1918.

Present: De Sampayo J.

SARAM *v.* SENEVIRATNA.

502—P. C. Colombo, 15,045.

Criminal Procedure Code, s. 105—Public nuisance— "Trade or occupation injurious to the health or physical comfort of the community."

The accused was the proprietor of an oil store where coopering was carried on. The noise created by the constant hammering on barrels affected the whole neighbourhood.

The Police Magistrate, acting under Chapter IX. of the Criminal Procedure Code, ordered the accused to abate the nuisance.

Held, that the Magistrate was right in acting under Chapter IX. "A nuisance which affects only those living in the neighbourhood, and not necessarily the public in general, may be the subject of proceedings under this chapter."

THE facts appear from the judgment.

Bawa, K.C. (with him *Goonetilleke*), for accused, appellant.

R. L. Pereira, for complainant, respondent.

July 4, 1918. DE SAMPAYO J.—

The appellant is the proprietor of an oil store at Charles place, Colpetty, where coopering is carried on during the day, and sometimes also at night. The noise created by the constant hammering on barrels is calculated to injure the health and physical comfort of persons resident in the neighbourhood. He has been proceeded against under Chapter IX. of the Criminal Procedure Code for what is undoubtedly a nuisance, and the Police Magistrate has ordered him to abate the nuisance. The only question for decision is whether the nuisance is of such a kind as is contemplated by the Criminal Procedure Code. The second paragraph of sub-section (1) of section 105, which applies to this case, empowers the Police Magistrate to act under the provisions in question, when he considers "That any trade or occupation or the keeping of any goods or merchandise should by reason of its being injurious to the health or physical comfort of the community be suppressed or prohibited."

It is true that under this chapter the nuisance complained of must be of a public and not of a private kind, but I do not think that the distinction intended is exactly that between public nuisances and

private nuisance as generally understood. For instance, it is noticeable that the passage above cited refers to the health or physical comfort, not of the " public ", but of the " community ", while the word " public " is used in certain other paragraphs of this very sub-section. I take it that " community " means here what it means in the Penal Code, which declares the word " public " to include " any class of the public or any community." Again, an instance of a nuisance given in another paragraph of the same sub-section is that of a building or tree likely to fall and thereby cause injury to persons " living or carrying on business in the neighbourhood. " Thus, a nuisance which affects only those living in the neighbourhood, and not necessarily the public in general, may be the subject of proceedings under this chapter. Apart from the scope of these particular provisions, the present case is, I think, an example of a public nuisance in the ordinary sense. The meaning to be gathered from English authorities is thus stated in the *Laws of England, vol. 21, p. 511:* " A public nuisance is one which inflicts damage, injury, or inconvenience upon all the King's subjects, or upon all those who come within the sphere of its operation. " The evidence in this case shows that the whole neighbourhood is affected by the continuous noise of coopering in the appellant's oil store. Moreover, as stated at page 508 of the same volume of the *Laws of England*, the interpretation of the word " nuisance " used in any statute is governed by the purpose and context of the statute, and it is shown that in the Public Health Acts, for instance, nuisances for the purpose of the provisions relating to methods of summary abatement are such as affect the health and comfort of the neighbourhood. Chapter IX. of our Criminal Procedure Code in general *re* abatement of nuisances has the same purpose in view, and should, in my opinion, be construed so as to apply the remedy to such a nuisance as the present. The extent of the nuisance for the purpose is a question of fact in each case. This being so, the case of *R. v. Lloyd*,[1] cited by Mr. Bawa, is really an authority against the appellant rather than for him. That was a prosecution against a tinman for a public nuisance caused by the noise made by the accused in carrying on his trade. The prosecutors were the body of solicitors having chambers in Clifford's Inn, but it transpired that the noise only affected three chambers, and that by shutting the windows the noise was in a great measure prevented. Lord Ellenborough thereupon held that the nuisance was " not of sufficiently general extent to support the indictment." It is clear that the decision would have been different if the facts showed that not three, but all or most of the officers were affected by the noise.

I think also that the provision of the Penal Code throws light on this matter. The Penal Code provides for the punishment of certain nuisances as offences, and the provisions of the Criminal

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Procedure Code appear to me to be only supplementary. Section 261 of the Penal Code provides as follows: " A person is guilty of a public nuisance who does any act . . . . . .which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity. " Here, again, it is noticeable that the act may be a " public nuisance," though it only affects people dwelling in the vicinity. All that is essential is that the injury, danger, or annoyance should be " common ", and not special to a few individuals. In an Indian case referred to in *Ratanlal's Law of Crimes 487* it was held that the expression " people in general " in the corresponding section of the Indian Penal Code meant a body or considerable number of persons, and, as the learned authors put it at page 486, it is in the *quantum* of annoyance that public nuisance differs from private. As I have said, the noise caused by the appellant's coopering business affects all those who dwell in the vicinity, viz., those occupying houses in Charles place, Bagatelle road, and Alfred place. One or two of them, who are relatives or friends of the appellant, have given evidence for him. But the Police Magistrate has, for reasons which appear to me sound, found that their evidence is interested, and does not, in fact, support the defence. In my opinion the act complained of in this case comes within the provisions of section 105 (1) of the Criminal Procedure Code, and the Police Magistrate has properly taken cognizance of it.

The order appealed from is right. The appeal is therefore dismissed.

Appeal dismissed.