*Present*: Mr. Justice Wendt.

*1908.*
*July 27.*

THE KING *v.* PODI SINNO.

*D. C. (Criminal), Colombo, 1,993.*

*Robbery, charge of—Conviction for theft—Validity—Penal Code, ss. 380 and 367—Criminal Procedure Code, s. 183.*

A person charged with robbery under section 380 of tht Ceylon Penal Code may be convicted of theft under section 367, although he was not charged with it.

THE accused was indicted for robbery under section 380 of the Penal Code. The Additional District Judge (H. A. Loos, Esq.) convicted the accused of theft under section 367 of the Penal Code, without altering or amending the indictment, and sentenced him to undergo three months' rigorous imprisonment.

An appeal was taken on the ground that the District Judge was wrong in convicting the accused of theft under section 367 of the Penal Code without any charge under that section.

*H. A. Jayewardene*, for the accused, appellant.

*Walter Pereira, K.C., S.-G.*, for the Crown.

*Cur. adv. vult.*

July 27, 1908. WENDT J.—

The appellant was tried upon an indictment which charged that on or about May 31, 1908, at Welikada, in the District of Colombo, he did rob one Hettiarachchige Cornelis Perera of a comb, a handkerchief, and some money, and that he thereby committed an offence punishable under section 380 of the Ceylon Penal Code. The District Judge convicted him of theft of the articles named under section 367 of the Ceylon Penal Code, and sentenced him to three months' rigorous imprisonment. The accused appeals on the following point of law, viz., that it was not competent for the Court upon the indictment for robbery to convict of the theft. Section 183 of the Criminal

[1] *66 L. J. P. C. 55; 2 N. L. R. 313.*

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Procedure Code enacts that when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it. In my opinion this provision is ample to support the action of the District Judge. The indictment was for robbery, and it gave even fuller particulars of the offence than appears to be the practice in Indian indictments, where it would appear to be sufficient to charge that the accused " did commit robbery," or " robbed *A. B.*" Under this indictment it was open to the prosecution to prove (section 379, Penal Code) either (1) theft accompanied by hurt or wrongful restraint, or (2) extortion accompanied by the putting of the person robbed in fear of instant death or hurt. This latitude is no hardship to the accused, because the two forms of robbery are so closely allied that it is frequently very difficult to distinguish between them (see the report of the framers of the Indian Penal Code, as quoted in page 30 of the " Law of Crimes " by Ratanlal and Diraglal, 4th edition). Inasmuch, therefore, as it was open to the prosecution to prove a theft as one ingredient of the robbery charged, it was equally open to the Court to convict the accused of theft and acquit him of the other particulars necessary to make up the offence of robbery. The evidence led for the prosecution in the Police Court gives an accused party notice of the form of robbery which it is intended to prove against him, but if in any case he is in doubt, it would be open to him to require of the prosecution a strict compliance with section 169 of the Procedure Code. The case of *Regina v. Chand Nur and another* [1] relied upon by the appellant is not exactly in point. It was there held that a man charged with murder could not, on the true construction of the Indian provision corresponding to section 183 of our Procedure Code, be convicted of abetment of the murder, because the graver charge did not give the accused notice of all the circumstances going to constitute the minor offence. " The latter," said West J., " is arrived at by mere subtraction from the former. But when this is not the case, where the circumstances, embodied in the major charge, do not necessarily, and according to the definition of the offence imputed by that charge, constitute the minor also, the principle no longer applies, because notice of the former does not necessarily involve notice of all that constitutes the latter." In the present instance, keeping in view what I have already said as to the close connection between robbery by theft and robbery by extortion, I should hold that the indictment did give the accused notice of the charge of theft, of which he has been convicted.

The point of law therefore fails, and I dismiss the appeal.

*Appeal dismissed.*

[1] *Bom. H. C. Rep., vol. II., p. 240.*