Neutral Citation: [2014] IEHC 323

THE HIGH COURT

[2013 No. 1583 SS]

IN THE MATTER OF SECTION 52 OF THE COURTS (SUPPLEMENTAL PROVISIONS) ACT 1961 AS AMENDED

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS (AT THE SUIT OF SERGEANT PETER GRIFFIN)

PROSECUTOR

AND

PERENNIAL FREIGHT LIMITED

DEFENDANT

Judgment of Kearns P. delivered on 27th day of June, 2014

This is a consultative case stated for the High Court by District Judge Gerard Haughton pursuant to the provisions of section 52 of the courts (Supplemental Provisions) Act 1961. The case stated is dated 3rd September, 2013.

THE CASE STATED
The consultative case stated was set out by Judge Haughton in the following terms:

> "1. At a sitting of the District Court held at Wexford on the 8th January, 2013 Perennial Freight Ltd (hereinafter referred to as "the defendant") was represented before the learned District Court Judge to answer the charges set out in the summonses (case no. 2011/304318) which alleged the following offences:-
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> > i) That the defendant did on the 15th March, 20II at Ballygillane Little, Rosslare Harbour, Wexford, a public place in the said District Court area of Wexford, use a mechanically propelled vehicle registered number 05C25202 for a purpose for which a higher rate of duty would be chargeable. Contrary to Section 2 of the Finance (Excise Duties) (Vehicles) Act 1952 and Section 20(3) of the Finance Act 1958 and Section 17 of the Finance Act 1961, as amended by Section 63 of the Finance Act, 1993.
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> > ii) That the defendant did on the 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 05C25202 in respect of which a licence required by the Roads Act 1920 and the Finance Acts was not in force. Contrary to Section 13(1) of the Roads Act 1920, as amended by Section 61 (1) of the Finance Act 1993.
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> > iii) That the defendant did on the 15th March, 2011 at Ballygillane Little, Rosslare Harbour, Wexford, cause another person to use a mechanically propelled vehicle registered number 05C25202 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 Section 71 (1) of the Finance Act, 1976 and Section 76 of the Finance Act, 1976 as amended by Section 63 of the Finance Act 1993.
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> 2. At the said hearing the Director of Public Prosecutions (hereinafter referred to as "the prosecutor") was represented by Kevin O'Doherty, solicitor. The defendant was represented by Dara Robinson, solicitor, Sheehan and Partners, Cunningham House, 130, Francis Street, Dublin 8.
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> 3. The matter proceeded to hearing. At the said hearing the following facts were admitted or agreed and were so found by the District Judge:-
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> > (a) The defendant is a limited liability company which carries on a licensed haulage business. The motor vehicle bearing registration number 05C25202 is what is commonly called a tractor unit. It is used by the defendant in the course of its business for the purposes of pulling trailers of various sizes and designs for various purposes to different locations within the State. From day to day this tractor unit is assigned by the defendant to pull such trailers, with different trailers being pulled on different dates to different locations.
> >
> > (b) On the 28th day October 2010, the defendant paid excise duty to obtain a licence to cover the said vehicle bearing registration number 05C25202 from the 1st November, 2010 to the 31st October, 2011 in the sum of €2,145 which said sum was calculated by reference to the weight of the tractor unit together with a "flatbed" trailer that was attached to it for the purpose of the weighing exercise, the combined total amounting to 12,570 kilograms.
> >
> > (c) Accordingly the defendant had obtained a licence covering the use of said mechanically propelled vehicle bearing registration number 05C25202, albeit that in fact the licence obtained was in respect of a vehicle weighing 12,570 kilograms, a figure greatly in excess of the weight of the tractor unit alone. As of the 15th March, 2011, this licence had not been revoked.
> >
> > (d) On that date, Sergeant Griffin observed the said mechanically propelled vehicle bearing registration number 05C25202. At the time he observed it, a vehicle commonly known as a "curtain-sider" trailer bearing registered number RAAS929 was attached to it. This "curtain-sider" was not a mechanically propelled vehicle and accordingly did not itself require a licence pursuant to the provisions of Section 1 of the Act of 1952 as amended. It had no means of independent mechanical propulsion. The "curtain-sider" trailer did not have a front axle. When uncoupled,

the front of the vehicle was supported by legs which could be lowered to the ground. The trailer can be attached to a tractor unit such as the mechanically propelled vehicle bearing registration number 05C25202 by what is commonly known as "fifth wheel coupling". Essentially the coupling consists of a coupling pin or kingpin on the front of the semi-trailer and a horseshoe shaped coupling device known as a fifth wheel on the rear of the towing vehicle. The surface of the trailer rotates against the surface of the fixed fifth wheel which does not, itself, rotate. The trailer slides onto the fifth wheel and locks onto it. The engagement of the kingpin into the fifth wheel locking mechanism is the only means of connection between tractor and trailer and is purely temporary as once the trailer arrives at its destination it is unlocked from the fifth wheel.

(e) There is no difference in substance between a trailer being pulled along by means of a bar hooked onto a coupling and that referred to in the previous paragraph save that the method used is arguably safer and more secure.

(f) Sergeant Griffin estimated that on the day he made his observations the combined weight of the two elements he had observed amounted to 15 - 16 tonnes (15,000kg - 16,000kg). He informed the court that a single vehicle with a weight between 15 - 16 tonnes was required to be licensed pursuant to the provisions of Section 1 of the Act of 1952 as amended, at the rate of €3,198 per annum. He stated that since the mechanically propelled vehicle registered number 05C25202 had been licensed on the basis of having had attached to it on the day it had been licensed an unidentified trailer, giving a combined weight on the day of licensing of 12,570 kilograms, there was a 'shortfall in excise duty' of €783 with respect to the 'vehicle' he observed at Rosslare Harbour on the 15th March, 2011, which vehicle was in part constituted by motor vehicle registration number 05C25202.

(g) Sergeant Griffin joined the Traffic Corps in September 2007 and since 2008 he concentrated on dealing with Heavy Goods Vehicles (H.G.V's). He has a certificate of compliance in the use of mobile weighbridges and has been trained in the use and operation of the weighbridge in Wexford. He has weighed hundreds of unladen H.G.V.'s. The Sergeant allows a margin of error of 2 MT and in all cases the vehicle driver is given the option of having the vehicle weighed at a time convenient to both parties.

