

1906.
November 16.

Present: Mr. Justice Middleton.

ANDERSON v. SEGU MOHIDEEN.

M. C., Colombo, 9,144

Suffering premises to be in a filthy condition—Liability of owner or lessee not living on the premises—Requisites of proof—Notice in writing—Ordinance No. 15 of 1862, s. 1 (1).

Held, that before an owner or a lessee who does not live on the premises can be convicted of keeping or suffering the premises to be in a filthy and unwholesome state under sub-section (1) of section 1 of Ordinance No. 15 of 1862, it must be proved (1) that the premises were in a filthy and unwholesome condition, (2) that the owner knew or was apprized of that fact, and (3) that in spite of such knowledge he neglected to put them in a proper sanitary condition.

Held, also, that the notice to the owner or lessee need not be in writing.

A PPEAL from a conviction under sub-section (1) of section 1 of Ordinance No. 15 of 1862.

The facts and arguments material to the report appear in the judgment.

Elliott, for the accused, appellant.

F. J. de Saram, for the complainant, respondent.

Cur. adv. vult.

16th November, 1906. MIDDLETON J.—

In the present case the accused has been convicted under sub-section (1) of section 1 of Ordinance No. 15 of 1862, that he, being the owner of premises bearing assessment No. 37, Ward Place, within the Municipality of Colombo, did on the 11th day of September, 1906, keep or suffer the same to be in a filthy and unwholesome state. The accused appeals against that judgment on the ground that he had not received a written notice to the effect that the premises were in a filthy and unwholesome state, as alleged by the Inspector of Nuisances. The appeal is based on a judgment of mine, founded on the ruling of the Supreme Court in *Blacker v. Saibo* (1). I am not aware that either in my own judgment or in the judgment of the Supreme Court there appears any observation which would warrant the inference that a notice in writing is considered necessary. The notice in writing would unquestionably be the better means of formally conveying the

(1) 2 *Balasingham* 13.

information to the accused, but, so far as my opinion is concerned, I should say that if it were proved that the Inspector had brought the matter verbally to the notice of the owner, that would be sufficient. In the present case the accused is charged as a lessee or *pro tanto* owner with keeping or suffering his premises to be in an unwholesome or filthy condition on the 11th day of September. The evidence on the record only shows that on that date the Inspector found the premises in that condition and told the defendant so, which the defendant denies, and consequently there is only oath against oath on the point of notice. The meaning put by this Court on the word "suffer" in the case alluded to shows that it is necessary that evidence should be given that an owner, knowing or having reason to know that his premises were in the alleged state, neglected within reasonable time to put them in a proper sanitary condition. If an Inspector of Nuisances is desirous of bringing an owner not occupying the premises as an offender within the terms of the Ordinance, it seems to me that it will be necessary for him to prove, first, that the premises were in a filthy and unwholesome condition when he visited, that he acquainted the owner with that fact, or that the owner knew of that fact, and that in spite of the knowledge which was so given to or existed in the accused, he had neglected to put them in a proper sanitary condition. If the defendant was not aware that his premises were in the state alleged by the Inspector on 11th September, he can hardly be said to have suffered them to be in that condition on that date. There is nothing however to prevent his being prosecuted for an offence under the section on 24th September, if there is evidence to warrant it. I regret to say, on the face of this record, I am unable to find the evidence which would, I think, warrant me in affirming the conviction.

I must therefore set aside the conviction and acquit the accused. In revising my judgment I have elaborated it slightly for the purpose of making it more useful to the Police Court.

Conviction set aside.

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MIDDLETON
J.