SILVA *v.* RANIS.

1897.
March 23.

P. C., Galle, 24,035.

House-breaking by night—Accused seen in neighbourhood of the house, carrying something—Transfer by accused of certain property, identified as complainant's to house of a third party—Presumption of house-breaking and theft—Impropriety of separating the two offences.

Complainant's house having been broken into in the night and bags of arecanuts carried away, the accused were seen going along the road leading from that house carrying each a filled gunny bag, and later on they left the bags in the house of a third party, and such bags were identified by complainant as being part of the property stolen that night.

Held, per BONSER, C. J.—That the correct inference to be drawn from such evidence was that the accused were guilty of house-breaking and theft, and that the Police Magistrate ought not to have separated the two offences and tried the offence of theft summarily.

THE facts of the case appear in the judgment of the Chief Justice.

Bawa, for appellant.

23rd March, 1897. BONSER, C.J.—

In this case the Police Magistrate of Galle has convicted the appellant of theft of some bags of arecanuts. It appears that some time in the night of the 16th February the house of the complainant was broken into by a hole being made in the wall, and certain bags of arecanuts were carried away, so that it is clear that, on that night, an offence was committed—the offence of house-breaking by night, which is punishable under section 443 of the Penal Code. That is an offence triable only by a District Court. It is also clear that the offence of theft in a building used as a human dwelling was committed on the same night as the house-breaking. That is an offence triable by a Police Court, if the property stolen does not exceed Rs. 100 in value. It appears that in the present case the property stolen did not exceed Rs. 100 in value, and therefore the charge of theft was triable by the Police Court.

The principal evidence against the appellant is that of two women, who were originally accused jointly with him. They say that on the night in question, about midnight, the appellant and some of the other accused brought to their house certain bags of arecanuts, which were subsequently found by the police there, and which were identified by the complainant as being part of the property stolen that night. Their evidence was confirmed by a man called Lokuhamy, who says that on the same night—the

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night of the robbery—he saw the appellant and two of the other accused going along the road leading from the complainant's house, about four fathoms therefrom, each carrying a filled gunny bag. If that is true, it is quite clear that the appellant took part in the house-breaking. Recent possession of property may be ascribed to a receipt of it knowing it to be stolen. But if the evidence is true, the time and place at which the accused were seen shows that that is not the correct inference to be drawn. The correct inference would be that they were engaged in this house-breaking and theft.

In these circumstances, I do not think that the Police Magistrate ought to have separated the two offences, which were so intimately connected as these offences of house-breaking and theft. It was all one transaction, and it ought not to have been split up. Therefore, I think this case should be tried before the District Court, and it is accordingly transferred to that Court for trial with assessors.