1895.
December 16.

QUEEN *v.* CARA *et al.*

D. C., Kalutara (Criminal), 650.

Criminal Procedure Code, s. 18—Sentence—Power of Court to give aggregate punishment—Distinct offences.

Under section 18 of the Criminal Procedure Code, it is competent for a District Court to pass sentences on an accused person aggregating four years.

But such a power should not be exercised except when the offences of which the accused is convicted are completely distinct in their character.

THE persons accused in this case were convicted of house-breaking by night in order to commit theft (under section 443) and of committing theft in the same building used as a human dwelling (under section 369 of the Penal Code), and each of the accused were sentenced "to undergo rigorous imprisonment for a period of two years for the first offence, and further to undergo rigorous imprisonment for a period of two years for the second offence, the several terms of imprisonment to commence immediately after the expiry of the first term; in all to undergo each four years' rigorous imprisonment."

On appeal preferred by the accused, *Dornhorst* (with him *Jayawardana*) appeared for them.

The Supreme Court affirmed the conviction, but ordered the sentence passed on each of the appellants to be reduced from four to two years, for reasons given in the following judgment:—

WITHERS, J. 16th December, 1895. WITHERS, J.—

Notwithstanding the able way in which he put his appeal, Mr. Dornhorst failed to convince me that the verdict arrived at is a wrong one.

I reserved consideration of the sentences passed on the appellants.

The 18th section of the Criminal Procedure Code seems to me clearly to enact that, when a person is convicted at one trial of two or more distinct offences, the Court may sentence him for such offences to the several punishments prescribed therefor, which such Court is competent to inflict, provided that if the case is tried by a District or Police Court, the aggregate shall not exceed twice the amount of punishment which such Court in the exercise of its ordinary jurisdiction is competent to inflict.

Hence a District Court is competent in such a case to pass sentences aggregating four years.

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Such a power should not, however, be exercised except when the offences are completely distinct in their character. The distinct character of the offences will be best indicated by the intention of the offender. If, *e.g.*, the dominant intention is to injure the person, there should be but one punishment, though the transaction in its entirety discloses more than one injury to the same person. If the transaction, on the other hand, discloses an intention to commit a crime against the person as well as the property of the injured person, the punishments may and should be distinct. Let me illustrate what I mean. If A commits the offence of rape against B, and then and there commits theft from B's person, his conduct indicates the intention of committing two offences wholly distinct in character, and separate sentences would be appropriately passed upon him in such a case. Lust and greed are alike gratified.

In the present case, to use the language of the old Criminal Law, there was burglary and theft from a dwelling-house in one and the same transaction. The single intention as disclosed by the conduct of the appellants was to commit an offence against property. In consequence one sentence should have been passed, in my opinion. I therefore reduce the sentence against each of the appellants from four to two years' rigorous imprisonment.