

1921.

Present : Shaw J.

DANIEL *v.* FERNANDO.

167—*P. C. Colombo, 20,422.*

Conviction for being drunk and disorderly—Binding over to keep the peace—Criminal Procedure Code, s. 80.

The accused was convicted of being drunk and disorderly in a public place under the Police Ordinance, and bound over to keep the peace under section 80 of the Criminal Procedure Code.

Held, that the offence of being drunk and disorderly is not an offence which involves a breach of the peace, and that the order binding him over to keep the peace was wrong.

THE facts appear from the judgment.

Hayley, for appellant.

Sansoni, for respondent.

March 3, 1921. SHAW J.—

The accused has been convicted under the Police Ordinance of having been drunk and disorderly in a public place. The Magistrate has sentenced him 'to fourteen days' rigorous imprisonment, and has also bound him over to keep the peace under section 80 of the Criminal Procedure Code. Section 80 provides for the binding over of people who are convicted of any offence which involves a breach

of the peace or of committing criminal intimidation by threatening injury to persons or property or of being a member of an unlawful assembly. The offence of being drunk and disorderly is not an offence which involves a breach of the peace, nor do I think it is an offence which involves a breach of the peace where the disorderly conduct which constitutes the offence is, as it was in the present case, using indecent language and uttering threats to people. If it had been desired to get the accused bound over under this section, he should have been charged with the offence of criminal intimidation, when he might have been bound over under the section had he been found guilty of that offence.

I vary the order of the Magistrate by deleting the order for binding over to keep the peace.

Varied.

1921.

SHAW J.

*Daniel v.
Fernando*

