THE COURT OF APPEAL

Neutral Citation Number: [2015] IECA 252

APPEAL NO. 2014/1377 & 2014/1381

Ryan P.
Peart J.
Hogan J.

BETWEEN:

DIRECTOR OF PUBLIC PROSECUTIONS

PROSECUTOR/RESPONDENT

AND

PERENNIAL FREIGHT LIMITED

DEFENDANT/APPELLANT

JUDGMENT of Mr Justice Michael Peart delivered on the 21st day of October 2015:

1. This appeal and cross-appeal arise from the judgment of the High Court (Kearns P.) delivered on the 27th June 2014 in relation to a consultative case stated by the District Judge Gerard Haughton in proceedings which were before him at Wexford District Court on the 8th January 2013. On that occasion the defendant/appellant faced prosecution, firstly in respect of the use of a truck for a purpose for which a higher rate of duty would be chargeable contrary to s. 2 of the Finance (Excise Duties) (Vehicles) Act 1952, as amended, and secondly, in respect of the use of that truck in circumstances where a licence required by s. 13 of the Roads Act 1920, as amended, was not in force.

2. The appellant appeals against the answers given by Kearns P.to Questions 1, 2 and 5. The prosecutor's cross appeal relates to the answers to Questions 3 and 4.

3. The appellant is a haulage company. One of its vehicles is a tractor unit designed to pull a trailer which is not itself a mechanically propelled vehicle and therefore incapable of independent movement. Trailers come in different shapes and sizes and are therefore of different weights when unladen.

4. The DPP contends that the relevant legislation requires that the rate of excise duty payable in respect of the tractor be assessed by reference to the combined weight of the tractor and the unladen weight of the trailer it is pulling, and not the tractor unit alone.

5. The appellant contends that the legislation, properly construed and understood, does not make provision for excise duty to be paid by reference to the combined weight of the tractor and a notional trailer, since s. 1 of the Finance (Excise Duties) (Vehicles) Act 1952 ("the Act of 1952") provides that excise duty shall be levied and paid "in respect of mechanically propelled vehicles used on roads", and a trailer is not a mechanically propelled vehicle. Alternatively, in so far as the DPP contends that other provisions, including the Schedule to the Act of 1952, bring the unladen weight of the trailer into consideration, the appellant contends that any such provisions relied upon are ambiguous, lack certainty and, in accordance with the canon of interpretation which leans against doubtful penalisation, are insufficient to ground the offences for which the appellant is being prosecuted in the District Court.

6. If the DPP is correct the problem for any tractor owner is that, in accordance with the way the haulage business operates nowadays, he is very often contracted to haul somebody else's trailer in order to move it from one location to another, and until he is so engaged he cannot know the unladen weight of the particular trailer to be hauled. In other words, the trailer may or may not be owned by the owner of the tractor which pulls it. There is an obvious difficulty for the owner when deciding what rate of excise duty to pay in respect of his tractor unit at the beginning of the licensing period. Perhaps the cautious or prudent thing to do would be to decide what is the heaviest trailer that might possibly be hauled during the year and pay excise duty on that combined unladen weight, even though in practice he might never haul such a heavy trailer. That might lead to many a haulier overpaying on his vehicle on a precautionary basis. Nevertheless that is the way the legislation is understood and operated by An Garda Síochána when checking whether, on a particular day on which the vehicle is observed towing a trailer, the correct excise duty has been paid on the vehicle, and it is a basis which the DPP on this appeal says is correct.

7. It is part of the appellant's case that the relevant statutory scheme has simply failed to keep pace with developments in the design and operation of haulage vehicles and the way the haulage business now typically operates, and that the DPP is straining the words of statutory provisions enacted in the context of different and older types of vehicles in an effort to make them fit some types of vehicle now owned and operated by hauliers, and that they do not bear the meaning contended for.

8. In the present case the appellant paid excise duty to cover one of his tractor units for the period 1st November 2010 to 31st October 2011 which was calculated by reference to the unladen weight of his tractor combined with an unidentified 'flatbed trailer'. These combined units were placed on a weighbridge and were weighed at 12,570 kilograms for the purpose of assessing the excise tax payable on the tractor, and excise duty was paid accordingly.

9. However, on the 15th March 2011 the tractor, being driven at the time by an employee of the appellant company, was observed by Sergeant Griffin to be pulling a 'curtain-sider' trailer whose unladen weight combined with the tractor unit was estimated by him to have been between 15,000 and 16,000 kilograms and therefore considerably in excess of the unladen weight for which excise duty had been paid. The estimated shortfall in excise duty was €783. Therefore while the appellant company had obtained a licence for the tractor, and this had not been revoked or cancelled in any way by the date of observation, the DPP contended that there was no valid licence for the tractor on the date in question, given the provisions of s. 5(3) of the Roads Act, 1920.

10. The appellant was prosecuted in respect of the following alleged offences:

(i) that the defendant did on 15th March 2011 at Ballygillane Little, Rosslare Harbour, Wexford, a public place in the said District Court area of Wexford, use a mechanically propelled vehicle registered number 05 C 25202 for a purpose for which a higher rate of duty would be chargeable.

