

1909.

January 19
and 21.

Present : The Hon. Sir Joseph T. Hutchinson, Chief Justice.

FERDINANDS *v.* USOOF SAIBO.

M. C., Kandy, 15,976.

*Bakery—Place used as a bakery—“ Place ”—Costs in criminal appeals
—Municipal Councils’ Ordinance (No. 7 of 1887), s. 122.*

A by-law enacts as follows :—“ No place used as a bakery shall be used as a dwelling-place or for any other purpose whatsoever,”

Held, that the word “ place ” meant only the building and grounds actually used as a bakery, and did not include other portions of the same building.

A PPEAL by the Municipal Council from an acquittal of the accused by the Police Magistrate (T. B. Russell, Esq.). The facts sufficiently appear in the judgment.

H. J. C. Pereira, for the Council (appellant).

H. Jayewardene, for the accused, respondent.

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I think the decision of the Magistrate is right. The accused was charged with breach of a by-law made under section 122 of Ordinance No. 7 of 1887. No copy of the by-laws is before me, and I have not seen any of them, except the one in question, which runs as follows:—
“No place used as a bakery shall be used as a dwelling-place or for any other purpose whatsoever.”

The accused's bakery has direct communication with the premises in which he lives by means of a covered place in the verandah, which looks out on an inner courtyard. The question is whether the word “place” includes the premises in which the accused lives. The prosecution contended that the word “place” means the whole of the buildings, of which the bakery forms part, although it can hardly be argued that it would include a building, even if it were in the same compound, separate from and without any communication with the building used as a bakery. The Magistrate gave what he considered to be the natural meaning to the word “place,” i.e., as including only the building and ground which is actually used as a bakery.

In my opinion the framer of the by-law could not have intended that, if one room in any extensive block of buildings is used as a bakery, none of the other buildings, however distant and however strictly shut off from it, can be used for any purpose whatsoever.

I dismiss the appeal.

The respondent asks for an order on the appellant to pay his costs of the appeal. He was summoned at the instance of the appellant in order that the Municipality might obtain a decision on the meaning of a by-law; it was not said that he had been guilty of any serious offence. His bakery had been in existence for many years, and had always been clean and well kept, but the prosecutor alleged that the inter-communication between the bakery and the dwelling rooms which had existed all those years was a breach of the by-law. The respondent succeeded in the Magisterial Court on the merits; he had to bear his own costs of the contention there; but he does not complain of that. When, however, the prosecutor carries the case to the Appeal Court, it is reasonable that, if he fails, he should pay the respondent's costs of the appeal, and I so order.

Appeal dismissed.