

TOUSSAINT v. MAHA NAYAKA UNNANSE.

M. M. C., Kandy, 8,040.

1900.
May 4.

Ordinance No. 15 of 1862, s. 1, sub.-s. 1—Offence of keeping premises in a filthy and unwholesome state—Proper person to be charged—Evidence.

To justify a prosecution under "The Nuisances Ordinance, 1862," section 1, sub-section 1, there must be evidence that the accused is the proprietor or the person having control of the premises in question.

IN this case the "Maha Nayaka Unnanse of the Malwatta Pansala, Victoria Drive, Kandy," was charged before the Municipal Magistrate's Court at Kandy with having on the 8th February, 1900, kept the Malwatta Pansala premises in a filthy and unwholesome state, under sub-section (1) of section 1 of Ordinance No. 15 of 1862, found guilty, and sentenced to pay a fine of Rs. 10. The accused applied to the Magistrate for leave to appeal against the finding, but his application was refused. He now petitioned the Supreme Court to deal with the case in revision.

Van Langenberg, for petitioner.—There is no proof that the petitioner was either the owner or occupier of the premises in question. They consist of several *pansalas* occupied by separate incumbents, and it has not been shown that that part of the premises which was filthy and unwholesome was within the supervision or control of the petitioner. He was not on the premises when the complainant entered, having gone to the Seven Korales. In *Leembruggen v. Rajapakse* (Ram. 1875, 252) it was held that where a tenant is in occupation, the tenant and not the owner is liable; and in *Thomas v. Perera* (1 S. C. C. 45) PHEAR, C.J., ruled that to support such a charge it was essential to prove

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that the person accused should not only be either the owner or occupier, but should also have such a control over it as is involved in the allegation that he kept or suffered the same to be in the state complained of.

4th May, 1900. MONCRIEFF, J., quashed the conviction and sentence in these terms:—

I think that the charge is not made out against the accused under the terms of Ordinance No. 15 of 1862, section 1. It is not made out that he is the proprietor, or the person having control of the premises. I therefore think that the conviction is wrong, and that the order complained of must be quashed.