Contrary to s. 2 of the Finance (Excise Duties) (Vehicles) Act 1952 and s. 20 (3) of the Finance Act 1958 and s. 17 of the Finance Act 1961, as amended by s. 63 of the Finance Act 1993.

(ii) that the defendant did on 15th March 2011 at Ballygillane Little, Rosslare Harbour, Wexford, a public place in the said District Court area of Wexford, use a mechanically propelled vehicle registered number 05 C 25202 in respect of which a licence required by the Roads Act 1920 and the Finance Acts was not in force.

Contrary to s. 13 (1) of the Roads Act 1920, as amended by s. 61 (1) of the Finance Act 1993.

(iii) that the defendant did on 15th March 2011 at Ballygillane Little, Rosslare Harbour, Wexford, cause another person to use a mechanically propelled vehicle registered number 05 C 25202 on which excise duty is chargeable by virtue of the Finance (Excise Duties) (Vehicles) Act 1952 as amended by the Finance Act 1985 whilst the said excise duty was unpaid.

Contrary to s. 71 (1) of the Finance act 1976 and s. 76 of the Finance Act 1976 as amended by s. 63 of the Finance Act 1993.

11. When the matter came before the District Court on the 8th January 2013, the appellant was represented by Dara Robinson, solicitor, who made extensive submissions, as did Kevin O'Doherty, solicitor, who represented the DPP. Having heard those submissions, District Judge Gerard Haughton decided to state a case for the opinion of the High Court on certain questions of law, pursuant to the provisions of s. 52 of the Courts (Supplemental provisions) Act 1961, being:

(1) When a mechanically propelled goods vehicle, which itself is subject to the obligation to obtain a licence pursuant to the provisions of s. 1 of the Act of 1952, is being licensed and where it is the intention of the owner of that vehicle that the said vehicle will tow or haul trailers in the course of a business, is such owner obliged to licence that mechanically propelled vehicle at a weight in excess of the vehicle's actual weight but having regard to what weight might be attributed to that vehicle and a trailer which that vehicle might be expected to tow or trail in the course of the following licensing year? [To this question, the President of the High Court answered 'yes']

(2) If a mechanically propelled goods vehicle of a certain weight is licensed pursuant to the provisions of s.1 of the Act of 1952 and at the time of such licensing excise duty has been calculated having regard not only to the weight of the mechanically propelled vehicle but also to the weight of a trailer which that mechanically propelled vehicle may draw during the course of the licensing year

(a) Is that vehicle in respect of which such licence has been issued to be regarded as having been "altered" within the meaning of s. 5 (3) of the Roads Act 1920 after the licence has been issued in such manner as to cause the vehicle to become a vehicle in respect of which a licence at a higher rate of duty or a licence of a different class is required, by virtue only of the fact that such mechanically propelled vehicle draws a trailer by means of the mechanism outlined above, the combined weight of which mechanically propelled vehicle and trailer exceeds the weight in respect of which excise duty has been paid at the time the licence was granted, thereby rendering the licence void after the licence has been issued?

(b) If so, does the vehicle become a vehicle in respect of which a licence at a higher rate of duty or a licence of a different class is required and

(c) Does the licence become void unless same is surrendered and payment is made in respect of the difference between the amount payable on the new licence and the amount paid on the surrendered licence?

[To each of questions 2 (a), (b) and (c) the President answered 'yes']

(3) If a mechanically propelled goods vehicle within the meaning of paragraph 5 of the First Schedule to the Act of 1952, as amended, obtains a licence on the payment of excise duty calculated not merely in respect of the actual weight of that mechanically propelled vehicle but also having regard to the weight of a trailer which that vehicle might be expected to draw or trail in the course of the licensing year, does the drawing or trailing of a trailer in excess of the weight of the trailer used at the time the licence was granted constitute use of the mechanically propelled vehicle in a condition or manner or for a purpose contemplated by the provisions of s.2 (1) (b) of the Act of 1952 such that if such vehicle was used solely in that condition or manner or for that purpose, the mechanically propelled vehicle would thereby be rendered chargeable with duty at a higher rate than that at which duty had been paid whereby the use of such vehicle would amount to a criminal offence as provided for at s. 2 (2) of the Act of 1952 as amended?

[To this question the President answered 'No']

(4) If the answer to (2) (a), (b) and (c) above be in the affirmative, can a prosecution pursuant to the provisions of s. 2 of the Act of 1952 be sustained?

[To this question, the President answered 'No']

(5) If the interpretation of the legislation as put forward on behalf of the prosecution be correct, would I be correct in convicting the defendant of each or any of the offences as set out in paragraph 1?

[To this question, the President answered 'Yes – the defendant may be convicted on either charge (ii) or (iii).]

