

1963

Present : Herat, J., and Abeyesundere, J.

B. DON MARTHELIS and others, Appellants, and **THE QUEEN**,
Respondent

S. C. 5-10/62—D. C. (Crim.) Colombo, N2055/33289/C

Indictment—Unlawful assembly—Joinder of counts based on unlawful assembly with counts based on common intention—Validity—Criminal Procedure Code, ss. 178–181, 184.

Counts based on the allegation of unlawful assembly cannot be joined in the same indictment with counts based on common intention.

¹ (1954) 56 N. L. R. 243.

APPEAL from a judgment of the District Court, Colombo.

Colvin R. de Silva, with D. S. Wijesinghe, for the Accused-Appellants.

P. Colin-Thome, Crown Counsel, for the Attorney-General.

March 19, 1963. *ABEYBUNDURE, J.—*

Of the thirteen accused in this case, the 1st, 4th, 5th, 6th, 9th, and 11th accused were convicted on all the nine counts in the indictment and sentenced to various terms of imprisonment which in respect of each accused aggregated to fifteen months' rigorous imprisonment. The convicted accused have appealed from their convictions and the sentences passed on them. Dr. Colvin R. de Silva, who appeared for the accused-appellants, argued that the indictment was invalid by reason of the misjoinder of charges. Counts (1) to (5) were based on the allegation of unlawful assembly and counts (6) to (9) which related to the offences of causing simple hurt and committing mischief were based on common intention. Section 178 of the Criminal Procedure Code requires every charge to be tried separately except in the cases mentioned in sections 179, 180, 181 and 184 of that Code. Crown Counsel who appeared for the Attorney-General conceded that none of the four last-mentioned sections applied to the counts in the indictment in this case. The joinder of the two sets of charges referred to above is therefore not according to law. Consequently the indictment is invalid. We quash the convictions of the accused-appellants and order that they be discharged.

HERAT, J.—I agree.

Convictions quashed.