

Present: Mr. Justice Wood Renton.

1906.
March 22.

THE SANITARY OFFICER v. FERNANDO.

M. C., Colombo, 1,448.

Neglecting to keep clean road and drain in front of premises—employé of owner—Police Ordinance (No. 16 of 1865) s. 94—Implied repeal—Municipal Councils' Ordinance (No. 7 of 1887), ss. 170 and 171.

Held by WOOD RENTON J.—

- (1) That the provisions of section 94 of Ordinance No. 16 of 1865 in respect of streets must be considered to be impliedly repealed by sections 170 and 171 of the Municipal Councils' Ordinance (No. 7 of 1887) in so far as the Municipality of Colombo is concerned.
- (2) That a mere employé of the real owner cannot be said to be the "occupier" or the "inhabitant," within the meaning of Ordinance No. 16 of 1865, of the premises on which he works and therefore cannot be convicted under the above section of the Ordinance.

A PPEAL from a conviction under section 94 of Ordinance No. 16 of 1865. The facts sufficiently appear in the judgment.

Sampayo, for appellant.

Bawa, for respondent.

22nd March, 1906. WOOD RENTON J.—

The appellant has been convicted by the Municipal Magistrate, Colombo, under section 94 of "The Police Ordinance, 1865" (No. 16 of 1865), of having neglected to keep clean a road and drain in front

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of premises of which he is the " occupier. " Two objections are urged against the conviction—(i.) that, in so far as the Municipality of Colombo is concerned, section 94 of the Ordinance of 1865 has been impliedly repealed by " The Municipal Councils' Ordinance, 1887 " (No. 7 of 1887), sections 170 and 171 of which impose the duty of cleaning the streets, and for that purpose of providing dust boxes for the collection of rubbish, on the Chairman of the Municipal Council; and (ii.) that in any event the appellant, being only an employé of the real owner of the premises (he was in fact in charge of the Grocery Department of the owner's business, which was carried on in the premises in question) could not be convicted either as the " occupier " of such premises or as an " inhabitant " of them within the meaning of later words in the same section. In my opinion both objections are fatal to the conviction. The Police Ordinance, 1865, is a general law. Then comes the later and special Ordinance of 1887. It provides new machinery for the cleaning of the streets, and imposes the duty of working it on the Chairman of the Municipal Council, which in turn is invested with the power of levying rates on the community to enable it to discharge its statutory obligations.

In so far as streets are concerned, I think that, within the Municipality of Colombo, the new machinery has superseded the provisions of section 94 of the General Police Ordinance. It may well be that the part of that section relating to private passages, &c.—ground not covered by sections 170 and 171 of The Municipal Council's Ordinance, 1887—is still in force. But that is a question which I have not now to decide. With regard to the second point, I am clearly of opinion that an employé in the position of the appellant is not an " occupier " of the premises on which he works; and the use of the words " his house " in the subsequent clause precludes him from being regarded as an " inhabitant. "

I set aside the conviction.