12. The appellant submits that the President erred in some of his conclusions and in his answers to questions 1, 2 and 5 the Consultative Case Stated, but submits that he was correct in his answers to questions 3 and 4 thereof. The DPP submits that the President was correct in relation questions 1, 2 and 5, but was incorrect in relation to questions 3 and 4 and has filed a notice of

cross-appeal in that regard.

13. Relevant statutory provisions:

Section 1 of the Finance (Excise Duties) (Vehicles) Act 1952, as amended:

> *"(1) On and after 1st day of January 1953, there shall, subject to the provisions of this Act be charged, levied and paid in respect of mechanically propelled vehicles used in any public place duties of excise at the rates specified in the Schedule to this Act.*
>
> *(2) (a) subject to paragraph (b) the duties charged under this section shall be paid annually upon licences to be taken out by the person keeping the vehicle.*
>
> *(3) …*
>
> *(4) duty under this section shall not be charged or levied in respect of any of the following vehicles:*
>
> > *(a) refuse carts, sweeping machines or watering machines used exclusively for cleaning public streets and roads,*
> >
> > *(b) ambulances, road-rollers or fire engines,*
> >
> > *(c) vehicles kept by a local authority and used exclusively for the purpose of their fire brigade service,*
> >
> > *(d) vehicles which are used exclusively for the transport (whether by carriage or traction) of road construction machinery used for no purpose other than the construction or repair of roads,*
> >
> > *(e) vehicles which are used exclusively for the transport (whether by carriage or traction) of lifeboats and their gear or any equipment for affording assistance towards the preservation of life and property in cases of shipwreck and distress at sea.*
>
> *(5) a vehicle which is used for the purpose specified in paragraph (d) of subsection (4) of this section shall not become liable to a higher rate of duty by reason of such user.*
>
> *(6) …*
>
> *(7) a vehicle which is used for the purpose specified in paragraph (e) of subsection (4) of this section shall not become liable to a higher rate of duty by reason of such user." [remaining subsections not relevant]*

Section 2 of the Finance (Excise Duties) (Vehicles) Act 1952:

> *"(1) Where: (a) a licence under section 1 of this Act is in force,*
>
> > *(b) the vehicle is used in a condition or manner or for a purpose which would, if it was used solely in that condition or manner or for that purpose, render it chargeable with duty at a higher rate than that at which duty has been paid, and*
> >
> > *(c) the vehicle as so used is in all other respects a vehicle chargeable with duty at a higher rate, duty shall become and be chargeable on the vehicle at the higher rate.*
>
> *(2) Where a person so uses a vehicle that duty becomes chargeable in accordance with this section at a higher rate, the person shall, unless duty has been paid at the higher rate before the commencement of such user, be guilty of an offence and be liable on summary conviction to an excise penalty of (whichever is the greater) £1000 [€1269.74] or three times the difference between the duty paid and the duty at the higher rate."*

Paragraph 1 (3) of Part 2 of the Schedule to the Act of 1952:

> *"(3) (a) Where a vehicle (in this subparagraph referred to as the first-mentioned vehicle) has another vehicle or an attachment in the nature of a vehicle (in this subparagraph referred to as the second-mentioned vehicle) attached to and partly superimposed upon it, the first-mentioned vehicle and the second-mentioned vehicle shall, for the purposes of Part 1 of this Schedule be deemed to form and be a single vehicle and the first-mentioned vehicle shall not, by reason merely of the attachment thereto of the second-mentioned vehicle, be deemed to be a tractor or a vehicle drawing a trailer."*

Sections 1 and 2 of the Finance (Excise Duties) (Vehicles) (Amendment) Act 1960:

> *" 1. -- …*
>
> > *any reference to a vehicle shall be construed as including a reference to a vehicle and another vehicle or an attachment which, in accordance with subparagraph (3) of paragraph 1 of Part 2 of the Schedule to the Principal Act [the Act of 1952] are, for the purposes of Part 1 of that Schedule, to be deemed to form and be a single vehicle.*

2. – (1) For the purposes of the Principal Act [the Act of 1952] the weight unladen of a vehicle shall, notwithstanding section 18 of the Road Traffic Act 1933, be taken to be the weight of the vehicle inclusive of all additions, but exclusive of the weight of water, fuel or accumulators (other than boilers) used for the purpose of propulsion and of loose tools or loose equipment.

(2) For the purposes of subsection (1) of this section—

(a) each of the following shall, with respect to a vehicle, be an addition: (i) a body, (ii) a part, (iii) a fitting, (iv) a receptacle,

(b), (c) (d) … ."

Section 5 (3) of the Roads Act, 1920:

" (3) where any vehicle in respect of which any such licence as aforesaid has been issued is altered after the licence has been issued in such manner as to cause the vehicle to become a vehicle in respect of which a licence at a higher rate of duty or a licence of a different class is required, the licence shall become void, but the holder of the licence shall, on surrendering the same and furnishing the prescribed particulars, be entitled to receive a new licence in respect of the vehicle, to have effect for the period for which the surrendered licence would, if it had not been surrendered, have remained in force, on payment of such amount, if any, as represents the difference between the amount payable on the new licence and the amount paid on the surrendered licence."

