1939

Present : **Soertsz J.**

AKBAR *v.* LEORIS APPUHAMY.

17—M. M. C. Colombo, 20,583.

Nuisance—Throwing rubbish into the public road—Master's liability for acts of his servant—Ordinance No. 15 of 1862, s. 1 (12) (Vol. IV., Ch. 180, p. 443).

The accused, who carried on business at Fifth Cross street, Pettah, was charged under section 1 (12) of Ordinance No. 15 of 1862 with having thrown or put or permitting his servants to throw or put onion peelings, paper, and dust on the public road from the premises. The accused pleaded that he was not present at the time, that he had provided dustbins and instructed his servants not to throw rubbish on to the road.

Held, that the accused was liable as occupier of the premises.

The master must be held to have permitted the servants to do what they did although they acted contrary to his instructions and in his absence, because the master ought at his peril to have seen his prohibition obeyed.

APPEAL from a conviction by the Municipal Magistrate of Colombo.

M. T. de S. Amerasekere (with him *H. A. Koattegoda*), for accused, appellant.

L. A. Rajapakse (with him *Jayamanne*), for complainant, respondent.

Cur. adv. vult.

April 5, 1939. SOERTSZ J.—

The accused-appellant carries on business on the premises bearing assessment No. 153, Fifth Cross street, Colombo.

It has been proved that on the night of September 8, 1938, half a handcart load of onion peelings, paper, and dust was swept on to or thrown on the public road from these premises.

The accused was not present on the premises at the time. He says he has provided dustbins for all such rubbish to be deposited in for removal by the Municipal scavengers, and that he has instructed his servants to make use of those dustbins, and not to throw rubbish on the road. I accept the evidence.

The question, then, is whether the accused was rightly convicted. There are occasions on which, in the view of the law, a man may be said to permit a thing to be done although he is not present at the time it is done, and has given definite instructions to his servants not to do it. This case, in my opinion, is an instance of one of those occasions. In *Mousell Bros. v. London & N. W. Railway*[1] Atkin J. said, "I think that the authorities . . . . make it plain that while *prima facie* a principal is not to be criminally responsible for the acts of his servants, yet the

[1] *(1917) 2 K. B. 836.*

Legislature may prohibit an act or enforce a duty in such words as to make the prohibition or the duty absolute; in which case the principal is liable if the act is in fact done by his servants".

Now, one of the cases, in which the principle of non-liability of a principal for the criminal acts of his servants is departed from in legislation, is in the case of acts amounting to public nuisances. There is justification for a stringent view of the master's responsibility in such cases for the criminal acts (criminal in the sense that they are *mala prohibita*) of his servant, because the master by the very fact of setting a servant upon work that may result in a nuisance, has induced a state of things which he ought, at his peril, to prevent. If he had given instructions to prevent it, he ought, at his peril, to have seen his prohibition obeyed.

In the present case, the charge is laid under Ordinance No. 15 of 1862, which was enacted "for the better preservation of Public Health and the suppression of Nuisances". The section under which the accused was charged namely section 1 (12) makes the occupier of premises liable if he or his servants throws or throw rubbish on any street or road. The relevant words are "whosoever shall throw or put, or permit his servants to throw or put . . . . rubbish on any street, road . . . . ."

It is true that the accused was not present, but he has delegated his responsibility to his servants, and when they in the course of, and within the scope of their employment, threw the rubbish on the road, although they acted contrary to his instructions when they did so, it must be held that in law the master permitted them to do so for the master ought, at his peril, to have seen his prohibition obeyed.

The case of *Allen v. Whitehead* [1] is one of many cases that support this view. That was a case in which the licensee of a refreshment house was charged under the Metropolitan Police Act, 1893, section 44, with having wilfully or knowingly allowed prostitutes . . . . to remain therein. The licensee had expressly instructed his manager that no prostitutes were to be allowed to congregate on the premises. But he was liable to conviction, because the knowledge of the servant must be imputed to the master.

As was pointed out in the case of *Mousell Bros. v. N. W. Railway* (*supra*), to ascertain whether a particular act was one in respect of which the master is criminally liable, the words used, the object of the statute, the nature of the duty, the person on whom it is imposed, the person upon whom the penalty is imposed must be taken into consideration. In this instance "whosoever" in the context of section 1 (12) means whosoever being the occupier of premises, and the liability and the penalty are imposed on him in respect of his acts and those of his servants. If in those circumstances, the employer were to be held not liable because he was not present or because he had given instructions, the statute would be rendered nugatory. It would fail of its purpose.

I dismiss the appeal with costs which I fix at Rs. 21.

Affirmed.

[1] (1930) *1 K. B. 211.*