Present: Dalton J.

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14—P. C. Matale, 27,929.

Public nuisance—Annoyance to the public—Penal Code, s. 283.

In a prosecution for committing a public nuisance, it is necessary to prove that the nuisance was such as to annoy the neighbouring community generally and not merely some particular person.

THE accused was charged with committing a public nuisance under section 283 of the Penal Code, in that he failed to take the necessary precautions to prevent his dog barking continuously at night, and thereby disturbing the repose of the public or the people in general, who dwell or occupy property in the vicinity and causing annoyance to them. The evidence showed that the only person who complained of the barking was the Police Magistrate of Matale. The learned Police Magistrate convicted the accused.

R. L. Pereira, for accused, appellant.

January 25, 1927. DALTON J.—

Appellant is the owner of a dog and has been convicted under section 283 of the Penal Code with committing a public nuisance. The nuisance in question set out in the charge is that on November 12, 1926, he did fail to take " necessary precautions to prevent his brown pup barking continuously at night and thereby disturbing the repose of the public or the people in general who dwell or occupy property in the vicinity, and causing annoyance to them."

A " Public nuisance " is defined in section 261. A person is said to be guilty of a public nuisance who does any act or is guilty of any illegal omission 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.

There was some dispute in the lower Court as to the identity of the dog which caused the trouble, but the Magistrate was satisfied on the evidence that it was proved that it was the dog of the accused described in the charge. The only question argued on appeal was whether the evidence disclosed any act or illegal omission on the part of the appellant which caused annoyance " to the public or to the people in general who dwell . . . . in the vicinity." The evidence shows that the only person who complained of the barking was Mr. C. F. Ingledow, Police Magistrate of Matale. He had complained of barking dogs in general, and of this dog in particular on a previous occasion. He states that on the occasion

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set out in the charge he was disturbed, with his household in the night, by persistent barking. He complained to the Sub-Inspector of Police and the barking was traced, as deposed to by P. C. Nair, to accused's dog.

In cross-examination the complainant admitted that the complaint he made was due to the disturbance caused to his wife who was ill at the time. He adds that the disturbance to him was not so much as to cause him to lodge a complaint.

It appears to me that the Magistrate who tried the case has not directed his mind to the essential difference between a private nuisance and a nuisance to the public or the people in general as set out in section 261. There is no evidence to show that any person except the complainant and his family was inconvenienced. The Magistrate says: "The fact that nobody besides Mr. Ingledew, the Sub-Inspector, and the P. C. gave evidence does not influence me at all." That clearly shows that he did not appreciate the terms of section 261 and the nature of the offence charged. He says he is satisfied with the respectability of the status of the complainant. I have not the least doubt that no one ever questioned that.

An appeal in a similar case came before the Full Court as long ago as 1872 (P. C., Colombo, 3,901, (*1872*) *Grenier's Reports, p. 25*), where it is reported as "The Dog Case." Creasy C. J. in stating the law, points out that, to constitute the offence of a public nuisance, as distinguished from a private nuisance for which no criminal proceedings lie except under special Ordinance, it is necessary that the nuisance should be such as to annoy the neighbouring community generally and not merely some particular person. In that case the plaint alleged that the howling of the defendant's dog disturbed the repose of the public, but the proof adduced established that the inmates of one house only were disturbed. That, it was held, was insufficient to support the conviction.

The same question arose in another form in *De Silva v. De Silva.*[1] The Magistrate had ordered the removal of a coconut tree as likely to fall and cause injury to persons living or carrying on business in the neighbourhood or passing by. De Sampayo J. on the same reasoning, held that the section provided for a case in which the part of the public living in the place where the nuisance exists are generally affected, and that a single man and his family who complain against the next door neighbour are not within the contemplation of the section. He goes on to point out that such a person is not without a remedy.

The essential difference between a public and a private nuisance in such a case as this is also referred to by De Sampayo J. in *Saram v. Seneviratne.*[2] It is in the quantum of annoyance that

[1] *6 W. R. 98.* [2] *21 N. L. R. 190.*

public nuisance differs from private. The words "'' to the public or to the people in general '' mean a body or considerable number of persons.

There was no evidence before the Magistrate that anyone was inconvenienced except the original complainant and his household. The evidence led does not therefore support the charge. Whilst sympathizing with the complainant, for I also have experienced the same annoyance on occasion, the accused should have been acquitted.

I might here point out that had proceedings been instituted under the provisions of section 1 (4) of Ordinance No. 15 of 1862 (an Ordinance for the better preservation of public health and the suppression of nuisances) on the authority of *Snowden v. Rodrigo* [1] and P. C. Colombo, 3,901 (*supra*) proof of a nuisance to one family or person is enough if it be shown to be permanent or a frequently recurring nuisance. The evidence led here is, however, clearly not sufficient to satisfy even that latter requirement.

The appeal must for the reason I have given be allowed, the conviction being set aside.

Conviction set aside.