1950 *Present:* **Pulle J.**

PIYASENA, Appellant, *and* NADARAJAH (Inspector of Labour), Respondent

S. C. 1,268—M. C. Colombo South, 21,815

Shops Ordinance, No. 66 of 1938—Meaning of "shop"—Meaning of "premises"—Section 31 (1).

The accused was carrying on a retail business in textiles in a portion of the entrance to a hotel which bore Municipal assessment No. 191. Having regard to the place where he was carrying on business it was obvious that he was an occupant of a part of building No. 191.

Held, that the place where the accused was carrying on business fell within the meaning of the word "shop" as defined in section 31 (1) of the Shops Ordinance.

APPEAL from a judgment of the Magistrate's Court, Colombo South.

H. W. Jayewardene, for the accused appellant.

Sam. Wijesinha, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

November 28, 1950. PULLE J.—

The appeal in this case arises from a prosecution under the Shops Ordinance, No. 66 of 1938, and the point to be determined is whether the place where admittedly the appellant was carrying on a retail business fell within the meaning of the word "shop" as defined in section

31 (1) of the Ordinance. The definition reads, leaving out what is immaterial,

> " ' Shop means any premises in which any retail or wholesale trade or business is carried on and includes any premises in which the business of a barber or hairdresser or the sale of articles of food or drink is carried on."

There is a building which is described as a hotel and bearing Municipal assessment No. 191, Galle Road, Wellawatte. A portion of the entrance to this building is blocked by a partition and in front of it, on the floor of the entrance, is a counter which is flanked by the two doors of the entrance which are left permanently open. The appellant who carried on a business in textiles transacted his business from the area between the counter and the partition. There was a canvas awning over the counter and the goods were displayed on the counter and the space between it and the awning. Directly above the awning were the concrete eaves of the hotel. At night the place was illuminated by electric lights from current taken from premises No. 191.

Having regard to the place where the appellant was carrying on business it is obvious that he was an occupant of a part of building No. 191. Learned Counsel argues that that is not sufficient to constitute the place a shop as defined in the Ordinance. He argues that to constitute a shop there must be a compact building capable of providing the salesmen with facilities for taking meals and with sanitary conveniences and also capable of being closed and opened in order to conform to closing orders made under section 15 (1). I do not think that the argument based on the absence of facilities in any way assists the appellant. In regard to compulsory providing of facilities, sections like 10, 11 and 14 cannot be interpreted to mean that if these facilities do not exist a retail or wholesale place of business cannot be a shop. On the contrary they envisage a place of business which is a shop within the meaning of the Ordinance, but which may not have those facilities and thus rendering the occupier guilty of offences punishable under section 23 (1). As I read sections 15 and 18 a physical closing of the place of business is not essential to compliance therewith. What is prohibited is the keeping of a shop open in breach of the prescribed hours " *for the serving of customers.*"

On behalf of the appellant reliance was placed on the cases of *Metropolitan Water Board v. Pain* [1] and *Illford Corporation v. Mallinson* [2]. In the former case the word " premises " had to be interpreted in the context of section 79 of the East London Waterworks Act, 1853. The question for decision in the first case was whether a bare land on which the owner intended to erect buildings came within the description of the word " premises " so as to entitle the owner to a water supply for building operations at certain advantageous rates. It was held that the word " premises " meant a house and did not include bare land. In the second case the word " premises " had to be interpreted as used in section 1 in the Poor Rate Exemption Act, 1833. In this as well it was held that the word referred to buildings only and not a piece of vacant land. In view of the evidence in this case that the place where

[1] *(1905) 96 L. T. R. 63.*

[2] *(1923) 147 L. T. R. 37.*

the appellant carried on his business is a part of a building, the applicability of these decisions does not arise. I would observe that in the earlier case the word " premises " was not defined in the Act and the Judges expressed the opinion that the interpretation of the term gave rise to great difficulties. In both cases the scope of the relevant Acts was considered and it was decided that the term could not have been intended by the legislature to mean a piece of bare land. It may be that a person who sets up a movable structure on a piece of bare land for the purpose of selling his wares is not reached by the provisions of the Shops Ordinance, No. 66 of 1938, but that is not the question which falls to be determined in the present case.

In *Summers v. Roberts* [1] the appellant sold by retail liniment in bottles in the uncovered portion of a market at a stall consisting of a board resting on but not fixed to two trestles. It had to be determined whether the place was a shop which according to Shops Act of 1912 *included* any " premises " where retail trade was carried on. It was ruled that the word " shop " should be interpreted from the setting and context in the Act of 1912 and that the word " premises " connoted a permanent place, defined by precise limits on which, or on part of which, there was some sort of structure where a regular retail business could be carried on. In the present case the elements of permanence and the regularity of the business are both present.

I hold that the case against the appellant has been proved and the appeal is, therefore, dismissed.

Appeal dismissed.