14. Given that excise duty is chargeable only in respect of a mechanically propelled vehicle, what, therefore, is the status of the tractor unit with a trailer attached, in the light of these provisions? Is it a mechanically propelled vehicle with "an attachment in the nature of a vehicle" attached to it, and therefore in its combined form deemed to be a single vehicle (Sch 1, Part 2, para. 3 of the Act of 1952)? Or, is the tractor unit a vehicle that has been "altered" by the attachment of a trailer so as to attract a higher rate of excise duty (s. 5(3) of the Roads Act, 1920)? Or, is the trailer to be considered to be "a receptacle" within the definition of "addition" in s.2 of the Finance (Excise Duties) (Vehicles) (Amendment) Act 1960? Also, where the owner of a tractor unit has paid excise duty based on the combined weight of his tractor and a notional unladen trailer, and tows a heavier vehicle than the notional vehicle, is the licence so obtained rendered void by the towing of the heavier vehicle under s. 5(3) of the Roads Act, 1920? These and other matters arise in order to answer the questions posed by the District Judge in his consultative case stated.

15. Ultimately it will be a question of trying to identify the intention of the Oireachtas from the plain and ordinary meaning of the words in the relevant legislative provisions. Specifically the ultimate question may be reduced to an examination of whether the legislation is worded sufficiently to include the type of combined truck and trailer which has become so commonplace but which was not known when the relevant legislative provisions were enacted, namely the articulated lorry, whereby the tractor unit (which is a mechanically propelled vehicle) reverses towards the front of an immobile trailer, far enough to position its towing mechanism (known as a fifth wheel coupling) underneath the front end of the trailer, and when engaged move forward again with the trailer attached. It may be that the legislation has simply failed to keep up with such technical innovations and that it cannot be interpreted in such a way as to levy duty on the basis of the combined weight of the tractor and trailer, rather than on the basis of the trailer alone. The Court can go only so far by way of a teleological approach to its interpretation. If there be a lacuna, it is a matter to be addressed by the Oireachtas.

Questions 1 and 2 of the Consultative Case Stated:

16. These questions have been set out in full above, but essentially ask, firstly, whether the tractor owner, when obtaining a licence for the tractor for the year ahead, must pay excise duty based not simply on the tractor but by reference to the combined weight of the tractor and the heaviest trailer which he might tow during the year; secondly, if he tows a heavier trailer during that year than that on which the level of excise duty was calculated for the licence obtained, has the vehicle been "altered" such that a higher rate of duty is payable, and has the licence become void, and if so, does the vehicle become one which attracts a higher rate of duty; and thirdly, does the licence become void unless it is surrendered and an additional payment made for a new licence to cover the heavier trailer. As noted earlier, the President answered Questions 1 and 2 in the affirmative.

17. The President concluded firstly, and correctly in my view, that he was not satisfied that a trailer came within the definition of a 'receptacle' in s. 2 (2) of the Act of 1960, and therefore could not be an "addition" to the tractor unit for the purposes of calculating the unladen weight of the tractor unit under section 2 (2) of the Act of 1960. He distinguished – correctly, in my view - the facts of this case from the very different facts in *Attorney General (Supt. De Burca) v. Murtagh* (1961) 95 ILTR 56.

18. He went on to consider the more difficult question whether the tractor and trailer combine so as to be deemed to form a single vehicle for the purposes of Schedule 1, Part 2, paragraph 1 (3)(a) of the Act of 1952, the provisions of which have been set out above. In concluding that they do, the learned President stated the following:

"The Court finds that the trailer in question does come within the scope of paragraph 1 (3) of Part 2 of the Schedule to the 1952 Act in that it is attached to and partly superimposed on another vehicle, i.e. the tractor unit. Counsel for the defendant has argued that the word 'vehicle' as it appears in the Act can only apply to mechanically propelled vehicles and does not include a non-mechanically propelled vehicle such as a trailer. Before turning to discuss the issue of superimposition, which is required in addition to an attachment, I will first consider the matter of statutory interpretation.

It is submitted that the word 'vehicle' must be read consistently throughout the 1952 Act, i.e. it can only refer to a mechanically propelled vehicle. Extensive submissions have been made in relation to the principles of construction and the need to interpret penal statutes strictly. A breakdown vehicle was used as an example of where this provision applied as it is a vehicle which has a second mechanically propelled vehicle partly superimposed or even carried on it. The Court notes as an aside that in this example the 'second' vehicles referred to by the defendant could, like a trailer, also be said to be vehicles without a means of independent propulsion, i.e. they are broken down and are moved by being superimposed on the leading vehicle. As the Court understands it, cars removed from the scene of a traffic accident or from a scrap yard would be included in the defendant's example, yet these are also 'vehicles' without independent mechanical propulsion. In any event, the Court's primary consideration in this regard has been that the relevant subparagraph does not only refer to a 'vehicle' and specifically states that 'an attachment in the nature of a

