

CHAMPAKLAL PREMBHAI

v.

REGINAM

[SUPREME COURT, 1963 (MacDuff C.J.), 29th March, 19th April]

Appellate Jurisdiction

Criminal law—failing to close wholesale and retail premises—wholesale and retail licence and wholesale and retail store licence—meaning of—Early Closing Ordinance (Cap. 205) ss. 2, 3, 8—Licence Ordinance (Cap. 174) s. 15 (1) (2) and (3)—Closing of Premises (Wholesale and Retail) Ordinance 1919.

Interpretation Ordinance—*in pari materia*.

The appellant was convicted of failing to close wholesale and retail premises for the sale of goods at the hour of five o'clock in the afternoon contrary to ss. 3 and 8 of the Early Closing Ordinance. "Wholesale and retail premises" are defined in s. 2 to mean "any place, yard or building in respect of which a wholesale and retail licence has been issued". The appellant had a "wholesale and retail store licence" issued under the Licence Ordinance. It was argued that there was no such thing as a wholesale and retail licence and that, in consequence, there were no "wholesale and retail premises" and therefore s. 3 of the Early Closing Ordinance created no offence.

Held.—The Early Closing Ordinance and the Licence Ordinance are *in pari materia* and reading the two Ordinances together it becomes obvious that the expression "wholesale and retail licence" in the Early Closing Ordinance can only have the same meaning as "wholesale and retail store licence" in the Licence Ordinance.

It was suggested that the part of the premises which had been open was used for retail purposes only.

Held.—The defence was not taken in the court below and must be dismissed, but in any event the words "wholesale and retail" are clearly conjunctive and the licence applies to the whole of the premises specified in the licence.

Appeal against conviction.

Ramrakha for the appellant.

Palmer for the Crown.

MACDUFF C.J. [19th April, 1963]—

The appellant was charged with—

"Statement of Offence"

Failing to close wholesale and retail premises for the sale of goods at the hour of five o'clock in the afternoon contrary to sections 3 and 8 of the Early closing Ordinance (Cap. 205, Laws of Fiji).

Particulars of Offence

Champaklal Prembhai, s/o Prembhai; Ratalil Prembhai, s/o Prembhai and Shantilal Nagindass, s/o Nagindass, trading as Nagindass & Bros. on the 21st day of November, 1962, at Suva in the Central Division being the owners of the wholesale and retail premises situated at 24 Waimanu Road, failed to close the said premises for sale of goods at the hour of five o'clock in the afternoon when not exempted from the provision of Early Closing Ordinance (Cap. 205, Laws of Fiji)."

was convicted, fined the sum of £6 and was ordered to pay 10s. costs.

The facts out of which this charge arose were not in dispute, in fact the appellant deliberately kept open his premises for the purpose of testing the validity of section 3 of the Early Closing Ordinance. The firm of which he is a partner, Nagindass and Bros., occupy premises at No. 26 Waimanu Road in which it sells groceries and piece goods. It closes its back door at 5 p.m. but keeps the front part of its premises, fronting on to Waimanu Road, open after that hour. The firm was, at the relevant time, the holder of a "wholesale and retail store licence" issued by the Town Clerk, Suva, under the Licence Ordinance (Cap. 174, Laws of Fiji) in respect of the premises at Waimanu Road.

The first ground of appeal arises out of a difference in wording between the above two Ordinances and is—

"(1) That your petitioner was convicted of an offence not known to law inasmuch as your petitioner held a wholesale and retail store licence and not a wholesale and retail licence."

The section of the Early Closing Ordinance under which the charge is laid provides—

"3. All wholesale and retail premises in the Colony shall, save as otherwise provided in this Ordinance, be closed for the sale of goods not later than five o'clock in the afternoon of every day except Saturday."

and "wholesale and retail premises" are defined in section 2 to mean—

"any place, yard or building in respect of which a wholesale and retail licence has been issued."

For the purpose of differentiating between the two types of premises with which this Ordinance is concerned "shop" is defined in the same section to mean—

"any building, stall, shed, tent, vehicle, pack or boat where goods are sold or exposed for sale other than wholesale and retail premises."

One object of this Ordinance is to regulate the closing times of various shops and premises for which purpose it has subdivided them into two classes, to wit wholesale and retail premises and other premises, defined as shops, where goods are sold or exposed for sale.

The Licence Ordinance provides for the licensing of various callings, trades and professions and is a revenue ordinance. In the Second Schedule to this Ordinance are *inter alia* the following licences:—

"keeping store wholesale and retail keeping store retail."

these occupations being defined in section 15 in these terms—

"15.—(1) A wholesale and retail store licence shall enable the licensee to sell on premises specified in the licence in any quantity whatever all goods or articles in respect of which specific licences are not issued, but shall not permit the hawking of such goods or articles.

(2) A retail store licence shall enable the licensee to sell on premises specified in the licence the same goods or articles as a wholesale and retail store licence but not in unbroken packages nor at any one time in quantities equal to or exceeding an unbroken package. An unbroken package under this section means a package as it is when first imported into the Colony:

Provided always that a retail store licence shall permit the sale of the articles enumerated in the Fourth Schedule hereto in the quantity or form specified in such Schedule and also of such other articles as the Governor in Council may from time to time by proclamation declare to have been added to the articles enumerated in such Schedule in the quantity or form specified in such proclamation, and every such proclamation shall be laid before the Legislative Council at its next sitting."

It is the contention of the appellant that while there is a "wholesale and retail store licence" there is no such thing in law or in fact, as a "wholesale and retail licence" with the result that there cannot be, in law or in fact, "wholesale and retail premises". If this be so then there is no offence created by section 3 of the Early Closing Ordinance. It is also contended that the Court is not entitled to read the word "store" into the wording "wholesale and retail licence" to make it "wholesale and retail store licence" as this is against the usual canons for the construction of statutes.

