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Present : Lyall Grant J.THE KING *v.* SIYARIS.6—*P. C. Galle, 30,764.*

[SECOND SOUTHERN CRIMINAL CIRCUIT 1927.]

Evidence—Housebreaking—Evidence of possession of other stolen articles—Intent—Rebut defence—Evidence Ordinance, ss. 14 and 15.

On an indictment charging the accused with murder and house-breaking, the prosecution tendered evidence to prove that, at the time the accused entered the house broken into, he was in possession of other articles stolen from another house the same night.

Held, that the evidence was admissible to prove the intention with which the accused entered the house and to rebut the defence that he had come at the invitation of the wife of the owner.

THE accused was charged before the Supreme Court Criminal Sessions, Galle, with murder and with committing house-breaking by entering the house of one Carolis in order to commit theft. The defence was that his presence in the house was not due to any intention to commit theft but to the invitation of the wife of Carolis. The prosecution led evidence to show that at the time the accused entered the house he was in possession of certain articles which had been stolen the same night from a house about a mile away. On an objection raised, the learned Judge held that the evidence was admissible.

E. M. Karunaratne, for accused.

J. E. M. Abeyesekere, C.C., for Crown.

October 27, 1927. LYALL GRANT J.—

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I am asked to rule on the admissibility of certain evidence. The accused is charged with having on June 5, 1927, at Kaduruppe, in the District of Galle, committed housebreaking, by entering into the house of one Dinetti Carolis, in order to commit theft. It has been proved and is admitted by the accused that he was present at the house on that night. But he has raised as a defence that his presence there was not due to any intention to enter into the house to commit theft, but that he was there on the invitation of Baisohamy, the wife of the owner of the house. Baisohamy has been cross-examined at some length, with the object of showing that she is a woman of bad character, and the accused, in the previous trial in this Court, went into the box and gave evidence at considerable length to show that he was, and had been for some time, on intimate relations with the woman Baisohamy. I understand from counsel for the defence that he adheres to his defence, and the questions which have already been put in cross-examination to the prosecution witnesses tend to show that this defence is being maintained.

In these circumstances, the prosecution tenders certain evidence, which is to the effect that at the time that the accused entered this house he was in possession of certain articles which on the same night had been stolen from a house about a mile from the spot. I understand that this evidence is preferred for the purpose of discrediting the defence put forward by the accused and supporting the story of the witness Baisohamy. I think in these circumstances that the evidence can be admitted. The accused has put in issue the state of mind which he had at the time that he came to the house where the offence charged was alleged to have taken place, and the question whether he came as a thief or as this woman's paramour. That is a question of intention, and the evidence which is proposed to be led is relevant as throwing some light upon the intention with which he came to the house. I am also of opinion that even if this evidence is not admissible under section 14 of the Code, it is admissible under section 15. Section 15 provides that where there is a question whether an act was done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant. The only difficulty under that section is whether one other act in addition to the act complained of can be said to make the act complained of part of a series. Whether or not such an act forms part of a series appears to depend entirely on the class of acts which are in question, and where the question is one of housebreaking in a particular neighbourhood on a particular night, I think that one other act is

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sufficient to constitute a series of similar occurrences. Under section 14 the first illustration given is that of a person receiving stolen goods, knowing them to be stolen, and it has been held to be relevant in such circumstances to prove that the accused was in possession of other stolen articles. The question whether, when a person intended to commit a burglary, he was found in possession of articles which had been stolen on the same night appears to me to be relevant as tending to show the intention with which he entered a particular house on that night. It has, I think, always been held to be relevant in cases of burglary to prove that the accused was in possession of burglar's implements, and, if the defence were set up in such a case that the implements were intended for use in another place, that is matter which would be left to the jury. The second illustration is also somewhat similar, that is, the charge of fraudulently delivering a counterfeit coin, which the accused knew to be counterfeit, where it is held to be relevant to show that the accused was possessed of a number of other counterfeit coins.

I think that the necessary "nexus" between the previous act alleged to have been done by the accused and the act with which he is now charged is sufficiently close to allow the evidence tendered to be admitted.

Objection overruled.