(h) Sergeant Griffin did not weigh the vehicle (or combination of vehicles) he had observed and did not have any special or particular qualifications in estimating the weights of vehicles. He has limited powers pursuant to section 3 of the Finance (Excise Duties) (Vehicle) Amendment Act, 1960, to have the vehicle weighed provided there is a weighbridge within 5 miles and does not cause excessive inconvenience. The detection was not made within 5 miles of a weighbridge and the weighing of the vehicle would have caused considerable inconvenience at the time. He maintained that he was giving an estimate of the weight of the vehicle based on his experience. He acknowledged that the weight of a vehicle depended on the height and length of a vehicle as well as the metal used in the construction of the vehicle and the materials used in the vehicle along with the tyres and alloys used in the construction of the vehicle. He acknowledged he was not aware of what metals, materials, tyres or alloys had been used in the construction of what he had observed on the day.

(i) The argument advanced on behalf of the prosecution was to the effect that a *prima facie* case had been made out on the evidence of Sergeant Griffin. In particular, it was submitted that the provisions of paragraph 1(3) of the Second Schedule to the Act of 1952, as substituted by S.44 of the Finance Act 1968, required that the owner of a mechanically propelled vehicle which was a goods vehicle within the meaning of the First Schedule to the Act of 1952 was required to obtain a licence and pay excise duty having regard not merely to the weight of that vehicle as set out in paragraph 5 of the First Schedule to the Act of 1952, as substituted by the Motor Vehicle (Duties and Licences) (No. 2) Act 2008, but in addition, at the time of such licensing, was required to obtain a licence in respect of the said mechanically propelled vehicle as weighed along with a trailer such as that referred to in this Case Stated having a weight at least equivalent to the heaviest trailer which it was anticipated the mechanically propelled vehicle would draw in the course of the annual licensing period covered by the grant of the licence.

(j) It was further submitted that on the evidence of Sergeant Griffin it was clear that the licence actually issued in respect of the said mechanically propelled vehicle was in respect of a putative combined vehicle amounting in weight to 12,570 kilograms. As Sergeant Griffin's evidence was to the effect that the combined vehicle which he saw on the 15th March, 2011 was in his estimation of a weight between 15,000 and 16,000 kilograms, the licence issued to the defendant was automatically void as of the date of observation. This was as a result of the provisions of Section 5(3) of the Roads Act 1920. Accordingly, by virtue of the evidence of Sergeant Griffin in respect of the terms of the actual licence issued and in terms of the estimated weight of the combined vehicles observed on the 15th March, 2011, there was in fact no licence in being in respect of the 'vehicle' which had been observed at Rosslare Harbour on the day in question. Accordingly, the charge set out above at (ii) and the charge at (iii) had been made out on a *prima facie* basis.

(k) Further, it was the submission advanced on behalf of the prosecutor that the offence set out above at (i) had also been made out on a *prima facie* basis as it was clear from the evidence the 'vehicle' observed was being used contrary to the provisions of Section 2 of the Act of 1952 and it was being used in a condition or in a manner or for a purpose other than that for which it had been licensed.

(l) The prosecution contended that section 3 of the Finance (Excise Duties) (Vehicle) Act 1952 adopted the Roads Act of 1920, section 13(3) of which states:-

"if in any proceedings under this section any question arises as to the number of vehicles used or as to the character, weight or horse power of any vehicle or as to the number of persons seated by a vehicle or as to the purpose for which any vehicle was used the burden of proof in respect of the matter in question shall lie on the defendant". The prosecution contended that the effect of section 2(1) of the 1952 Act was that when used in that condition it became chargeable with duty at the higher rate in respect of the licence period during which it is used. Once it is so used the container must be considered to be a part of the lorry and should be taken into account in the determination of its unladen weight for assessment of the duty to which it was liable. Reliance was placed on *The Attorney General (at the Prosecution of Superintendent Tomas de Burca) v. Walter Murtagh* 1961 I.L.T.R. 56 Judgement of Judge Davitt dated 18th October, 1960.

(m) Further, the prosecution relied on section 2 of the Finance (Excise Duties) (Vehicle) Amendment Act, 1960, which provides:

i) For the purpose of the Principal Act, the weight unladen of a vehicle shall, notwithstanding section 18 of the Road Traffic Act, 1933, (1933 No. 11) 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.

ii) For the purposes of subsection (I) 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) in a case in which there is one addition only, the reference to all additions shall be construed as a reference to that addition.

(n) Dara Robinson, solicitor, on behalf of the defendant pointed out that the offence alleged and as set out at (i) above, was dependent upon there being in existence a licence issued pursuant to Section 1 of the Act of 1952 as amended. The offence at (ii) above was predicated upon there being no such licence in existence, which circumstance was also relevant to the third charge. Accordingly, there was an inconsistency in the charges before the court.

(o) It was further submitted that the provisions of paragraph 1(3) of the Second Schedule of the Act of 1952, as inserted by the Act of 1968, did not cover and were never intended to cover a situation such as that observed by the Sergeant. The mechanically propelled vehicle bearing registration number 05C25202 was required to be licensed in accordance with the provisions of the Act of 1952 and had been licensed. The fact that it had been licensed in respect of a weight in excess of its actual weight was irrelevant to the charges. He sought to distinguish the decision of the Supreme Court in *Attorney General (Gillespie) v. Burrell*, a decision of the 28th February, 1969 pointing out the *obiter* nature of the comments of Budd J. in that case. He submitted that the interpretation of the relevant provisions adopted on behalf of the prosecution was incorrect in point of law and that the mere manner in which the "curtain-sided" trailer had been attached to motor vehicle registration number 05C25202 by means of the mechanism referred to above could not of itself either render the licence issued in respect of the motor vehicle registration number 05C25202 void nor could it lead to an obligation to licence a vehicle, the trailer, which was not a mechanically propelled vehicle at all and hence did not require to be licensed pursuant to the provisions of the Act of 1952. He further argued that all references to a 'vehicle' in paragraph 1(3) of the Schedule to the Act of 1952 were references to mechanically propelled vehicles. He pointed out that there was a separate licensing regime in respect of the licensing of trailers most recently expressed in Statutory Instrument No. 399 of 2012 but which provisions were entirely irrelevant to the prosecution before the court.

