APPELLATE CRIMINAL.

Before Mr. Justice Wallace and Mr. Justice Madhavan Nayar.

P. NATESA MUDALIAR (APPELLANT) ACCUSED,

v.

KING-EMPEROR.*

1926, September 22.

Madras City Municipal Act, sec. 288—Operation of—If proof of nuisance a pre-requisite to—Person to determine what constitutes nuisance—Interpretation by reference to marginal notes.

Under section 288 of the Madras City Municipal Act the question whether the machinery is or is not a nuisance is for the Commissioner alone, and it need not be proved that the machinery is a nuisance before any part of the section comes into operation. Any one erecting machinery, whether it constitutes a nuisance or not, has to obtain the permission of the Commissioner

The construing of a section of a statute by referring to the marginal note is not a legitimate method of construction.

In re Smith (1925), 45 M.L.J., 731, dissented from.

APPEAL against the order of the Court of the Presidency Magistrates, Georgetown, Madras, in case No. 30993 of the Calendar for 1924.

P Sankaranarayana for the appellant.

Crown Prosecutor for the Crown.

JUDGMENT.

The appellant has been convicted of erecting, without the permission of the Commissioner of the Madras Municipal Corporation, machinery by the use of which smell, noise, vibration, etc., are produced. This is an offence by virtue of sections 288 and 357 and schedule 7 of the Act. Admittedly he has put up an electric

* Criminal Appeal No. 331 of 1926.

NATESA MUDALIAR v. KING-EMPEROR.

motor-driving mill and the evidence shows that this machinery emits disagreeable odours and produces considerable noise.

It is contended first that this is not machinery. This contention deserves no consideration.

Next, it is urged that the appellant had only substituted this motor for an oil-engine for which he had taken out permission. But even so, it is obvious that he had erected this machinery.

Finally, it is urged that the machinery is not a nuisance. But that is no defence to the case. The wording of section 288 is plain, that the question whether the machinery is or is not a nuisance is one for the Commissioner alone, and if he finds that it is a nuisance he may refuse permission altogether. Whether it is a nuisance or not a nuisance is immaterial, permission has to be obtained in either case, and may be withheld in the former case.

It is, however, brought to our notice that one learned Judge of this Court has, in a ruling in *In re Smith*(1), taken a different view, namely, that it must be proved that the machinery is a nuisance before any part of the section comes into operation. With all deference we are unable to agree with this view. To hold so would result in this, that the section empowers the Commissioner to grant a licence for what is a public nuisance and what he himself considers a public nuisance. The learned Judge was constrained to support his reading of the section by referring to the marginal note, but it has been frequently held that that is not a legitimate canon of interpretation. See the Privy Council case in *Balraj Kunwar* v. *Jagatpal Singh*(2). The section as it stands is to our minds perfectly plain; any one

(1) (1925) 45 M.L.J., 731. (2) (1904) I.L.R., 26 All., 393 (P.C.) at 406.

erecting machinery must get the permission of the Commissioner (whether permission is equivalent to *licence* is a matter which we need not consider in this case) and the Commissioner may refuse permission if the machinery in his opinion constitutes a nuisance to the neighbourhood. The section is a very salutary one in the interests of the general public. We can therefore see no reason to interfere and we dismiss this appeal.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Jackson.

SAMIULLAH SAHIB AND EIGHTEEN OTHERS (ACCUSED 1 TO 9 AND 11 TO 20), PETITIONERS*

1926, September 9.

v.

KING-EMPEROR.

Persons separately engaged in fishing in prohibited waters—No common object or common intention—Joint trial under ss. 379 and 447, Indian Penal Code—Same transaction—s. 239, Criminal Procedure Code—Applicability of.

Where a number of persons were all separately engaged in fishing, and were merely several poachers gathered in the same place at the same time, and there was no evidence of a common object or a common intention, and the said persons were tried together for offences under sections 379 and 447 of the Indian Penal Code as having been committed in the course of the same transaction, and convicted, *held*, that the accused ought not to have been tried together and that such joint trial was not a mere irregularity.

Whenever the applicability of section 239 of the Criminal Procedure Code is doubtful, it is far better that the accused should be tried separately. *Mala Makalakati Subbadu* v. *King-Emperor*, (1915) 28 M.L.J., 381, followed, *Emperor* v. *Rafuz-Zaman*

* Criminal Revision Case No. 33 of 1926.