1897.
March 2 and 4.

CADER SAIBO *v.* BRANHA.

P. C., Kandy, 3,599.

Nuisance—Abatement—Appointment of jury—Procedure.

An order by a Police Magistrate to suppress a public nuisance must specify the particular trade or occupation, and the place in which it is carried on, and that it has been made to appear to the Magistrate that the trade is injurious to public health or comfort for causes stated.

When a person who is served with an order for the abatement of a nuisance applies to the Police Magistrate for the appointment of a jury, under section 120 of the Criminal Procedure Code, to try whether the order made is reasonable or not, the Police Magistrate must meet the jury he has summoned and explain to them the issue which they have to try. It is necessary that he should call on the original informant or petitioner and on the respondent to adduce relevant evidence, oral and documentary, that he should fix a time within which the jury must return the verdict, and that the jury should proceed together to the place, and after evidence heard find whether the order of the Magistrate is reasonable, or in what respects it needs amendment. If the Magistrate accepts the modifications, he may make the order so modified absolute; but if the jury do not find the order reasonable, or if they suggest a modification which the Magistrate cannot accept, then section 121 provides that "no further proceedings shall be taken."

Bawa, for appellant.

Dias, for respondent.

4th March, 1897. LAWRIE, J.—

In my opinion all these proceedings were irregular.

It does not appear that the Magistrate received a report or other information, or that he took any evidence before he made the conditional order on K. C. C. Saibu, of Katugastota, "to suppress or remove the tannery within fifteen days."

This order is bad for uncertainty. It should have stated the particular trade or occupation and the place where it is carried on.

It should have stated that it had been made to appear to the Magistrate that the same was injurious to the public health or comfort by reason of causes which should be briefly stated in the order. Form XVI. of the Criminal Procedure Code (p. 364) should have been followed.

The respondent appeared to the informal order and notice, and applied to the Magistrate to appoint a jury to try whether the order was reasonable and proper. A jury of nine was appointed. Seemingly the Magistrate overlooked the decision reported in *9 S. C. C. 66.*

It does not appear that the Magistrate summoned the jury to attend at a place and time he thought fit (as is provided by sub-section (*b*) of section 120).

I am of the opinion that it is necessary that the Magistrate should meet the jury and should explain to them the issue which they had to try; that he should call on the original informant or petitioner and on the respondent to adduce relevant evidence, oral and documentary, which should be adduced in presence of the Magistrate and of all the jury; and that the Magistrate should fix a time within which the jury must return the verdict. It is permissible (and indeed in most cases necessary) that the jury should view the site of the alleged public nuisance: the jury should go together to the place, not one by one at different times, and they should thereafter all orally or in a writing to be signed by all find either that the order of the Magistrate is reasonable and proper, in which case it should be made absolute, or that it would be reasonable and proper if modified, and then the Magistrate may accept the modification and make the order so modified absolute; but if the jury do not find the order reasonable, or if they suggest a modification which the Magistrate cannot accept, then no further proceedings shall be taken.

It is not necessary now to decide whether, when all the proceedings before and by a jury have been regular, any appeal will lie. My opinion is that there is no appeal. It is sufficient in this case to point out that the Magistrate had insufficient materials before him to make any order; that the order he did make was bad for uncertainty; that he gave no directions to the jury; that no opportunity was given to the respondent to lead evidence; and that the finding of the jury is signed by eight only, and not by all. It is not necessary that all should agree. I think the opinion of the majority would prevail and be a good verdict, but all the jury must take part in the verdict or finding, whether assenting or dissenting.