(p) In the circumstances of this case, I find that I cannot accept the evidence of Sgt. Griffin to be admissible as evidence of the weight of the combination of vehicles on the basis that he is not an expert in the weight of vehicles. It seems to me that the appropriate way of establishing the weight of a vehicle is for the prosecution to produce a certificate of weight from an appointed weighbridge.

4. In light of the issues raised, I now seek the opinion of the High Court upon the following questions of law:

(1) When a mechanically propelled goods vehicle, which itself is subject to the obligation to obtain a licence pursuant to the provisions of Section I 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?

(2) If a mechanically propelled goods vehicle of a certain weight is licensed pursuant to the provisions of Section I 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 Section 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 had 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 higher 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 amount paid on the surrendered licence?

(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 Section 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 rate higher than that at which duty had been paid whereby the use of such vehicle would amount to a criminal offence as provided for at Section 2(2) of the Act of 1952 as amended?

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

(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?"

RELEVANT LEGISLATION

Section 1 of the Finance (Excise Duties) (Vehicles) Act, 1952 ('the 1952 Act') provides –

"(1) On and after the 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 on public roads 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…"

Section 2 of the 1952 Act provides as follows:-

"(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 rate higher 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 the 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) twenty pounds or three times the difference between the duty paid and duty at the higher rate…"

Paragraph 1(3)(a) of Part II of the Schedule to the 1952 Act provides as follows –

"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 I 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."

This is the provision relied upon by the prosecution for the contention that a mechanically propelled vehicle such as a tractor unit requires to be taxed on the basis of its weight combined with the weight of a trailer. Also of relevance is paragraph 5 of Part 1 of the schedule to the Act of 1952, substituted by the provisions of the Motor Vehicles (Duties and Licences) (No.2) Act, 2008. This, the prosecution asserts, sets out the applicable rates of duty on goods vehicles according to their weight –

"Vehicles (including tricycles weighing more than 500 kilograms unladen) constructed or adapted for use and used for the conveyance of goods or burden of any other description in the course of trade or business (including agriculture and the performance by a local or public authority of its functions) and vehicles constructed or adapted for use and used for the conveyance of a machine, workshop, contrivance or implement by or in which goods being conveyed by such vehicles are processed or manufactured while the vehicles are in motion…"

Section 13(1) of the Roads Act 1920 as amended provides –

"If any person uses any vehicle for which a licence under the Finance Act 1920, as amended by this Act, is not in force, or being the holder of a general license or general licences issued under this Act uses at any one time a greater number of licences than he is authorised to use by virtue of that licence or those licences, he shall be liable to an excise penalty of €253.95, or an excise penalty equal to three times the amount of the duty payable in respect of the vehicle or vehicles, whichever is the greater."

Section 71(1) of the Finance Act 1976 provides –

"Where vehicle excise duty is chargeable on a vehicle (whether by virtue of this Act or the Act of 1952) and is unpaid, then any person who, at any time while the duty remains unpaid, uses, parks or otherwise keeps the vehicle in a public place or causes another person to so use the vehicle or who authorises such use of the vehicle by another person shall be guilty of an offence."

In 1960, amending legislation in the form of the Finance (Excise Duties) (Vehicles) (Amendment) Act, 1960 was implemented, which

specifically addresses the issue of how "*weight unladen*" is to be calculated particularly in the context of goods vehicles which have an attachment to them. It is submitted by the prosecution that this amendment put the matter beyond doubt that the intent of the legislature was to ensure that a vehicle is taxed based on the combined weight of the vehicle with all its attachments, particularly in the case of a goods vehicle which is specifically required to be weighed together with any attachments that may be used during the licensing period for the conveyance of goods.

Sections 1 and 2 of the 1960 Act provide as follows –

> *"1.—In this Act—*
>
> *'the Principal Act' means the Finance (Excise Duties) (Vehicles) Act, 1952 , as amended by section 9 of the Finance Act, 1955 , and section 20 of the Finance Act, 1958; 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 II of the Schedule to the Principal Act, are, for the purposes of Part I of that Schedule, to be deemed to form and be a single vehicle.*
>
> *2.—(1) For the purposes of the Principal Act, 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) in a case in which there is one addition only, the reference to all additions shall be construed as a reference to that addition,*
>
> *(c) in a case in which, there being two additions (and not more), on no occasion are both of them used, the reference to all additions shall be construed as a reference to the heavier only of the additions or, where they are of equal weight, to one of them only,*
>
> *(d) in a case in which, there being three or more additions, on no occasion are all of them used, the reference to all additions shall be construed as a reference to the heaviest combination of the additions which is used on any occasion.*
>
> *(3) In a case coming within paragraph (d) of subsection (2) of this section, where one only of the additions is used on a particular occasion, 'combination of the additions' in that paragraph shall, in relation to that occasion, be taken as referring to that addition.*
>
> *(4) (a) Anything placed on a vehicle for the purpose of the conveyance of goods or burden of any other description shall, subject to the next paragraph, be a receptacle for the purposes of the foregoing subsections of this section.*
>
> *(b) Anything so placed is excepted from the foregoing paragraph if in relation to no journey are goods or burden of any other description both loaded into and unloaded from it without its being removed from the vehicle.*
>
> *(5) In proceedings for recovery of a penalty under section 2 of the Principal Act, the onus of proving that anything comes within the exception specified in subsection (4) of this section shall lie on the defendant."*

SUBMISSIONS OF THE PROSECUTION

Counsel for the prosecution submits that the 1952 Act imposes excise duty in respect of all mechanically propelled vehicles used on public roads. It is submitted that for the purposes of the present case the operative part of the 1952 Act is paragraph 5 of Part 1 of the Schedule which sets out the rate of duty payable in respect of "*vehicles constructed or adapted for use and used for the conveyance of goods or burden of any other description in the course of trade or business*". Counsel submits that paragraph 5 displays a clear legislative intention that the rate payable in respect of such vehicles increases as the weight of the vehicle increases and that the relevant figure for the purposes of calculating the duty payable is the "*weight unladen*" of the vehicle. It is submitted that the 1960 Act was introduced to clarify any ambiguity that there may have been in respect of calculating the weight unladen and that the amending provisions introduced by this Act display a clear legislative intention and put the matters at issue in these proceedings beyond doubt.