vehicle' is also included. Had the legislature intended that the subparagraph should only apply to mechanically propelled vehicles the use of the word 'vehicle' alone would have been sufficient. The term 'attachment in the nature of vehicle' in this manner is contrary to the principles of construction and nor does it do any violence to the intention of the legislature, particularly when reading the subparagraph and the Act as a whole. Rather, to do so is to give effect to the true legislative intention i.e. that where one mechanically propelled vehicle has another mechanically propelled vehicle or any other attachment in the nature of a vehicle superimposed upon it, it should be treated as a single vehicle. The deliberate addition of the words 'in the nature of a vehicle' is to be interpreted as including non-mechanically propelled vehicles including the trailer in question, particularly having regard to the fact that in order to fulfil its purpose of conveying goods, it is essential that such a trailer or vehicle be mechanically propelled by some means. While it is not a mechanically propelled vehicle in the truest sense, its symbiotic relationship with the tractor unit certainly classifies it as an attachment 'in the nature' of a vehicle. It follows that paragraph 5 of Part 1 of the Schedule to the 1952 Act applies – the tractor unit and trailer unit both constitute separate component parts of one single vehicle which is designed or constructed for the purposes of carrying goods or burden."

19. The appellant submits that the President is incorrect to conclude that the combination of tractor and trailer under examination in the present case come within paragraph 1(3) of Part 2 of the Schedule to the Act of 1952, so that they are deemed to be a single vehicle. It is submitted that the trailer cannot be considered to be "an attachment in the nature of a vehicle" because 'vehicle' must be given the meaning that it has throughout the Act, namely a mechanically propelled vehicle, which a trailer clearly is not, given that it is incapable of movement unless it is pulled.

20. The appellant also submits that contrary to the conclusions of the learned President, the wording of the Act of 1952 does not provide that such a deemed single vehicle should be licensed by reference to the combined unladen weight, with the proviso that the owner is entitled to substitute one trailer for another trailer so as to form a different 'single vehicle' intended to be covered by the licence first obtained provided that the combined unladen weight of the second 'single vehicle' does not exceed the combined weight of the first 'single vehicle'. The appellant submits that for the President to be correct, such an intention would have to be clear from the statutory provisions, and it is submitted that it is not.

21. The appellant refers to the President's conclusion, having found that the trailer's *"symbiotic relationship with the tractor unit certainly classifies it as an attachment in the nature of a vehicle"*, that paragraph 5 of Part 1 of the Schedule to the Act of 1952 applies since the tractor unit and trailer *"both constitute separate component parts of one single vehicle which is designed or constructed for the purpose of carrying goods or burden".* The appellant submits that this cannot be correct, and points to what is provided for in paragraph 5 of Part 1 of the Schedule, and then to what is provided for in paragraph 4 (d), and submits that paragraph 4 (d) must be the paragraph which best applies to the licensing of the tractor unit.

22. Part 1 of the Schedule in the Act of 1952 is headed "Excise Duties in respect of Mechanically Propelled Vehicles used on Public Roads", and proceeds to set out a number of different categories of such vehicles, including in Paragraph 5 thereof upon which the President relied, and which states:

"vehicles (including tricycles weighing more than 8 cwt. unladen) constructed or adapted for use and used for the conveyance of goods or burden of any description in the course of trade or business (including agriculture and the performance by a local or public authority of its functions)…"

and then proceeds to list sub-categories of vehicles at (a) and (b) which have no relevance for present purposes.

23. The appellant submits that the President fell into error in finding that *"the tractor unit and trailer unit both constitute separate component parts of one single vehicle which is designed or constructed for the purposes of carrying goods or burden".* The appellant further refers to the President's statement at page 34 of his judgment, namely *"the tractor unit bearing registration number 05 C 25202 is a high-powered vehicle specifically engineered for the purpose of transporting large trailers which are used to carry goods or burden in the course of trade or business"*. It is submitted that the tractor unit cannot be a vehicle *"constructed or adapted for use and used for the conveyance of goods or burden"*, since it does not itself, and is not designed to, carry goods or burden. Rather, it is submitted, the tractor by definition, and by design and purpose, hauls and pulls something. It does not itself convey or carry anything. But if it is incorrect in this submission and the tractor unit is to be seen as a vehicle constructed or adapted for the conveyance of goods, then the appellant points to the fact that as originally enacted this paragraph went on to provide for "*an additional duty, in the case of any vehicle used for drawing a trailer"* and by reference to the weight of such vehicle – and not the weight of the trailer being drawn. The appellant emphasises the fact that this additional duty was not payable by reference to the weight of the trailer when these provisions were enacted in 1952, and suggests that this was for good reason, namely, as in the present case, because the owner of the tractor vehicle which is designed only to pull a trailer would not know in advance the weight of any trailer it may be required to pull during the licensing period. The appellant submits that this supports the interpretation it contends for on this appeal. It is submitted also that given the provisions in Paragraph 5 of Part 1 of the Schedule relating to additional excise duty payable when a trailer is being drawn by a vehicle, the provisions of Paragraph 1 (3) of Part 2 of the Schedule (i.e. *"where a vehicle … has another vehicle or an attachment in the nature of a vehicle attached to and partly superimposed upon it")* must apply to a different scenario.

