

1919.

Present : Ennis A.C.J.

ERNEST v. AHAMADU LEBBE.

556—M. C. Colombo, 1,611.

Exposing goods over a public drain—Markets—Immemorial custom—Prescription.

A person cannot by immemorial use acquire a prescriptive right to expose his goods for sale outside his shop over the drain by the roadside.

THE facts appear from the judgment.

A. *St. V. Jayawardene*, for appellant.—This right to expose goods for sale on the roadside has been in existence long before the Municipal Councils Ordinance. This practice has gone on for more than fifty years without inconvenience to any one. Statutes giving local authorities control over streets do not affect pre-existing market rights. *16 Hals. 46; A. G. v. Homer*,¹ *Stepney Corporation v. Gingell*,² [Ennis J.—This is not a market.] This has been converted into a market by immemorial use. “Market is a public time and appointed place of buying and selling” (*Stroud*). No claim is made to the land, but only a right to expose the goods. This custom existed when the Municipal Councils Ordinance was introduced, and no provision is made in this Ordinance regulating this custom.

B. *F. de Silva*, for respondent, not called upon.

August 19, 1919. ENNIS A.C.J.—

This is an appeal from a conviction under section 156 of the Municipal Councils Ordinance, No. 6 of 1910. The appellant claims a right by immemorial custom to expose his goods for sale outside the shop over the drain by the roadside. It was contended on appeal that this was a right of market, and that statutes giving the local authorities control over the streets do not in general affect pre-existing market rights. I am quite unable to see how this can be called in any way a right of market. It is a claim by an individual to exercise a private and exclusive right over a public street, and, as the learned Judge observed, such a private owner would be considerably surprised to find the strip of road alongside his house used by the public as a market. The cases cited in support of the proposition enunciated by counsel for the appellant do not apply in this particular instance.

I dismiss the appeal.

Appeal dismissed.

¹ (1885) 11 App. Cases 66.

² (1908) 1 K. B. 115, affirmed in (1909) A. C. 245.