As set out above, section 2 of the 1960 Act specifically addresses the issue of how weight unladen is to be calculated. S.2(1) states that "*weight unladen*" refers to the weight of the vehicle "*inclusive of all additions*". S.2(2) sets out what is meant by an addition and includes, pursuant to s.2(a)(iv) a "*receptacle*". A "*receptacle*" is defined in s.4(a) as being "*anything placed on a vehicle for the purpose of the conveyance of goods or burden of any other description*". Subsections 4 (b) and (c) refer to situations where more than one addition or receptacle is used and indicate that for the purposes of calculating the weight unladen of a vehicle the heaviest addition should be weighed or the heaviest combination of additions which is used on any occasion. Counsel for the prosecution contends that these provisions undoubtedly include and were intended by the legislature to include a trailer such as the curtain-sider trailer which was attached to the tractor unit bearing the registration number 05C25202 on 15th March 2011. It is further submitted that it is clear that the legislature's intention was for weight to be the determining factor when calculating the duty payable.

Counsel referred the Court to the case of *The Attorney General (at the Prosecution of Superintendent Tomas de Burca) v Walter Murtagh* [1961] 95 ILTR 56 which it is submitted confirms this interpretation of the legislation. In *Murtagh* the duty payable on a lorry had been calculated by reference to the weight of the lorry combined with a trailer which had "ordinary drop sides." However, the owner also possessed a container which could be used with the lorry. This was a box-like affair with a bottom and four sides of equal height but with no roof. It was secured to the rigid bodied lorry by means of chains. The owner only used this container for the purposes of transporting livestock or furniture. Galway County Council required the owner to bring the lorry with the trailer attached to be weighed at a specified weighbridge. The owner failed to do so and was charged with failing to comply with the Council's requirements. In the High Court Davitt P. considered whether or not the container, or what the prosecution in these proceedings submits could also be called a receptacle, was part of the lorry for the purpose of calculating the weight unladen. It was held that –

> *"this has to be considered in relation to the use made of the lorry. While used for the carriage of merchandise, other than livestock or furniture, the lorry was not fitted with the container and the container was clearly not part of the lorry. While the lorry, fitted with the container, was used for the transport of livestock or furniture it seems to me that the container clearly was part of the lorry. It was capable of becoming part of the lorry by additure; and it seems to me to make no difference whether it is bolted to the lorry like any other part of the body, or whether it is secured by chains. …"*

The Judge then referred to section 1 and 2 of the 1952 Act in the following terms –

> *"By using the lorry with the container the defendant may have rendered himself liable to pay duty at the higher rate. The answer to this question whether he did or not depends upon the ascertainment of the weight of the lorry unladen, but with the container fitted. If the addition of the container made the weight such as prima facie to attract duty at the higher rate, then, if the lorry were solely used in this condition with the container added, it was clearly chargeable with duty at the higher rate. The effect of section 2 (1) of the 1952 Act is that when used at all in that condition, it becomes chargeable with duty at the higher rate in respect of the licence period during which it is so used. Once it is so used the container must be considered to be a part of the lorry, which should be taken into account in the determination of its unladen weight for assessment of the duty to which it has become liable. The County Council were therefore quite entitled, in exercise of their powers under Article 15 of the 1958 Regulations, to require the defendant to bring in the lorry to be weighed with the container fitted, and the defendant in failing to do so committed an offence under section 12 (4) of the Roads Act, 1920."*

An appeal against the finding of Davitt P. was allowed in the Supreme Court on the grounds that there was no evidence that the vehicle was used along with the container in the relevant taxing year. The Supreme Court also stated obiter that the container may be considered to be part of the load. It must be borne in mind that the commission of this offence predated the enactment of the Finance (Excise Duties) (Vehicles) (Amendment) Act 1960. However, the prosecutor contends that the trailer in this case is an addition in the nature of a "receptacle" under the Act of 1960 and that the Act of 1960 "copper-fastens" the legal basis for the prosecution. It is submitted that on the date in question the defendant company added a receptacle to the tractor unit bearing the registration 05C25202 and thereby used it in a condition or manner or for a purpose which rendered it chargeable with duty at a higher rate than that which had been paid on 28th October 2010, contrary to s.2 of the 1952 Act as amended.

It is the prosecution's case that the burden of proof with regard to the weight of the vehicle in determining whether an offence was committed under s.2 of the 1952 Act lies with the defendant. It is submitted that such a reverse burden of proof is specifically provided for in the relevant legislation. When Sergeant Griffin, an experienced member of An Garda Síochána Traffic Corps who holds a certificate of compliance in the use of weighbridges, stopped the vehicle in question on 15th March 2011 he had no power to require that the vehicle be weighed on that occasion as there was no weighbridge within 5 miles. Furthermore, unloading and reloading the vehicle for the purposes of the weighing exercise would have caused considerable inconvenience for the haulier, contrary to the legislation which outlines Garda powers in this regard. Instead, Sergeant Griffin, based on his experience of having weighed hundreds of heavy goods vehicles, estimated, allowing for a margin of error or two tonnes, that the combined weight of the tractor unit and curtain-sider trailer was between 15,000kg and 16,000kg. Section 13(3) of the Roads Act 1920 provides as follows –

> *"If in any proceedings under this section any question arises as to the number of vehicles used or as to the character, weight or horse power of any vehicle or as to the number of persons seated by a vehicle or as to the purpose for which any vehicle was used the burden of proof in respect of the matter in question shall lie on the defendant".*

It is submitted that section 3 of the 1952 Act imports this provision. S.3 provides –