24. The appellant suggests an example of such a scenario intended to be covered by Paragraph 1 (3) of Part 2 of the Schedule, where the same meaning must be given to the word 'vehicle' when this word is used in the Act of 1952 (i.e. a mechanically propelled vehicle), namely a breakdown vehicle which would typically tow or have partly superimposed upon it a mechanically propelled vehicle which is incapable of propelling itself because it has broken down, but is nevertheless an attachment "in the nature of a mechanically propelled vehicle". This example was rejected by the President as he explained in the passage from his judgment which has been set out in paragraph 17 *ante*. Another possible example suggested during oral argument was an earth-digging vehicle with a mechanical roller on a platform being pulled behind.

25. It is submitted by the appellant that rather than placing a tractor within the definition contained in paragraph 5 of Part 1 of the Schedule as a vehicle "*constructed or adapted for use and used for the conveyance of goods or burden*", as the President did, it should more correctly be seen as coming within Paragraph 4 of the Schedule. Paragraph 4 makes provision for a number of different types of vehicles, such as at (a) vehicles which are used for trench-digging and which are used on public roads only for that purpose or for getting from a place to another place where they are to be used for trench-digging; at (b) tractors incapable of exceeding 50kmh, and other agricultural engines (not being tractors or engines used for hauling any objects except their own gear etc.); (c) tractors "*used for haulage in connection with agriculture and for no other purpose …*"; (d) "*tractors of any other description*" [emphasis added]; (e) caravans; and (f) vehicles kept and used on an off-shore island.

26. It is paragraph (d) highlighted above which the appellant submits covers a tractor unit such as that in the present case, and not

Paragraph 5 which refers specifically to vehicles "*constructed or adapted for use and used for the conveyance of goods or burden*", and, as already noted, it is contended the tractor is not itself such a vehicle.

27. It is submitted that paragraph (d) of Part 1 of the Schedule clearly provides the basis for the amount of excise duty payable for the tractor unit, and that there is no other provision which requires that duty in respect of the tractor be determined by reference to the combined unladen weight of the tractor and any trailer (not being a mechanically propelled vehicle) that it may be pulling at any particular time.

28. As I have noted, the appellant submits that if, as the President found, paragraph 5 of Part 1 of the Schedule in its original form covers the present case by imposing excise duty on "*vehicles … constructed or adapted for use and used for the conveyance of goods or burden*", then it follows that since the same paragraph provides for "*an additional duty in the case of any vehicle used for drawing a trailer*" (that additional duty being based on the weight of the tractor vehicle and not the trailer), paragraph 1(3) of Part 2 of the Schedule, upon which the DPP relies heavily, must refer to something else. The appellant has suggested that it may refer to some vehicle such as a tow-away truck to which a broken down mechanically propelled vehicle is attached or partly superimposed for the purpose of being towing away (a suggestion rejected by the President in his judgment), or something such as an earth-digging vehicle towing a steam-roller on a platform behind.

29. The DPP submits that the appellant's focus on the provisions of paragraph 1(3) of Part 2 of the Schedule to the Act of 1952 is misleading and that they must be viewed in conjunction with ss. 1 and 2 of the Finance (Excise Duties)(Vehicles)(Amendment) Act, 1960 ("the Act of 1960") which for convenience I will set out once more as follows:

> *"1. … any reference to a vehicle shall be construed as including a reference to a vehicle and another vehicle or an attachment which, in accordance with subparagraph (3) of paragraph 1 of Part 2 of the Schedule to the Principal Act [the Act of 1952] are, for the purposes of Part 1 of that Schedule, to be deemed to form and be a single vehicle.*
>
> *2. – (1) For the purposes of the Principal Act [the Act of 1952] the weight unladen of a vehicle shall, notwithstanding section 18 of the Road Traffic Act 1933, be taken to be the weight of the vehicle inclusive of all additions, but exclusive of the weight of water, fuel or accumulators (other than boilers) used for the purpose of propulsion and of loose tools or loose equipment.*
>
> *(2) For the purposes of subsection (1) of this section—*
>
> > *(a) each of the following shall, with respect to a vehicle, be an addition: (i) a body, (ii) a part, (iii) a fitting, (iv) a receptacle,*
> >
> > *(b), (c) (d) … ."*

30. The DPP has submitted that the trailer is an "addition" to the tractor vehicle, being a "receptacle" in which goods are carried, and that its unladen weight is therefore part of the basis upon which excise duty must be calculated, given that both units are deemed to be a single vehicle for such purposes, and that for the purposes of s. 5 (3) of the Roads Act, 1920 is to be considered a vehicle that has been "altered" to one which attracts a higher rate of excise duty, and therefore on the day observed was a vehicle in respect of which its licence had become void, and therefore an offence was committed.

