28th. February, 1953.

Judge:
The Hon. Mr. Justice W. Harding, B.Litt., LL.D.

The Police *versus* Frank R. Pearce

Sale of Commodities — Imposition of Conditions — Phoenicia Hotel — Public Bar and Private Bar — Reg. 9 "Sale of Commodities (Control) Regulations, 1952".

No trader shall, in selling, or in offering for sale any commodity, impose any condition with such sale, other than the charging of the proper price. Such regulation is meant to prevent any evasion of the charging of the proper price by circuitous means, as well as to prevent hoarding, or at least keeping commodities in stock for other buyers who are prepared to pay a higher price, by exacting from the first buyer a condition of such a nature as to discourage him from buying at all.

Although it does not seem safe in law to make a clear-cut distinction between a public bar and a private bar, when the premises of both come under the same licence, it was held in this case that the Cocktail Bar in the Phoenicia Hotel is a private bar, whereas the Snack Bar attached to the same hotel is a public bar.

In the light of the above considerations, it was held in the present case that the fact that naval ratings who called and asked for a drink at the Cocktail Bar in the Phoenicia Hotel were asked to go and have that drink at the Snack Bar attached to the same hotel, did not constitute an imposition of conditions in connection with the sale of a commodity in terms of the Sale of Commodities (Control) Regulations, 1952.

This is an appeal entered by the defendant against a judgment given by the Criminal Court of Magistrates of

Malta on the 5th. January, 1953;

The original charge was twofold: that of having, as licencee of the Hotel Phoenicia, without reasonable cause, refused to sell alcoholic drinks to three naval ratings in uniform, and that of having imposed conditions in connection with such sale. In the operative part of the judgment, the Court below found the defendant guilty of a single offence, namely that of having imposed conditions other than the charging of the proper price in the sale of drinks, by refusing to sell such drinks in the Cocktail Bar of the Phoenicia Hotel, and sentenced him to the payment of a fine of £3. In the course of the judment it is made plain that the condition, which that Court held to have been imposed, was that these ratings were told to have their drink in the Snack Bar instead of in the Cocktail Bar;

The point before this Court is, therefore, this: does the fact (which is not in dispute) that the naval ratings were told to have their drink in the Snack Bar instead of in the Cocktail Bar amount to the imposition of a condition in the sale of drinks?

This Court is not called upon to express, nor is it expressing, any opinion as to whether the licencee of a first-class hotel which includes a private bar, in the sense that it is considered more "select", is justified in refusing drinks to certain classes of persons not being residents or guests of residents, but merely outsiders or, as the term goes, "casuals";

With regard to the facts relevant to the issue in dispute it is sufficient to state that the Phoenicia Hotel is a duly licensed first-class hotel, and the premises include a Cocktail Bar, accessible only from inside the hotel itself, and a Snack Bar, to which access is also had from outside. The relevant licence is that whereof a copy is exhibited at page 3 of the record, in terms of which the defendant is allowed to keep a shop for the retail of wine, beer, and spiritous liquors, at the Phoenicia Hotel;

The solution of the point submitted to this Appellate Court flows naturally from the following considerations:—

1. The offence comes under regulation 9 (not 10, as erroneously stated in the judgment) of the Sale of Commodities (Control) Regulations 1952, which runs thus:— "No trader shall, in selling or in offering to sell any commodity, impose any condition in connection with such sale, other than the charging of the proper price";

It is as well to note that these Regulations, enacted under the Supplies and Services Act, 1947, are the aftermath of post-war conditions, and are mainly intended to combat what are commonly termed "black market transactions or practices". It is obvious that the afore quoted regulation, under which the First Court found the offence in question, is meant to prevent any evasion of the charging of the proper price by circuitous means, that is, by imposing a condition which makes the price more onerous for the buyer and the profit higher for the seller; for example, by compelling the buyer to buy other commodities which he did not intend buying. It is also intended to prevent hoarding, or at least keeping commodities in stock for other buyers, prepared to pay a higher price, by exacting from the first buyer a condition of such a nature as to discourage him from buying at all;

It does not seem reasonable to hold that the fact of asking the three naval ratings to have their drink in the Snack Bar instead of in the Cocktail Bar was the kind of condition which the legislator had in mind. There was no question of the licencee getting a higher price, or of his keeping in stock the commodity for other buyers; had the naval ratings gone to the Snack Bar, the price they would have paid would have been presumably the same, and the drink they wanted would have equally been served out of stock;