> *"On and after the 1st day of January, 1953, the Roads Act, 1920, as amended and extended by subsequent enactments, and the orders and regulations thereunder in force immediately before that date shall apply in relation to the duties under section 1 of this Act in like manner as they applied in relation to the duties under section 13 of the Finance Act, 1920, and for that purpose references therein to any provision relating to the latter duties shall be construed as references to the corresponding provisions of this Act."*

It is submitted therefore that where the prosecution raises a prima facie case that the vehicle is improperly licensed due to the weight of the vehicle, then the evidential burden of proof with respect to the actual weight of the vehicle transfers to the accused. It is submitted that this reversed burden of proof is not unique and that a reversed burden of proof is provided for in other legislative instruments including drunk in charge offences under the Road Traffic Acts, the Safety Health and Welfare at Work Act 2005 and in the School Attendance Act 1926. There is a safeguard for the accused in that the District Judge obviously must acquit where he has a reasonable doubt as to whether the impugned vehicle is heavier. In *The People (DPP) v Smyth* [2010] 3 IR 688 Charleton J. held that –

> *"…a decision to reverse onto the accused an element of the proof of the commission of the crime that might normally be expected to be borne by the prosecution, or set up a special defence such as insanity, was a matter of legislative competence; it was for the Oireachtas to set the parameters of proof in a criminal charge and to indicate the nature of the burden of proof to be discharged by the defence."*

The prosecution contends that there is also a further or alternative prosecution available to the District Judge under section 13(1) of the Roads Act 1920. As set out above, section 5(3) of the Roads Act 1920 provides as follows –

> *"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."

It is submitted that the addition of a heavier trailer than that which was weighed for the purposes of the licence constitutes an alteration which causes the vehicle to become one in respect of which a licence at a higher rate of duty is required and thereby rendered the existing licence void. Consequently, the addition of the heavier trailer caused the defendant to fall foul of s.13 (1) of the Roads Act 1920 which provides –

"If any person uses any vehicle for which a licence under the Finance Act, 1920, as amended by this Act, is not in force, or being the holder of a general licence or general licences issued under this Act uses at anyone time a greater number of vehicles than he is authorised to use by virtue of that licence or those licences, he shall be liable to an excise penalty of [£1,000]…"

In response to an argument advanced by counsel for the defendant that there is a contradiction in the charges against the defendant in that the offence under s.2 of the 1952 Act requires a valid licence to be in place while the offence under s.13 (1) of the Roads Act 1920 is dependent on there not being a licence in force, counsel for the prosecution contends that there is no such contradiction. The defendant did possess a valid licence in respect of a goods vehicle up to a weight of 12,750kg. However, it is submitted that once a different addition was attached to the tractor unit which brought the combined weight above this amount, the vehicle, being the tractor unit combined with a trailer or receptacle, was used in a manner or for a purpose for which a higher rate of duty is chargeable contrary to s.2 of the 1952 Act and the licence which had been issued was rendered void and no longer in force contrary to s.13(1) of the Roads Act 1920. It is submitted that it remains open to the District Judge to convict the defendant on either one or both of charges.

While the prosecution relies primarily on the 1960 Act and the approach of Davitt P. in *Murtagh*, it is submitted that paragraph 1(3) of Part 2 of the Schedule to the 1952 Act also applies. Paragraph 1(3) states –

"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 I 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."

The prosecution submits that the trailer in question was attached to and partly superimposed on the tractor unit by means of fifth wheel coupling as set out in the case stated and detailed earlier herein. For that reason, the combination of both vehicles, i.e. the tractor unit and the trailer, is to be treated as a single vehicle and therefore comes within paragraph 5 of Part 1 of the Schedule to the 1952 Act in that it is a vehicle constructed or adapted for use and used for the conveyance of goods or burden of any other description in the course of trade or business, with the excise duty payable in respect of such vehicles to be assessed on the basis of the vehicle's weight.

SUBMISSIONS OF THE DEFENDANT

Counsel for the defendant submits that in the 60 plus years since the 1952 Act came into force the haulage industry has changed dramatically. While the process of weighing a tractor unit together with a trailer for the purposes of calculating the excise duty payable has operated for many years on what counsel describes as an *ad hoc* basis, it is submitted that there is no legislative provision or statutory framework which requires anything other than the tractor unit alone to be weighed for the purposes of calculating the excise duty. The defendant contends that any procedure which requires both the tractor unit and trailer to be weighed together is outside the contemplation of the relevant legislation.

Counsel for the defendant submits that the combination of the tractor unit and curtain-sider trailer in this case does not come within the meaning of paragraph 5 of Part 1 of the Schedule to the 1952 Act as only the tractor unit is required to be weighed and a tractor unit does not carry or convey goods. The case of *Attorney General (Croke) v O'Sullivan* [1958] ILTR 92 addressed paragraph 4 and 5 of Part 1 of the Schedule. Paragraph 4(b) refers to various types of tractors and engines which are used for agricultural work but does not include tractors used for hauling any objects "*except their own necessary gear, threshing appliances, farming implements or supplies of fuel or water for the purposes of the vehicle or agricultural purposes*". This subparagraph provides for a low rate of excise duty. Paragraph 4(c) provides for a higher rate of duty payable in respect of agricultural tractors which are used for haulage. The paragraph states that "*where a tractor is fitted with a detachable platform, container or implement (being a platform, container or implement used primarily for farm work), goods or burden of any other description conveyed on or in the platform, container or implement shall be regarded for the purposes of this sub-paragraph as being hauled by the tractor*". The defendant in O'Sullivan argued that paragraph 4(b) should apply while the Attorney General contended that the appropriate duty chargeable was the higher rate provided for in paragraph 4(c). Davitt P. also considered the provisions of paragraph 5 and said that it applies to "vehicles used for carriage". It was held that paragraph 5 would have covered the defendant's tractor on the date in question but for the amendment and insertion of paragraph 4(c), which was found to be the appropriate paragraph for the purposes of determining the duty payable. Counsel for the defendant submits that this decision makes clear that it is the carriage or conveyance of goods that brings a vehicle within paragraph 5 and the definition of a goods vehicle. It is submitted that the tractor unit in question does not carry anything but that it hauls a trailer. The defendant submits that *prima facie* it would appear that the appropriate provision in this case is paragraph 4(d) which covers "*tractors of any other description*".

