1960 *Present :* **Basnayake, C.J.**

THAHIRA, Appellant, *and* URBAN COUNCIL, HAMBANTOTA, Respondent

S. C. 523—M. C. Hambantota, 34,348

Housing and Town Improvement Ordinance—" Closing order "—Sections 76 (1) and 81 (3).

A valid " closing order " in terms of section 76 (1) of the Housing and Town Improvement Ordinance is a pre-requisite to all subsequent penal steps taken under the statute.

APPEAL from an order of the Magistrate's Court, Hambantota.

Stanley Perera, for Accused-Appellant.

M. M. Kumarakulasingham, for Complainant-Respondent.

December 8, 1960. BASNAYAKE, C.J.—

The appellant has beeen convicted of an an offence punishable under section 81(3) of the Housing and Town Improvement Ordinance and sentenced to pay a fine of Rs. 40 while the 2nd and 3rd accused who are her children have been warned and discharged. The penal provision under which they have been convicted reads as follows :—

> " Any person inhabiting a dwelling-house in respect of which a closing order has been made who, after the expiration of the time fixed in the notice referred to in section 76 (2), shall continue to inhabit such dwelling-house, and any person who after a dwelling-house has been vacated under a closing order while such closing order continues operative shall inhabit such dwelling-house, shall be guilty of an offence, and liable to a fine of five rupees for each day or part of a day on which the offence is committed or continues."

It is submitted that no closing order as provided for in section 76 (1) of the Housing and Town Improvement Ordinance has been made, and that therefore there can be no conviction under the provision above quoted. That section reads—

> " (1) If on the representation of the Health Officer of the local authority or other information given any dwelling-house used for human habitation appears to the Chairman to be unfit for human habitation, it shall be his duty to apply to the Magistrate to make a mandatory order prohibiting the use for human habitation of such dwelling-house (herein referred to as a " closing order ") until such dwelling-house is rendered fit for that purpose ; and the Magistrate, upon serving a notice upon the owner of such dwelling-house, shall have power to make such order accordingly.
>
> (2) Where a closing order has been made, the Chairman shall affix in a conspicuous place in or on the dwelling-house a notice calling upon one or more tenants occupying such dwelling-house to quit the premises on or before the expiration of the calendar month next succeeding the date of the notice."

I shall now examine learned counsel's submission. In M. C., Hambantota, Case No. 33,582 the Chairman of the Urban Council represented as follows :—

> " Whereas the dwelling-house belonging to Mr. Deen Salahudeen occupied by Mrs. Latiff Thahira bearing assessment No. 9 situated at May Street, Hambantota, within the limits of the Urban Council of Hambantota, is reported by the Medical Officer of Health, Hambantota, after personal inspection by him, to be unfit for human habitation, I, Issadeen Deen Usuph, Chairman of the Hambantota Urban Council, having satisfied myself that the said dwelling-house is unfit for human habitation, do hereby apply under section 76 (1) of the Housing and Town Improvement Ordinance (Chapter 199) to the Magistrate, Hambantota, for a mandatory order prohibiting the use for human habitation of the dwelling-house until it is rendered fit for that purpose.
>
> The report of the Medical Officer of Health, Hambantota, relating to the aforesaid dwelling-house is annexed hereto."

The documents produced in that case do not include the report of the Medical Officer of Health. Upon this application notice was served on Mr. Deen Salahudeen, the owner of the house, as required by section 76 (1). He stated to court that he had no cause to show and the court thereupon made the following order on 23rd June, 1959 :—

> " He has no cause to show. Issue mandatory order prohibiting the use for human habitation of the said dwelling-house."

The " mandatory order " was issued in the following form on 30th June under the hand of the Magistrate :—

> " Whereas Mr. Deen Salahudeen of May Street, Hambantota, was summoned on 23.6.59 to show cause why a closing order should not be issued in respect of the building bearing assessment No. 9 situated in May Street, Hambantota.
>
> And whereas an application has been made by the Chairman of the Urban Council, Hambantota, for a closing order against you the said owner of the building No. 9 situated at Hambantota under section 76 (1) of the Housing and Town Improvement Ordinance (Cap. 199).
>
> I, J. G. L. Swaris, Magistrate, Hambantota, do hereby by virtue of the powers vested in me by the last named sub-section order you to close the building in question on or before 30th July, 1959."

This " mandatory order " does not satisfy the requirements of the statute. The section quoted by me requires the Magistrate to make an order " prohibiting the use for human habitation " of the dwelling-house in respect of which an application is made if such dwelling-house is rendered unfit for that purpose.

A further order in the following form appears to have been issued under the hand of the Magistrate on 28th October, 1959 :—

" You as Chairman, Urban Council, Hambantota, made an application to this Court in the above case, for a Mandatory Order prohibiting the use of dwelling-house bearing assessment No. 9, May Street, Hambantota, for human habitation under section 76 (1) of the Housing and Town Improvement Ordinance (Cap. 199) of the Legislative Enactments of Ceylon.

And whereas this Court summoned the owner of the dwelling-house in question Mr. Deen Salahudeen to show cause if any why such Mandatory Order should not be issued by this Court.

The said Mr. Deen Salahudeen did appear before this Court on such summons on 23.6.59 and failed to show cause why such Mandatory Order should not be issued.

I, J. G. L. Swaris, Magistrate, Hambantota, by virtue of the powers vested in me by the Housing and Town Improvement Ordinance do hereby order you to close up the above premises in accordance with law."

Both orders are addressed to the Chairman. Neither order is warranted by the Housing and Town Improvement Ordinance. The Magistrate is empowered only to make order prohibiting the use for human habitation of a dwelling-house in respect of which an application is made on the ground that such dwelling-house is unfit for human habitation. Upon the orders issued by the Magistrate and quoted above by me, a notice appears to have been affixed on the front door of the premises. That notice is not before me nor is there a copy of it in the record. Without the notice being produced in evidence it is not possible to decide whether the appellant failed to comply with it. The complaint now is that the accused did not vacate the premises in terms of a notice which is not before the Court. Apart from the failure of the prosecution to prove the notice which it is alleged the appellant failed to comply with, the subsequent steps taken by the local authority were of no effect in law as there was no proper " closing order ".

Learned counsel for the respondent submits that the order made by the Magistrate is a mandatory order prohibiting the accused from using the dwelling-house for human habitation and that it satisfies the requirements of section 76 (1) of the Housing and Town Improvement Ordinance.

I am unable to agree with that contention. The provisions of the statute must be strictly observed if the penal consequences of disobedience to an order made thereunder are to be brought home to those who disobey it. A valid " closing order " in terms of the statute is a prerequisite to all subsequent steps under the statute.

I therefore quash the conviction and acquit the accused.

Appeal allowed.