July 20, 1911

Present : Wood Renton J.

TISSERA *v.* FERNANDO.

445—*P. C. Chilaw*, 33,868.

Obscene words—Annoyance to a single person—Penal Code, s. 287.

A person who utters obscene words in a public place is guilty of an offence under section 287 of the Penal Code, even if a single person was annoyed thereby.

WOOD RENTON J.—There is nothing either in section 287 itself, or in the reason of the thing apart from that section, to justify me in holding that a sufficient number of persons to constitute the public must be present in order to bring any one who uses indecent language in or near a public place within the prohibition and the penalty of the section.

APPEAL against an acquittal with the sanction of the Attorney-General. The facts are set out in the judgment.

Goonetilleke (with him *Mendis*), for the appellant.—To constitute an offence under section 287 of the Penal Code it is not necessary that the obscene words should have been uttered in the presence of several people. Counsel cited *Mayne's Criminal Law*, *3rd ed.*, *p.* 145.

No appearance for the respondent.

July 20, 1911. WOOD RENTON J.—

This is an appeal, with the sanction of the Attorney-General, against the acquittal of one Albano Fernando in the Police Court of Chilaw, on a charge of having uttered obscene words in or near a public place " to the annoyance of others," in contravention of the provisions of section 287 of the Penal Code. The learned Police Magistrate was satisfied, as I can gather from the record, that the words were used, and that they were obscene. But he acquitted the accused on the ground that the words in question were not uttered in the hearing of the public generally, but only within that of the lady abused and several of her employees. "I am confronted," says the Police Magistrate, "with the difficulty that the annoyance must be to the public." Section 287 does not say that the annoyance must be caused to the public. It is sufficient if the indecent words are spoken, as they were here, in a public place to the annoyance of " others," and under section 8 of the Penal Code the plural number includes the singular, unless the contrary appear from the context. There is nothing either in section 287 itself, or in the reason of the thing apart from that section, to justify me

in holding that a sufficient number of persons to constitute the public must be present in order to bring any one who uses indecent language in or near a public place within the prohibition and the penalty of the section. We have not to consider here the common law of England, according to which it would seem (see the case of *Regina v. Webb*[1]) that such acts as the accused has been convicted of even if committed in a place of public resort, were not indictable if only one person could have been annoyed by them. We have to construe the provisions of the Penal Code. I would adopt as part of my own judgment the following language used by Mr. Mayne in his commentary on section 294 of the Indian Penal Code, which corresponds to section 287 of our own Code : " There certainly is no reason why a person who bawls out an indecent song in a railway carriage to the annoyance of a single lady should not be punished for it." I set aside the acquittal, and send the case back to the Police Court of Chilaw in order that the accused may be convicted and sentenced. It will be open to the Police Magistrate, in accordance with the judgment delivered a few days ago by my brother Middleton and myself, and which, in view of its importance to the courts of first instance throughout the Colony, will, I hope, find its way into the Official Law Reports at the earliest possible date, to receive any legal evidence on oath that may be tendered to him either by the prosecution or by the defence, or that he may himself think it right to call, bearing on the question of the character and the antecedents of the accused, before passing sentence.

Sent back.

[1] *1 Don 338.*