It is submitted that the only way in which paragraph 5 can apply is if the combination of tractor and trailer unit comes within the scope of paragraph 1(3) of Part 2 of the Schedule to the 1952 Act which provides that where a vehicle has another vehicle attached to and partly superimposed upon it, it is to be treated as one single vehicle. However, the defendant submits that this could not possibly be the case in the present proceedings and that such an interpretation not only flies in the face of standard canons of construction but also does violence to the intention of the legislature. If the Court decides that paragraph 1(3) does apply, it is submitted that a licence issued in respect of a tractor unit and trailer weighed together covers that particular combination of tractor unit and trailer only. When the specific trailer which was weighed for the purpose of the licence is uncoupled from the tractor unit and a different trailer is attached, this creates a new unlicensed vehicle which is required to be weighed separately. This, it is submitted, is clearly not the intention of the legislature and renders the entire process of calculating excise duty unworkable, particularly in the context of a haulage industry where trailers are interchangeable and are frequently detached from one vehicle before being attached to another.

It is submitted that the basic principles of statutory interpretation dictate that where the same word appears in various locations in

the same enactment it must be given the same meaning. The defendant contends that it follows that the word 'vehicle' as it appears in paragraph 1(3) of Part 2 of the Schedule to the 1952 Act must refer to a "mechanically propelled vehicle" only and not a trailer, which is a non-mechanically propelled vehicle. Counsel for the defendant asserts that the defendant merely has to point to an ambiguity in the legislation as there is a very strong canon on interpretation leaning against doubtful penalisation. In the present case it is contended that there is a reasonable doubt as to whether or not the word 'vehicle' in the relevant legislation means a "mechanically propelled vehicle" and so the issue must be resolved in favour of the defendant. In *R v Bradley [*2005] EWCA Crim 20 it was held that –

> *"It was to be assumed that when the draftsman expressly defined "criminal proceedings" for miscellaneous and supplemental purposes, a provision enacted for such a purpose, contained in the same chapter, should have the same meaning".*

The defendant also refers the Court to *McGroddy v Carr* [1975] IR 275 where the Supreme Court considered the meaning of the words "under the influence of intoxicating liquor or a drug" as they appear under sections 49 and 50 of the Road Traffic Act, 1961. Henchy J. stated –

> *"So, if the argument of counsel for the prosecutor were to prevail, it would be impermissible to convict a person under s. 49 of driving (or attempting to drive) while under the influence of intoxicating liquor or a drug to the specified extent, but quite permissible to convict a person under s. 50 of being in charge while under the influence of intoxicating liquor or a drug to the same extent. The words "under the influence of intoxicating liquor or a drug" would produce two offences when used in s. 49 but only one offence when used in section 50. This, to my mind, would be contrary to common sense and to the fundamental rule of interpretation that when expressions are repeated in the same instrument, and more especially in a particular part of the same instrument, they should be given a common force and effect unless the context requires otherwise."*

The defendant submits that the word 'vehicle' as it appears throughout the Act is clearly intended to be a mechanically propelled vehicle and that consequently paragraph 1(3) does not apply. It is further submitted that the relevant provisions should be construed strictly as they are part of a statute creating offences and imposing criminal sanctions and also because the statute is designed to impose a taxation liability. In *Salinas de Gortari v Smithwith (No.2)* [2000] 2 IR 553 McGuiness J. stated –

> *"As I have already said, I have no doubt that the intention of the Oireachtas was that a witness appearing before the nominated judge of the District Court under this statutory scheme should be compelled to answer the questions put to him save in the exceptional circumstances set out in paragraph 3. However, no explicit provision has been made either to create an offence or to provide a penalty in the event of failure to answer. Counsel for the notice party argues that these lacunae may be overcome through the purposive interpretation of the statute. This court has previously accepted the principle of purposive interpretation, see for example Quinlivan v. Governor of Portlaoise Prison [1998] 2 I.R. 113 and Mullins v. Harnett [1998] 4 I.R. 426, but the principle that any statute which imposes or may impose penal sanctions must be strictly interpreted is also well established. This latter principle must always have high priority in the interpretation of any statute."*

The Court was referred to the case of *Howard v. Commissioner for Public Works* [1994] 1 I.R. 101 where in the Supreme Court Denham J. (as she then was) referred to *Halsbury's Laws of England* (4th ed.) which states –

> *"Speculation as to Parliament's intention is not permissible. If the result of the interpretation of a statute according to its primary meaning is not what the legislature intended, it is for the legislature to amend the statute construed rather than for the courts to attempt the necessary amendment by investing plain language with some other than its natural meaning to produce a result which it is thought the legislature must have intended."*

Denham J. went on to state that –

> *"The correct conclusion to be drawn is that the plain language of the Act must not be extended beyond its natural meaning so as to supply omissions or remedy defects. The court should neither misconstrue words so as to amend defects in the legislation nor legislate to fill gaps left by the legislature. If there is a plain intention expressed by the words of a statute then the court should not speculate but rather construe the Act as enacted."*

The defendant submits that it is not for this Court to amend or remedy any defects or to fill in gaps in the existing legislation. Counsel also relies on the case of *Revenue Commissioners v Doorley* [1993] I.R. 750 as authority for the proposition that statutes which impose taxation are required to be strictly construed. It is submitted that these authorities reinforce the defendant's position that the use of the word 'vehicle' in the 1952 Act must be read consistently as meaning a mechanically propelled vehicle, including where it appears in paragraph 1(3). The defendant therefore submits that paragraph 1(3) relates only to situations where one mechanically propelled vehicle is attached to or partly superimposed on another mechanically propelled vehicle. It is submitted that a breakdown vehicle or a vehicle used to transport steamrollers, diggers and other similar construction vehicles from a construction site to some other location, for example, come within this definition. Counsel refers to the case of *The Attorney General (at the suit of Superintendent Gillespie) v George William Burrell* [1965] WJSC-SC 1936 in this regard.

