

1946

Present : Jayetilleke J.

CHOW, et al., Appellants, and DE ALWIS (PRICE CONTROL INSPECTOR), Respondent.

937-9—M. C. Colombo, 48,698.

Catering establishment—Restriction of meals—Defence (Restriction of Meals) (No. 3) Regulations, 1944, Regulation 2 (1).

The provisions of regulation 2 (1) of the Defence (Restriction of Meals) (No. 3) Regulations, 1944, are applicable to a catering establishment which was in existence in September, 1939, but which subsequently came to be run by different proprietors between whom and the previous proprietors there was no privity of contract.

A PPEAL from a conviction by the Magistrate of Colombo.

H. V. Perera, K.C. (with him *G. E. Chitty*), for the accused, appellants.

T. K. Curtis, C.C., for Attorney-General.

January 24, 1946. JAYETILEKE J.—

The accused are the proprietors of a restaurant called Shanghai Restaurant at No. 81, Galle road, Bambalapitiya. One Iyer had an eating-house at the premises up to March, 1942. Shortly after the Japanese raids he left for India, leaving all his belongings in the charge of the landlord. In July, 1942, the accused took the premises on rent from the landlord and opened the restaurant. They were charged with having served chicken and milk to one Salgado on November 30, 1944, in contravention of regulation 2 (1) of the Defence (Restriction of Meals) (No. 3) Regulations, 1944. After trial they were convicted and fined Rs. 400 each. The Regulation reads—

“No food, consisting of or containing any article specified in the schedule hereto, shall be sold, supplied or served at any catering establishment which was not in existence on September 1, 1939”.

The essential question is whether the Shanghai Restaurant was in existence on September 1, 1939. The prosecution admitted that on that date there was an eating-house at the said premises which was run by Iyer. The accused has not purchased Iyer's business, and it cannot, therefore, be said that they are successors of Iyer in that business. Mr. Perera contended that as meals were sold at No. 81, Galle road, by Iyer on September 1, 1939, the said premises were excluded from the application of Regulation 2 (1). The Regulation is in a group of regulations which deal with restriction of meals and in my opinion, it shall be so interpreted, if it presents any ambiguity, as to promote restriction of meals. This interpretation, I think, accords with the principle enunciated by Lord Blackburn in *River Wear Commissioners v. Adamson*¹ and per Tindal C.J. in *Sussex Peerage Case*².—

“But if any doubt arises from the terms employed by the Legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the Statute, and to have recourse to the pre-ambles, which, according to Chief Justice Dyer in *Stowel v. Lord Zouch*³ is ‘a key to open the minds of the makers of the Act and the mischiefs which they intended to remedy’”.

The expression “catering establishment” is defined in regulation 5 as follows :—

“Catering establishment means a hotel, restaurant, cafe, resthouse, eating-house, tea or coffee boutique, or other place of refreshment open to the public”.

¹ (1877) 2 A. C. 743 at 763-65.

² (1844) 11 Cl. & F. 85 at 143.

³ *Plowden* 369.

On the materials before me I am of opinion that the catering establishment that is excluded from the application of regulation 2 (1) is the eating-house that was run by Iyer. That catering establishment ceased to exist in April, 1942. I think it would require the clearest and the most precise language to give the accused who did not have a catering establishment on September 1, 1939, the right to open one after that date, and to serve therein meals prohibited by the regulations. I can find nothing in the language of regulation 2 (1) or in the definition of "catering establishment" in regulation 5 which would justify me in holding that the intention of the Legislature was to exclude from the application of regulation 2 (1) merely the building in which Iyer carried on his business. The Shanghai Restaurant was not in existence on September 1, 1939, and the convictions of the accused are, therefore, right. I would, accordingly, dismiss the appeals.

Appeals dismissed.