2. Although it does not seem safe in law to make a clear-cut distinction between a "public" bar and a "private" bar, if the premises of both come under the licence (vide, in this sense, the case which came before the New Zealand Courts, "Arundell vs. National Insurance Co. of New Zealand, Ltd." (1925) N.Z.L.R. 924, per Alpers J. at page 927), even though in a Scottish case (Howman v. Doyle, 1921, S.C. (J) 49, per the Lord Justice General, Lord Clyde, at page 53), the

term "public bar" was held to mean a bar open to the general public without discrimination, nevertheless it is a fact, in the present case, that, whilst on the one hand the Cocktail Bar is inside the hotel proper, accessible only through and from the hotel itself, and in terms of the licence, as interpreted by the terms of the application at page 5, is meant primarily for residents, on the other hand, the Snack Bar is also accessible from the road outside, and in terms of the licence, as afore interpreted, is primarily intended for the general public. The first is, therefore, in so far as this factual distinction goes, a private bar, whereas the second is, within that distinction, a public bar;

It is useful to note, in this connection, that the defendant was authorised by the responsible minister not to exhibit price-labels in the Cocktail Bar, on the strength of its being a private bar (see proces verbal at page 2);

Viewed from this aspect, which is the proper one to take, it does not seem reasonable to hold that the fact of asking a "casual", or a non-resident, to be served with drinks in the Snack Bar instead of in the Cocktail Bar implies the imposition of a condition; because the fact that the Cocktail Bar, in terms of the licence, is run primarily for residents and their guests would lose all its significance if the licencee were not free to direct outside customers to the Snack Bar whenever he considered it proper to do so. Otherwise, it would conceivably happen, at times, that the Cocktail Bar would be swamped with outside customers, and the hotel residents and their guests would be thus deprived of an amenity to which they are entitled, and they would find themselves compelled in any such eventuality, to repair to the Snack Bar for drinks, notwithstanding that this latter bar is, in terms of the licence, intended primarily for the general public;

It would be absurd, in the opinion of the sitting Judge, to argue that the licence transforms the whole hotel into a "shop", and that therefore the case has to be considered on a par with that of a licencee of a public house who refuses to serve a customer with drinks. In the Case Gordon Hotels Limited v. London County Council, 2 K.B. Div. 4th. April,

1916, Counsel for the hotel, Mac Moran K C., in the course of his submissions, referred to "the absurdity of saying that a large residential hotel is a shop". The judges seemed to have concurred. In fact, Ridley J. said, "inter alia": "I cannot think that an hotel, the primary business of which is to provide residence for visitors, is a shop within this Act". Later on he said that an hotel was not a retail establishment. His brother Judge Bray J. also said:— "It has been contended that the hotel is a shop... ..... In my opinion it is not";

It is only true, as Mr. Justice Avory pointed out in the same case, that certain parts of the hotel may become a shop — presumably those parts covered by the wine and spirits licence. In the present case, the Cock tail Bar and the Snack Bar are both covered by the licence. But, this notwithstanding, no Court, in judging whether the fact which brought about this case amounted to imposing a condition in contravention of section 9 of the Regulations, could in fairness shut its eyes to the other fact that it is dealing with a hotel, not a public house, with all that is reasonably implied in that distinction. As Rowlatt J. stated in the case Prance v. London County Council, 1915, 1 K.B. 695, in this type of cases the whole question is "a matter of degree, in which one has to be guided by common sense, and not really a question of law";

Now, it is obvious that, in the aforesaid circumstances, no condition was being imposed on the ratings by asking them to have their drinks in the Snack Bar instead of in the Cocktail Bar; both bars were parts of the "shop" mentioned in the licence, and one part was as good as the other. The ratings were not being denied anything, nor were they being made to pay more, or to undergo anything more onerous; they could have had their drinks equally well in the Snack Bar. After all, the provision of regulation 9 afore quoted should not be used to put the seller in the odious position of having to submit to any unreasonable demand of the buyer, and there does not appear to have been any plausible reason for the ratings to insist on being served in the Cock tail Bar in-

stead of in the Snack Bar. They must have been aware that the Cocktail Bar, even though licensed, was, in point of fact, being inside the hotel, part and parcel of the hotel premises, and they must have realised that, once they elected to go and have their drinks at an hotel, instead of in a public-house proper, they would have had to conform themselves, as anyone else, to the requirements of the proper meaning of a hotel — which requirements certainly include providing hotel residents and their guests with a place for drinks in preference to outside customers;

Under these circumstances, this Court is definitely of opinion that to bring this case under the provisions of regulation 9 is stretching the law somewhat excessively and unjustifiably;

The appeal is, therefore, allowed, and the sentence of the Court below is reversed. The defendant is declared not guilty of the offence for which he was sentenced by the First Court, and is discharged.