In *Burrell* the defendant was charged with an offence contrary to section 2 of the 1952 Act. On the date of the alleged offence, a Garda observed a combination of two vehicles being driven by the defendant whereby the leading vehicle was drawing the second vehicle. The leading vehicle was what was described as a 'cut-down lorry' to which the owner had added a steel arm and a steel box for the purpose of attaching a second or drawn vehicle. He drawn vehicle consisted of a chassis on which the defendant had mounted a superstructure suitable for carrying livestock. The prosecution contended that the method of attachment between the two vehicles caused the drawn vehicle to be superimposed on the drawing vehicle so that it be treated as one vehicle under paragraph 1(3) of Part 2 of the Schedule to the 1952 Act. Budd J. considered whether or not the drawn vehicle was superimposed on the drawing vehicle as there was no question that it was attached to it. Budd J. found that the fact that weight may be imposed on the drawing vehicle is irrelevant for the purposes of superimposition. He also found that the method of attachment was irrelevant and distinct from superimposition. Budd J. went on to find that –

> *"The facts clearly indicate that in this case the drawn vehicle is not placed or laid on the drawing vehicle and is not therefore superimposed on it.*
>
> *That there seems to be no reason on principle from a tax point of view for deeming two vehicles to be one and thus taxable at a higher rate when one is merely attached to the other for towing purposes is again reinforced when one*

considers the results that would ensue. If two vehicles merely attached to one another with the towbar of the drawn vehicle superimposed on the drawing device of the drawing vehicle were held to be within the purview of the subparagraph then it would mean that a great number, probably the greater part of all motor cars with trailers attached for ordinary domestic purposes would come within the provisions of the subparagraph. If the legislature had intended such a far reaching result it is scarcely credible that it would not have said so in clear language having regard to the widespread effect of such a legislative determination"

In relation to the 1960 Act, counsel for the defendant submits that the provisions relied upon by the prosecutor do not apply in this case. It is submitted that the 1960 Act was enacted as a response to a practice whereby farmers, after having paid duty at a certain rate and in an attempt to circumvent the legislation, altered their tractor to make it fit for some other use or purpose which required a higher rate of duty. It is submitted that the term 'receptacle' refers to something which is bolted onto or fastened or secured by some other means to a rigid bodied vehicle and does not include a trailer, which is itself a vehicle subject to a separate licensing scheme. Additions such as a container of some description or a refrigeration unit come within this definition, but a trailer does not. The defendant submits that in light of the Supreme Court decision in *Murtagh*, the decision of Davitt P. in the High Court can not be relied upon. Furthermore, it is submitted that if paragraph 1(3) of Part 2 of the Schedule to the 1952 Act applies, which is not accepted, then the tractor unit and trailer unit combined are to be treated as one single vehicle. Consequently, the trailer couldn't be treated as an addition or a receptacle under the 1960 Act as the trailer itself constitutes part of the single vehicle and is therefore not an addition to the vehicle.

Counsel for the defendant further submits that the charges against the defendant are contradictory and that both cannot be relied upon. It is submitted that the offence under s.2 of the 1960 Act requires a valid licence to be in place and that the use or purpose of the vehicle licensed was changed so that a higher rate of duty is payable. The offence under s.13(1) of the Roads Act on the other hand requires the prosecution to show that no valid licence was in force for the vehicle in question.

Based on these submissions, counsel for the defendant submits that each of the questions posed by the District Judge in the case stated must be answered in the negative.

Counsel for the defendant also offers an alternative interpretation. It is submitted that if both tractor unit and trailer are treated as one vehicle under paragraph 5 and are required to be weighed together then only that particular combination is licensed for use on public roads. Section 5(2) of the Roads Act 1920 provides that –

"…every licence issued under section 13 of the Finance Act 1920, as amended by this Act, shall be issued in respect of the vehicle specified in the application for the licence and shall not entitle the person to whom it Is issued to use any other vehicle…"

The 'vehicle' stopped by Sergeant Griffin was therefore an entirely different vehicle so that the vehicle licensed on 28th October had not been 'altered' within the meaning of s.5(3) of the Roads Act. Instead, Sergeant Griffin observed an entirely new vehicle for which no licence was in force. Based on these alternative submissions, counsel for the defendant submits that Questions 1, 2, 3, and 4 should be answered in the negative while Question 5 should be answered as follows –

"Yes in respect of the charge at ii or iii (they are alternatives). There was at the time of detection no licence in force in respect of the 'vehicle' observed by the Garda. Otherwise No"

DISCUSSION

I have carefully considered the extensive submissions of both parties as well as all of the relevant statutory provisions and case law. The tractor unit bearing the registration number 05C25202 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. Without a trailer attached it, the tractor unit has no commercial purpose. Similarly, without the tractor unit the trailer in question, which has no means of independent mechanical propulsion, would simply remain in a stationary position resting on its front legs which are lowered when it is uncoupled from a drawing vehicle. A trailer in such a state is of little or no commercial use to a haulage company, except perhaps for storage. Together however, the two units are indispensable to the haulage industry and to the business of the defendant company. The method of attachment and decoupling as set out in some detail in the case stated facilitates the speedy loading or unloading of the trailer unit and has the added benefit of not requiring the tractor unit to 'park up' and stand idly as this process of loading or unloading is carried out, thereby maximising efficiency. It is undoubtedly the expectation of the owners of such tractor units that more often than not they will have a trailer unit attached. When a tractor unit does not have a trailer attached, it is invariably on its way from having delivered a load to collect a new load.

The first issue which this Court must consider is whether, for the purpose of calculating the excise duty payable, the tractor unit and trailer combine to form one single vehicle or whether the trailer should be viewed as a 'receptacle' according to the provisions of the 1960 Act; or whether the tractor unit should simply be weighed by itself in the absence of any trailer for the purposes of calculating the rate payable.

