

Present: De Sampayo J.

WICKRAMASURIYA v. GUNARATNE.

776—P. C. Kalutara, 44,552.

*Housing and Town Improvement Ordinance, No. 19 of 1915, s. 15 (1)—
Allowing a building constructed in part before the Ordinance came
into force to be occupied before obtaining a certificate.*

The accused obtained permission under the Local Boards Ordinance, 1898, for the erection of a block of buildings, and partly completed the same before the coming into operation of the Housing and Town Improvement Ordinance, 1915. He was charged with having allowed the building to be occupied without obtaining a certificate from the Chairman, as provided by section 15 (1) of the Ordinance.

Held, that section 15 (1) did not apply to such a building, and that the conviction was bad.

THE facts are set out in the judgment.

Weeraratne, for accused, appellant.—Section 15 of Ordinance No. 19 of 1915 applies only to buildings constructed under that Ordinance. The Ordinance does not have any retrospective effect. Sanction for building was given under the Local Boards Ordinance before the Housing Ordinance came into force. All the conditions attached to that permission for building were complied with. No offence was committed by accused occupying the house without the certificate of the Chairman.

Cur. adv. vult.

September 28, 1917. DE SAMPAYO J.—

This appeal involves the question of construction of section 15 (1) of the Housing and Town Improvement Ordinance, No. 19 of 1915, which came into operation on December 1, 1915. The Inspector of the Local Board of Kalutara charged the accused with having on July 7, 1917, allowed a new building to be occupied without obtaining a certificate from the Chairman as provided in that subsection. The accused appeals from a conviction.

The building consists of a row of five rooms capable of separate occupation. In 1914 the accused obtained permission to erect it from the Chairman, under the provisions of the Local Board Ordinance, 1898. The building operations were soon begun, and two of the rooms appear to have been completed and occupied by

tenants in 1915, before the Housing and Town Improvement Ordinance came into operation. But the remaining three rooms were finished later, and were occupied in April this year without any certificate from the Chairman, and, as I understand the Police Magistrate's judgment, the accused is considered to have committed a breach of the Ordinance in respect of these three rooms, as he has allowed them to be occupied without a certificate from the Chairman.

The question is whether this sub-section is applicable to the case. It runs as follows: "No building constructed after the commencement of this Ordinance shall be occupied, except by a caretaker, until the Chairman has given a certificate that such building as regards construction, drainage, and in all other respects is in accordance with law." Sub-section (3) penalizes a person who occupies or allows to be occupied any building in contravention of this provision. Now, what does "constructed" mean in the connection in which it occurs? Does it apply to buildings authorized under the previously existing law, though completed only after the new Ordinance came into operation? Section 15 is one of a group of sections constituting a chapter relating to buildings. The main provisions of these sections are that no person shall erect any building except in accordance with plans and specifications approved by the Chairman (section 5); the Chairman is not to approve any plan or specification which causes the building to conflict with the provisions of that or any other Ordinance (section 7); no person shall commence any building operations unless he has given seven days' notice of his intention to do so to the Chairman (section 10); and finally, no building shall be occupied without a certificate from the Chairman (section 15). This chapter contains an entire scheme with regard to buildings, and all the sections must be read together. The reason for the requirement of section 15 (1) is obvious, for though the plans and specifications may have been approved, the actual building may not be in accordance with them, and so power is given to the Chairman to satisfy himself on the point before the building is allowed to be occupied. The word "constructed" is somewhat ambiguous. But it is a primary rule that a thing which is within the letter of a statute is not within the statute unless it be also within the real intention of the Legislature, and words must be construed in the sense which is more in harmony with that intention. Every section of a statute should be construed with reference to the context and to the other sections, so as to make a consistent enactment of the whole statute. This rule of construction may be illustrated by many examples, but I think it is interesting to note one which is concerned with buildings. A section of 25 and 26 Vict. c. 102 enacted that if "any building" projecting beyond the general line of the street was pulled down the Board of Works might order it to be set back, and the next section enacted that "no building" should be erected in any street beyond the general

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line without the consent of the Board. The latter section, taken by itself, would have included buildings whether on new sites or old; but it was held that it must be read with the previous section, and that it was confined to buildings erected on new and hitherto vacant ground. *Lord Auckland v. Westminster Board of Works*;¹ *Wendon v. London County Council*.² Accordingly, I think section 15 (1) of the Ordinance in question is confined to buildings "constructed" under the provisions of the previous sections of the same chapter, and is inapplicable to buildings to which the latter sections did not apply. The accused had, as already stated, obtained permission under the Local Boards Ordinance, 1898, for the erection of the whole block of buildings, and partly completed the same before the coming into operation of the Housing and Town Improvement Ordinance, 1915, and, in my opinion, the responsibility of the accused in respect of the occupation of the buildings cannot be regulated by the latter Ordinance.

For these reasons I think the conviction is erroneous in point of law. It is therefore set aside.

Set aside.



¹ *L. R.*, 7 *Ch.* 597.

² (1894) 1 *Q. B.* 812.