QUEEN *v.* CARA *et al.*

1895.
December 11 and 16.

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

Criminal Procedure Code, s. 18—Power of District Court to pass aggregate sentences—When it should be exercised.

A District Court convicting a person, at one trial, of two or more distinct offences may sentence him to the several punishments prescribed therefor, provided the aggregate does not exceed four years.

The power of passing such sentences should not be exercised except when the offences are completely distinct in their character.

The distinct character of the offences is best indicated by the intention of the offender.

Therefore, where house-breaking by night and theft were committed in the same dwelling-house, and the conduct of the accused showed only the single intention to commit an offence against property, *held* that distinct sentences should not be passed in such a case.

THIS was an appeal from a conviction of the accused—first, of committing house-breaking by night in order to commit theft, and thereby committing an offence punishable under section 443 of the Penal Code; and second, of committing theft in a building used as a human dwelling of a quantity of cloths, &c., and thereby committing an offence punishable under section 369 of the Code. The District Judge sentenced each of the accused 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 second term of imprisonment to commence immediately after the expiry of the first term: in all to undergo each four years' rigorous imprisonment.

The accused appealed.

Dornhorst, for appellants.

No appearance for respondent.

Cur. adv. vult.

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

1895.
December 11 and 16.
WITHERS, J.

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.

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 inquiry 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 commit 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 this 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.