1931 *Present:* **Drieberg J.**

THE KING *v.* MUTALIP *et al.*

7—D. C. (Crim.) Puttalam, 475.

Appeal—Accused convicted of several offences—Sentences to run concurrently—Right of appeal—Criminal Procedure Code, s. 335.

Where an accused has been convicted at one trial of several offences and sentenced to various terms of imprisonment, to run concurrently, his right of appeal depends upon the actual term of imprsonment he has to undergo and not on the aggregate term to which he is sentenced.

APPEAL from a conviction by the District Judge of Puttalam.

Hayley, K.C. (with him *Soertsz*), for appellant.

Pulle, C.C., for the Crown.

August 17, 1931. DRIEBERG J.—

The appellants were convicted under the first seven counts of the indictment with being members of an unlawful assembly and rioting; the other charges were of committing hurt to various persons in prosecution of their common object. The appellants were sentenced to terms of rigorous imprisonment varying from one week to three months, the sentences to run concurrently, and none of the appellants had to undergo a longer term of imprisonment than three months though the aggregate of the sentences in each case exceeds three months.

Mr. Hayley contended that under section 335 of the Criminal Procedure Code the appellants had the right of appeal. The question is not free from doubt, but I am inclined to follow the ruling of de Sampayo A.C.J. in *King v. Samaranayake* [1] that the test is the term of imprisonment which the appellant has to undergo.

No application was made for leave to appeal on the facts and it was suggested that the appellants may have thought that they had a right to appeal and so omitted to apply. I therefore directed an inquiry to be made from the learned District Judge and he replied that he would not have allowed leave if an application had been made to him.

The one point of law which was certified in the petition of appeal was that this prosecution was barred by a previous conviction on a charge of committing an affray under section 157 of the Penal Code. The judgment on this point is right and I need make no further reference to it.

[1] *(1923) 1 C. T. L. R. 265.*

Mr. Hayley contended that on the facts as found the common object of the appellants was nothing more than to exclude the " two-trustee " party to which the injured men belonged, that it could not be said that they assembled with the common object of causing hurt; but the difference is merely apparent and not real, for it has been found that it was their intention to exclude the others by violence if they insisted on their right to enter and that they had prepared the means to do so.

I was asked to reduce the sentences to fines and I have given the matter careful consideration. There is much to be said for the view that a fine would tend more to the calming down of the angry feelings which this incident aroused than sentences of imprisonment which might keep alive a bitterness which would prevent any real reconciliation between the parties. But there is the danger that leniency may not be properly understood or appreciated and a reduction of sentences to fines may serve no good purpose. The learned District Judge was in a better position than I am to form an opinion on this point and I have no doubt that he felt that these sentences were necessary.

Affirmed.