

1946

Present : Howard C.J.

CECILY HAMY, Appellant, and ZOYSA (P.C. 78), Respondent.

58—*M. M. C. Colombo, 68,088.*

Prosecution of idle and disorderly person—Onus on prosecutor to prove ingredients of offence—Vagrants Ordinance (Cap. 26), s. 3 (1) (c).

In a prosecution under section 3 (1) (c) of the Vagrants Ordinance the *onus* is on the prosecutor to prove the ingredients of the offence one of which is that the accused is a person without any visible means of subsistence.

A PPEAL against a conviction from the Municipal Magistrate's Court, Colombo.

M. M. Kumarakulasingham, for the accused, appellant.

R. A. Kannangara, C. C., for the Attorney-General.

February 18, 1946. HOWARD C.J.—

In this case the appellant was charged under section 3 (1) (c) of the Vagrants Ordinance (Cap. 26). That section is worded as follows :—
“ Every person wandering abroad or lodging in any verandah, outhouse, shed or unoccupied building or in any cart, vehicle or other receptacle without leave of the owner thereof and not having any visible means of subsistence and not giving a good account of himself shall be deemed an idle and disorderly person within the true intent and meaning of this Ordinance and shall be liable upon the first conviction to be imprisoned, with or without hard labour for any term not exceeding 14 days or to a fine not exceeding ten rupees.”

The appellant was found by two policemen in the early hours of the morning in Schofield place in company with a naval man and a boy. When the police came the boy whistled and ran away, but was arrested. The naval man also ran away and the appellant was arrested. The Magistrate seems to have convicted the appellant on the ground that she and her witnesses did not appear to be speaking the truth. He seems to have forgotten that it was incumbent on the prosecution to prove the ingredients of the offence with which the appellant was charged. One of the ingredients of this offence was that the appellant was a person without any visible means of subsistence. There was no evidence supplied by the prosecution to prove this. In fact, so far as the appellant is concerned, the evidence was all the other way inasmuch as she called in evidence a man called Edwin Singho who stated that she was his mistress and that he was keeping her at her parents' house. This was borne out by her father who gave evidence. This ingredient of the offence not having been established, the conviction must be set aside.

Conviction set aside.
