

1904.  
January 25.

BELL v. SENANAYAKA.

M. C., Colombo, 6,966.

*Ordinance No. 16 of 1865, s. 90—Disturbing repose at night—Causing another to make a noise.*

A lessee of a plumbago store, whose workmen disturbed the repose of the inhabitants of the neighbourhood during night by coopering barrels, is not liable under section 90 of the Ordinance No. 16 of 1865 unless he was present at the place where the men were working.

**T**HE facts of the case appear in the following judgment of the Chief Justice.

*Jayawardene and Wijeyekoon, for appellant.*

25th January, 1904. LAYARD, C.J.—

In my opinion this conviction cannot stand. It proceeds on the ground that the accused, being the lessee of the plumbago store, situate in premises C 3, caused the coopering of barrels in the said plumbago shed during night time, and thereby made such a noise as to disturb the repose of the inhabitants of the locality, in breach of section 90 of Ordinance No. 16 of 1865. The provisions of this section appear to me, to apply only to persons who themselves make a noise in the night so as to disturb the repose of the inhabitants, but do not apply to persons who may employ workmen to work on their premises during the night, even if the

workmen in carrying on their work make such a noise as to disturb the repose of the inhabitants. It may be that the workmen who actually made the noise are liable to be prosecuted under section 90 of Ordinance No. 16 of 1865. I however can find nothing in that section which renders a person liable to prosecution for causing other persons to make such a noise as to disturb the repose of the inhabitants of the locality. I understand in this case that, when the noise was made, the accused was not actually present at the place where the workmen were working on the night in question, and it may be in view of the judgment of the Full Court cited to me (*9 S. C. C. 52*) if he had been, that he would have been liable under this section. In my opinion the conviction cannot stand. It must be set aside and the accused acquitted.

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If the causing of persons to make such a noise as to disturb the repose of the inhabitants of a locality is to be deemed an offence, it is for the Legislature to so expressly provide. This Court cannot extend the operation of the law as it at present stands.