I have carefully considered the submissions of the prosecution in relation to the provisions of the 1960 Act and do not accept that a 'receptacle' for the purposes of section 2(2)(iv) and defined in s.2(4)(a) includes a trailer such as the one in this case. Counsel for the prosecution relies on the line of reasoning of Davitt P. in *Murtagh* in this regard. However, as noted above, the decision in *Murtagh* was set aside by the Supreme Court, albeit on grounds which are not relevant to these proceedings, and the Court made obiter remarks which indicated that the container may have formed part of the load. In any event, the facts in *Murtagh* are distinguishable from the present case as in *Murtagh*, the owner had altered his rigid bodied vehicle, the rear trailer part of which had ordinary drop sides, and added a container or receptacle which could carry furniture or transport livestock. The relevant provisions of the 1960 Act were most likely a response to instances such as where farmers were attempting to circumvent the legislation by taxing their agricultural tractors according to a provision which required a lower rate of duty and subsequently altering them or adding to them with the effect of making the vehicle fit for a purpose which ought to have been taxed at a higher rate. A 'receptacle' under the 1960 Act includes, for example, a refrigeration unit or a basin or container of some kind which is added to a vehicle. For reasons to which I will now turn, nothing was 'added' to the vehicle the subject of these proceedings and the Court therefore finds that the trailer in question is not a 'receptacle'.

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 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 Courts 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 *'an attachment in the nature of a vehicle'* was clearly included to encompass something more. I do not believe that to interpret the expression *'an attachment in the nature of a 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.

Counsel for the defendant submits that interpreting the legislation in this way renders the entire statutory scheme unworkable. It is submitted that if the tractor unit and trailer combined by fifth wheel coupling is to be treated as one vehicle, then when they are decoupled and a different combination of tractor unit and trailer is used, this creates a new single vehicle which requires a separate licence and this could not possibly be what the legislature intended. The Court does not accept this position. It is clear from reading the legislation as a whole and from the rates of duty set out in paragraph 5 that the crucial determining factor for the purposes of calculating duty payable is the weight of the vehicle. The legislature clearly intended that a higher rate applies to heavier vehicles. Therefore, the vehicle will be licensed up to a certain weight and as long as this weight is not exceeded, the particular type of trailer which is attached to the tractor unit so that it may fulfil its commercial purpose is not relevant as long as the use, i.e. the conveyance of goods, is not altered contrary to the provisions of the Act. The fact that the vehicle in question is somewhat dynamic in that it is capable of being constituted of different parts is irrelevant as long as the weight provided for in the licence is not exceeded. This is not an unworkable situation and allows haulage companies to use different combinations of tractor units and trailers as long as a licence up to a certain weight is in place and that weight is not exceeded. When the particular trailer used for the weighing exercise is uncoupled and a new trailer is attached there is still a goods vehicle bearing the same registration number, albeit with a different type of trailer, but one which is permitted by the terms of the licence as long as it is not heavier than the trailer that was initially weighed.

I have carefully examined the decision in *Burrell* and find that the facts of that case are distinguishable from the present proceedings. In *Burrell,* Budd J. found that the trailer in question was not superimposed on the drawing vehicle as it was not placed or laid on it. There, the trailer was towed by means of a conventional towbar and drawing device. In the present case rather than simply being drawn behind the leading vehicle by means of a towbar, a large part of the trailer is required to protrude over the back of the tractor unit so that it may be linked to the specially designed 'fifth wheel'. The Court is not referring solely to the method of attachment which, as Budd J. indicated in *Burrell*, is distinct from the requirement of superimposition. In the present case, both superimposition and attachment must occur in order for paragraph 1(3) to apply. The fact that a substantial portion of the drawn vehicle is required to overlap or crown the leading vehicle rather than simply be drawn along behind it is in the Court's view sufficient superimposition to bring this matter within subparagraph 1(3) of Part 2 of the Schedule to the 1952 Act. The Court in *Burrell* raised concerns that if two vehicles merely attached by a towbar and drawing device came within the subparagraph then almost every motor car which draws a trailer would be included as well. The Court concurs with and has followed this line of reasoning and the finding that superimposition occurs in the present case, which is distinguishable on its facts, does not give effect to these concerns. In arriving at this conclusion the Court has also had regard to the use or purpose of both component parts of the single vehicle i.e. the tractor unit and the trailer. Both components are entirely dependent on one another in order to fulfil any meaningful commercial use. The tractor unit is designed and engineered for the specific purpose of conveying goods by means of a trailer. It is the sole reason a haulage company such as the defendant purchases a tractor unit. This is in contrast to a motor car as considered by the Supreme Court in *Burrell* for which drawing a trailer is at best a secondary use. In any event, the primary conclusion of the Court in this regard is that superimposition and attachment both occur for the purposes of paragraph 1(3) of Part 2 of the Schedule to the 1952 Act.

Having found that the tractor unit and trailer constitute one vehicle for the purposes of paragraph 1(3), the Court must now consider which, if any, of the charges against the defendant could be sustained. As already indicated, no addition such as a receptacle was added to the vehicle in question and there has been no suggestion or evidence that the purpose or use to which the vehicle was put has been altered. It follows therefore that the charge under section 2 of the 1952 Act as amended does not arise.

Following the payment of excise duty on 28th October 2010, a valid licence was in place for the vehicle constituted of tractor unit bearing the registration number 05C25202 and a trailer up to a certain weight. This was the licence sought to be relied upon by the defendant company on 15th March 2011. However, the Court finds that the removal of a trailer which was within the prescribed weight and the addition of a trailer which exceeded this weight constitutes an alteration under section 5(3) of the Roads Act 1920, thereby rendering the licence void. Consequently, if the trailer observed by Sergeant Griffin on 15th March 2011 was over the permissible weight, there was no valid licence in force contrary to s.13(1) of the Roads act 1920 as amended.

As to the burden of proof in establishing the weight of the vehicle, the Court accepts the submissions advanced by counsel for the prosecution that a reversed burden of proof can apply under the relevant legislation. What weight is given to be given to the evidence of Sergeant Griffin is a matter for the district Judge. If he is satisfied that there is a reasonable doubt as to the combined weight of both parts of the vehicle on the date in question then the defendant must prove that the vehicle was not outside the scope of its licence. This is a matter for the District Judge to consider.

DECISION
For the reasons set out above, I would answer the questions posed in the case stated as follows:

1. Yes.

2. (a) Yes

   (b) Yes

   (c) Yes

3. No

4. No

5. Yes; the defendant may be convicted on either charge ii or iii.