1945 *Present:* **Soertsz A.C.J.**

391—M.C. Galle, 44,481.

COLQUHAM, Appellant, *and* GUNARATNAM, Respondent.

Defence (Restriction of Meals) (No. 3) Regulation 2—Serving fish in catering establishment—Proprietor not liable if the establishment was not open to the public—Shareholder cannot be described as proprietor.

The accused was charged, as the proprietor of a catering establishment, for serving fish in contravention of Regulation 2 of the Defence (Restriction of Meals) (No. 3) Regulations. The accused was in fact a shareholder, and the catering establishment was a tea-shop which was not open to the public.

The definition of catering establishment in the Regulations runs thus: "Catering establishment means a hotel, restaurant, cafe, rest-house, eating-house, tea or coffee boutique or other place of refreshment open to the public".

Held, that the words "open to the public" qualify not only "other place of refreshment" but also all the other categories mentioned in the definition; there may well be hotels, restaurants, &c., not open to the public.

Held, further, that a shareholder in a catering establishment, even when he is the licensee, cannot be described as the proprietor.

APPEAL from a conviction by the Magistrate of Galle.

G. E. Chitty (with him *H. Wanigatunge*), for the accused, appellant.

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

Cur. adv. vult.

July 27, 1945. SOERTSZ A.C.J.—

By notification in the *Government Gazette* No. 9,273 of May 25, 1944, it was made an offence for any fish to be sold at a catering establishment and "the proprietor or the person for the time being in charge of that establishment" was made liable for any contravention of that regulation.

The appellant was charged as the proprietor of a catering establishment for serving fish to two Price Control Inspectors who had gone there as *agents provocateurs*. He was convicted and fined Rs. 350. On appeal, the conviction was challenged on the ground that (*a*) appellant was not the proprietor, (*b*) that this establishment was not open to the public.

In regard to (*b*) Crown Counsel drew attention to the definition of catering establishment in the *Gazette* Notification which runs thus:

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

and he contended that the words "open to the public" qualified only "other place of refreshment" and not "hotel, restaurant . . . . or tea boutique". The appellant was charged in respect of an establishment described as a tea-shop, in his application for a licence, and as Royal Restaurant, on the board placed at the entrance to it. In my opinion, the words "open to the public" qualify all the categories for, conceivably, there may well be hotels, restaurants, cafes, and tea-boutiques not open to the public. What I mean is that although, as commonly existing

and as commonly understood, those establishments are open to the public, there is—if I may so put it—no etymological compulsion that they should be open to the public. Indeed, in this case, this tea-shop or restaurant, according to the evidence of the appellant, was confined to the employees of the R. E. Yard. The Magistrate says that he finds that " it was originally started with the object of serving a limited class " but that the evidence makes it clear that the place was open to the public. The only evidence on the point is that these two inspectors went there on this day and were served. They do not say that they had gone there on any other occasion, or that, on this occasion, there were other members of the public there, or that from observation they had seen members of the public resorting to it. It may well be that the waiters assumed that these two inspectors, from the way they walked in and took their seats and called for fish, were R. E. Yard men. They were not uniform.

Again, I do not think that, on the evidence, the appellant can be described as the proprietor. He is one of many shareholders. On this day, admittedly, he was not in the tea-shop or restaurant. The cashier was the man in charge. He would have been the proper person to charge. The facts that the appellant is the licensee, that he buys provisions and things like that may show that he is an enthusiastic shareholder. They cannot serve to convert him into " the proprietor " or " the person for the time being in charge ".

I set aside the conviction and acquit the appellant.

Conviction set aside.