31. The President did not accept that the trailer could be considered to be a receptacle, and I have already expressed my respectful agreement with that conclusion. That conclusion, however, undermines the DPP's submission in relation to paragraph 1 (3) of Part 2 of the Schedule to the Act of 1952, even though she submits that whether read separately or together it is clear that the legislature intended that a goods vehicle be taxed on the basis of the weight of the heaviest combination of tractor unit and trailer (or any other form of attachment) in any given year. In her written submissions the DPP stated "*the application of the 1960 Act completely precludes the artificial argument made by the defendant that only attachments in the nature of another mechanically propelled vehicle can be added to the front unit for the purposes of calculating the weight of the combined vehicle*". In my view, however, an "*attachment in the nature of a vehicle*" referred to in s. 1 of the Act of 1960 and in Paragraph 1 (3) of Part 2 of the Schedule to the 1952 Act is not to be conflated or otherwise confused with an "*addition*". They are separate concepts, the latter being specifically defined. Another difficulty with the DPP's submission, as drawn attention to during the appellant's oral submissions, is that if the trailer and the tractor unit are, as she suggests, deemed to be a single vehicle because of the deeming provision in Paragraph 1 (3) of Part 2 of the Schedule, then s. 2 of the Act of 1960 is really not relevant since the trailer cannot be an "addition" if it is already deemed to be part of a single vehicle.

32. The competing arguments being put forward in order to discern the true meaning of the statutory scheme, and therefore the intention of the Oireachtas from the plain and ordinary meaning of the words used (which best express that intention), boil down essentially to considering the meaning properly to be attributed to the words "*an attachment in the nature of a vehicle*" appearing within Paragraph 1 (3) of Part 2 of the Schedule, and the provisions of

33. Paragraph 4 (d) of Part 1 of the same Schedule relating to the licensing of "tractors of any other description". I suggest that the matter can be determined by reference to these two provisions given the following conclusions which I have reached:

> (a) Paragraph 5 of Part I of the Schedule does not apply because it refers to "*a vehicle constructed … and used for the conveyance of goods or burden" but with "an additional duty in the case of any vehicle used for drawing a trailer …*". In my view, this provision applies where the front vehicle itself is a goods carrying vehicle and draws a trailer. The tractor in the present case is not such a vehicle. It does not carry anything. It pulls something else. In my view the learned President fell into error when he concluded that Paragraph 5 of Part 1 of the Schedule applies (p. 37 of his judgment).
>
> (b) The trailer is not a "receptacle" in any ordinary sense of that word, and therefore is not an "addition" for the purposes of section 2 of the Act of 1960. Reference to that provision does not assist the DPP, and the President's conclusions in this respect are correct.
>
> (c) The conclusion at (b) combined with the fact that in the present case there was no evidence of any physical (mechanical or otherwise) alteration to the tractor, means that the provisions of s. 5 (3) of the Roads Act, 1920 are not relevant. That section speaks of a vehicle (i.e. the tractor) that is "altered" after a licence is issued, in such a manner that it becomes a vehicle in respect of which a higher rate of excise duty is payable. This tractor was not altered in any way. It simply became attached to a trailer by means of its fifth wheel coupling. Whatever that constitutes, it certainly

does not amount to an alteration as that word is commonly and ordinarily understood.

34. The proper interpretation of Paragraph 1 (3) of Part 2 of the Schedule to the Act of 1952, and to Paragraph 4 (d) of Part 1 of the same Schedule must be informed by the fact that section 1 of the Act of 1952 states clearly and unequivocally that the Act is making provision for the payment of excise duties in respect of "*mechanically propelled vehicles used on public roads*". No other type of non-mechanically propelled vehicle or other contraption is stated to be subject to excise duty.

35. It can be informed also by the fact that throughout the relevant provisions of the Act of 1952 any reference to a vehicle is to one that is mechanically propelled. This is relevant to the consideration of whether the word "vehicle" as used in the statutory scheme can be seen as referring to a trailer that is not mechanically propelled in any way, but rather is pulled by a mechanically propelled vehicle. In other words, the question is whether the trailer is an "attachment in the nature of a vehicle".

36. It can be informed also by the general rule, according to accepted principles of statutory construction, that the same word used throughout an Act should be given the same meaning unless another meaning is clearly mandated by the context, but having regard also to the principle that when Acts are in *pari materia* or part of the same family of legislation, the use of the word in that family of legislation may assist in its interpretation in the provisions under review: see *BUPA Ireland Ltd. v. Health Insurance Authority* [2008] IESC , [2009] IR

37. It can be informed also by the fact that while the word "trailer" appears in Paragraph 1 (3) of Part 2 of the Schedule in its own context, it is absent from Paragraph 4(d) . Under Paragraph 1 (3) of Part 2 of the Schedule the first-mentioned vehicle, when attached to another vehicle (or an attachment in the nature of a vehicle) is not "by reason merely of the attachment" to be deemed to be a tractor (thereby bringing it within Paragraph 4 (d) of Part 1 of the Schedule) or to be a vehicle drawing a trailer (which in fact could bring it within Paragraph 5 of Part 1 of the Schedule) and therefore within a level of excise duty it would not otherwise attract. This makes clear that a "*vehicle drawing a trailer*" referred to at the end of Paragraph 1 (3) is different to "*another vehicle or an attachment in the nature of an attachment attached to or partly superimposed upon [the first vehicle]*" referred to earlier in the same paragraph, and to be treated differently for excise duty purposes.

