear that the appellant had no idea why, when the dustbin had been emptied, the boxes had not been removed and, as Mr. Stagnetto has pointed out, he would appear to have had no indication that the refuse collectors might not return later that day to remove the cardboard boxes as well.

29 Having regard to the refuse collection arrangements whereby occupiers of trade premises had authority to place their refuse on the pavement for collection, it appears to me that there was no obligation on the appellant to request the Government to remove his trade refuse. As I understand it, the Government has at some time in the past agreed to remove trade refuse, and this arrangement, envisaged by s.59 of the Ordinance, was in effect on January 17th, 1981. It appears to me, therefore, that the appellant was perfectly entitled to leave the trade refuse from his premises on the pavement to await collection.

30 It is very likely, as Mr. Thistlewaite has pointed out, that the boxes proved a considerable obstruction to passers-by on that Saturday morning in Gibraltar's Main Street, but in my view the leaving of the boxes on the pavement by the appellant after the refuse collectors had gone (after emptying the dustbin but without removing the boxes) did not constitute

an offence under s.263(a) of the Public Health Ordinance. Accordingly, I set aside his conviction by the learned Stipendiary Magistrate and order that the fine of £50, if paid, be refunded to the appellant.

Order accordingly.

[1980–87 Gib LR 39]

OLD RELIABLE FIRE INSURANCE COMPANY v. CASTLE REINSURANCE LIMITED

SUPREME COURT (Davis, C.J.): June 1st, 1981

Conflict of Laws—jurisdiction—submission to jurisdiction of foreign court—defendant submits to jurisdiction of foreign court if contests case there on merits, e.g. by submitting defence and entering counterclaim, even if entering available counterclaim mandatory under court's procedural rules—no submission if appearance merely to protest jurisdiction

Conflict of Laws—reciprocal enforcement of judgments—execution of foreign judgments—Gibraltar court unable to impeach foreign judgment unless obtained by fraud against court or judgment offends against substantial justice—fraud between parties no ground for impeachment

The plaintiff brought proceedings for the enforcement of a foreign judgment against the defendant.

The plaintiff, a Missouri company, sought the sum of US$341,322 plus interest from the defendant, a Gibraltarian company, having already obtained judgment in its favour in the US District Court for the Eastern District of Missouri. In that court, the defendant had made a preliminary application to have the claim struck out for lack of jurisdiction; when this was rejected, it submitted a defence and a counterclaim against the plaintiff, while maintaining that the court lacked jurisdiction. Upon obtaining judgment in its favour the plaintiff brought the present proceedings in Gibraltar, and applied for judgment under the Rules of the Supreme Court, O.14, on the ground that the defendant had no defence to its claim.

The defendant submitted that it should be given leave to defend as there were matters at issue which ought to be tried, namely (a) whether the Missouri court had jurisdiction over the case—the defendant having consistently argued that it did not, and the defendant not having submitted to the jurisdiction, having only entered a counterclaim in the