This difference in wording has existed since the two Ordinances were first enacted. Since 1888 the respective Licensing or Licences Ordinances have always referred to a "wholesale and retail store licence". The first Early Closing Ordinance, in 1906, applied to shops only. It was not until the enactment of the Closing of Premises (Wholesale and Retail) Ordinance, No. 15 of 1919, that a distinction was made as to closing times between shops (or stores) selling at retail and those selling at wholesale and retail. It was in this Ordinance that the expression "any place, yard or building (hereinafter called the premises) in respect of which a wholesale and retail licence has been issued" was used. That phraseology has been continued in subsequent Early Closing Ordinances.

For the appellant it is urged that section 3 of the Early Closing Ordinance is an interference with the liberty of the subject, creates an offence and must be construed strictly. Invoked in the majority of cases in *favorem vitae* this principle has lost much of its force and importance in recent times, and it is now recognised that the paramount duty of the judicial interpreter is to put upon the language of the legislature, honestly and faithfully, its plain and rational meaning and to promote its object. The rule was founded, however, on the tenderness of the law for the rights of individuals and on the sound principle that it is for the legislature, not the court, to define a crime and ordain its punishment. It is unquestionably a reasonable expectation that, when the legislature intends the infliction of suffering, or an encroachment on natural liberty or rights, or the grant of exceptional exemptions, powers, and privileges, it will not leave its intention to be gathered by mere doubtful inference, or convey it in "cloudy and dark words" only, but will manifest it with reasonable clearness.

On the other hand the rule of strict construction requires that the language shall be so construed that no cases shall be held to fall within it which do not fall both within the reasonable meaning of its terms and within the spirit and scope of the enactment. (Maxwell on Interpretation of Statutes, 11th Ed. at pp. 253, 254).

It appears to me, however, that to interpret the provisions of the Early Closing Ordinance it is necessary to import into it certain provisions of the Licences Ordinance in so far as that Ordinance deals with a "wholesale and retail licence". In Maxwell on Interpretation of Statutes, 11th Ed. at p. 32 the learned authors say—

"Probably the rule as to the exposition of one Act by the language of another is satisfactorily and most comprehensively laid down in the broad statement of Lord Mansfield, that 'Where there are different statutes *in pari materia*, though made at different times, or even expired and not referring to each other, they shall be taken and construed together, as one system and as explanatory of each other'."

and at p. 33—

"Where two Acts are to be read together every part of each must be construed as if contained in one Act unless there is some manifest discrepancy which makes it necessary to hold that the later Act had modified the earlier."

Reading the two Ordinances together it becomes obvious that the expression "wholesale and retail licence" in the Early Closing Ordinance has the same meaning, and can only have the same meaning, as "wholesale and retail store licence" in the Licence Ordinance. In fact, even in section 15 of the Licence Ordinance itself the two terms are regarded as interchangeable or synonymous. In subsection (3) of that section the wording used is "the holder of a wholesale and retail or a retail licence".

Accordingly, and in conformity with all of the rules of construction to which I have referred, I am of opinion that the words "wholesale and retail licence" used in the Early Closing Ordinance must be interpreted to have the same meaning as the words "wholesale and retail store licence" used in the Licence Ordinance. For that reason I dismiss the first ground of appeal.

The second ground of appeal is—

"(2) Your petitioner's licence (which was put in evidence) did not specify the premises for which the said licence was granted."

The licence issued to the appellant's firm was in this form—

"SUVA CITY COUNCIL—BUSINESS LICENCE

Licence is hereby granted to Nagindass & Bros. of Suva, Fiji, to keep a Wh/sale & Retail

This Licence applies to the Premises situated at Waimanu Rd. and occupied by.....

Date of Expiry of this Licence 31/12/62."

This is certainly most indefinite when it comes to ascertaining the premises or place, yard or building to which the licence applies and may be a matter of some importance in a charge laid under the provisions of the Licences Ordinance, or in certain cases under the Early Closing Ordinance. In the present case, however, it was an admitted fact that the licence, as issued, was in respect of premises occupied by the appellant's firm on the ground floor of No. 26 Waimanu Road, and that it was the front door of these premises which was kept open after 5 p.m. In those circumstances the appellant and his co-defendants knew quite clearly the charge they were required to answer and they were subjected to no injustice. I see no merit in this ground of appeal.

The final ground of appeal is—

“(3) In any event, your petitioner’s licence was severable inasmuch as your petitioner could use certain parts of the premises for wholesale purposes and other parts for retail purposes and the part of the premises which were open were used for retail purposes only.”

This defence does not appear to have been taken in the Court below and for that reason alone this ground of appeal should be dismissed. However, I am of opinion that it must also be dismissed on its merits. As I read the provisions of the Licensing Ordinance there is provision for two types of licences in respect of general stores and two types only. I use the word general store to exclude licences in respect of butchers’ shops, photographers’ studios, bakers’ shops, etc. If a person sells goods he can do so in one of two ways—either by retail, or by wholesale and retail. The words “wholesale and retail” are clearly conjunctive, not disjunctive. There is no provision for a wholesale licence, as such. If then one elects to take out a wholesale and retail store licence the licence applies to the whole of the premises specified in that licence and section 3 of the Early Closing Ordinance will also apply to the whole of those premises.

For these reasons the appeal is dismissed.

Appeal dismissed.

Solicitor for the appellant: *K. C. Ramrakha.*

Solicitor-General for the Crown.