38. The Court must have regard to the fact that the statutory scheme relates not simply to the imposition of duties or taxes, but creates offences for the use of a vehicle in respect of which the required excise duty has not been paid, and the need therefore to apply a strict construction to the provisions under scrutiny in the search for certainty.

39. Having considered carefully these arcane and somewhat anachronic provisions, I am in no doubt that the questions posed in the consultative case stated must be answered differently than was done by the President. The foundation for his conclusions was firstly that the trailer is "an attachment in the nature of a vehicle" for the purpose of Paragraph 1 (3) of Part 2 of the Schedule in the Act of 1952, and therefore that the tractor and attached trailer were to be deemed to constitute a single vehicle; and secondly, that Paragraph 5 of Part 1 of that same Schedule applied on the basis that "the vehicle (i.e. that deemed single vehicle) was "constructed or adapted for use and used for the conveyance of goods or burden". I respectfully disagree with these two conclusions.

40. In relation to Paragraph 1 (3) of Part 2 of the Schedule in the Act of 1952, I agree with the appellant's submission that the word "vehicle" must be given the same meaning throughout that paragraph, and that it must be read as referring to "an attachment in the nature of a [mechanically propelled] vehicle", and that a trailer does not come within that meaning. One might ask what is the nature of a mechanically propelled vehicle? The answer surely is that it is a vehicle which has some mechanism (*i.e.*, an engine no matter how powered) by which it is capable of independent movement. One struggles to find examples of what that might be if it not already included in the word 'vehicle', and a couple of examples have been given which are in my view probable examples. But whatever may have been intended to be included in the phrase, I cannot see how a trailer which does not have an engine and is incapable of independent movement (surely the hallmark of something to be called a vehicle) can be rationally and sensibly considered to be something which is "in the nature of a vehicle". In fact the only characteristic which the trailer would seem to have with a mechanically propelled vehicle is that it has two or more wheels. But so does the average shopping trolley and baby buggy, and while those examples will be considered facetious by some, they can nonetheless by no stretch of the imagination be considered to be in the nature of a mechanically propelled vehicle. Size and therefore weight alone would appear to be the only factors which distinguish them from the sort of trailer at issue in these proceedings.

41. I am also in agreement with the appellant's submission that Paragraph 1 (3) is in fact a relieving provision. By that I mean, as submitted, that by going on to state that "*the first mentioned vehicle shall not by reason merely of the attachment thereto of the other vehicle or attachment be deemed to be a tractor or a vehicle drawing a trailer*", it is saving such a vehicle from being brought within Paragraph 5 of Part 1 of the Schedule or indeed Paragraph 4 D) thereof, where a higher rate of excise duty may become payable. If these provisions are seen in this way, it becomes immediately obvious that a tractor unit is straightforwardly within Paragraph 4 (d) of Part 1 of the Schedule being a "tractor of any other description" – that is, not a tractor used for haulage in connection with agriculture referred to in Paragraph 4(c), and there is no provision which requires that a trailer being towed by the tractor or which is anticipated might be towed by the tractor be included in the calculation of a combined unladen weight for excise duty purposes.

42. My essential conclusion, therefore, is that by virtue of s. 1 of the Act of 1952, excise duty is payable on the tractor unit since it is a mechanically propelled vehicle. That excise duty is under the present legislation to be calculated in respect of that mechanically propelled vehicle alone as provided for in Paragraph 4(d) of Part 1 of the Schedule to that Act, and is not required to reckoned by reference to the combined unladen weight of any trailer which it might haul or tow during the licensing year. The practice or understanding of the legislation which had seen hauliers such as the appellant to bring a trailer to be weighed in association with the tractor for the purpose of being licensed for the coming period has in my view no statutory basis.

43. If it is indeed the view of the Oireachtas that the owners of such tractors should pay an excise duty based on the weight of a trailer being hauled by the tractor, then new legislation will be required to make that intention clear and to put in place the necessary scheme so that what is required is clear. Certainty is required where non-compliance gives rise to an offence.

44. For these reasons, I consider that the questions posed by District Judge Haughton in his Consultative Case Stated must be answered as follows:

Question 1 – No

Question 2 (a) -- No

Question 2 (b) -- No

Question 2 (c) -- No

Question 3 -- No

Question 4 -- In view of the answers to 2 (a), (b) and (c), Question 4 does not require to be answered.

Question 5 -- The interpretation of the legislation by the prosecution is incorrect, and it would not therefore be correct to convict the defendant of any of the offences set out in paragraph 1 of the Case Stated.