1915.

[FULL BENCH.]

Present: Wood Renton C. J. and Pereira and Ennis JJ.

THE KING *v.* SUPPAR *et al.*

56—61 D. C. (Crim.) Jaffna, 2,617.

Unlawful assembly—Common object—Voluntarily causing hurt—"Other offence"—Penal Code, s. 138.

The expression "other offence" in section 138, sub-section (3), of the Ceylon Penal Code does not mean an offence *ejusdem generis* with those expressly mentioned in the sub-section.

An intention voluntarily to cause hurt can constitute the common object of an unlawful assembly. *King v. Carupiah* [1] over-ruled..

THE facts appear sufficiently from the judgment. The case was reserved for argument before a Full Bench by Pereira J.

A. St. V. Jayewardene (with him *Arulanandam*), for accused appellants.—The common object set out in the indictment is causing

[1] *(1914) 17 N. L. R. 383.*

hurt. This is insufficient to support a conviction under section 138. The offence of causing hurt is not one *ejusdem generis* with those mentioned in the section. See *King v. Carupiah*[1]; also *Tambyah's Penal Code 247 ; Tambyah's Reports, vol. VI., p. 78.*

Section 138 comes under chapter VIII, which deals with offences against the public tranquillity. If the words " other offence " is given an extensive interpretation and made to apply to all offences as defined in section 38 of the Penal Code, absurd results will follow. Is forging a document secretly and within closed doors, if done by more than four persons, to come within the purview of section 138? Clearly not. Causing hurt is not an offence *ejusdem generis* with mischief and criminal trespass. The classification in the Code makes it clear. One is an offence against property, the other against person.

S. Obeyesekere, C.C., for the Crown.—*Queen v. Nandua*[2] is an authority in favour of the prosecution. It has been the invariable practice to include crimes of violence, at least as constituting the common object, within the purview of section 138. Counsel relied on *King v. Peris.*[3] Even if " other offence " is to be given the restricted interpretation, causing hurt is an offence *ejusdem generis* with criminal trespass, inasmuch as causing hurt is a trespass on one's personal rights of safety. It has been held in India that abduction and assault could form the common objects of an unlawful assembly. See *13 W. R. 33, 3 Cal. 584, 22 Bal. 276.*

May 18, 1915. PEREIRA J.—

In this case two questions have arisen for decision: (1) Whether in the clause, " To commit " any mischief, or criminal trespass or " other offence, " occurring in the definition of " unlawful assembly " in section 138 of the Penal Code, the expression " or other offence " is to be taken as referring to an offence *ejusdem generis* with mischief and criminal trespass; and (2) whether " voluntarily causing hurt " is an offence *ejusdem generis* with mischief and criminal trespass? On both these questions I regret I am obliged to differ from the view taken by the rest of the Court. It has been argued that the definition of the word " offence " in section 38 of the Code is conclusive on the first question; that is to say, that, inasmuch as the word " offence " is defined in a particular way in section 38, the flood gate of offences embraced by that definition is opened the moment the word is used in another section of the Code, and no expression in the latter section itself, or rule of law calculated to give the word a restrictive meaning, can stem the tide. I cannot for one moment accede to this proposition. True, the word cannot be taken as meaning anything other than the meaning assigned to

[1] *(1914) 17 N. L. R. 383.* [2] *(1895) 1 N. L. R. 317.*

[3] *(1914) 18 N. L. R. 321*

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it by the definition, but what has the definition to do with the question as to what among the numerous offences embodied by it are indicated by the word used in any particular section of the Penal Code?

The simple question is whether the legal principle of *ejusdem generis* applies to the word (cited above) used in section 138. In my opinion there can be no doubt as to the application, and, so far as I can see, all the text writers agree that in strict law the principle applies; but for some reason, of which I am not aware, they are inclined to think that the clause was intended to include all offences. Dr. Gour in his commentary (vol. 1, p. 568) says : " It (that is, the clause corresponding to the above in the Indian Code) says that an assembly is unlawful if its common object is to commit any mischief or criminal trespass or ' other offence. ' Now, strictly speaking, the other offence must be *ejusdem generis*, otherwise the preceding enumeration was unnecessary. If the clause then means to commit any offence, why should it have specified, of all, the two offences of mischief and criminal trespass?. . . . . However, the clause is intended to include all offences, both against person and property, and not only mischief, criminal trespass, and *ejusdem generis*. " This last proposition is not supported by any judicial decision or *dictum*, and it can only be looked at as the pious opinion of a learned author.

If the word " offence " in the clause cited above is to be regarded as meaning (according to the definition in section 38) any offence under the Code or any other law, provided that, in the case of the latter, it is punishable with not less than six months' imprisonment. the result would be that if five or more persons get together in a quiet room to commit a forgery they would be guilty of unlawful assembly, and thus of an offence under chapter VIII of the Penal Code, that is to say, an offence against " the public tranquillity. "

As regards the second question, it is manifest that voluntarily causing hurt is not an offence *ejusdem generis* with mischief and criminal trespass. The former falls into the category of offences affecting the human body, while the latter fall into the category of offences against property—two distinct classes according to the classification in the Code. It has been said that if the view set forth above is correct, the result would be that while an assembly of five or more persons with the common object of killing a dog would be an unlawful assembly, such an assembly with the common object of killing a human being or committing robbery would not be an unlawful assembly. Well, all that I can say is that the Legislature in its wisdom has so ordained. Apparently it was thought that in the latter case the weapon of prosecution, as for an unlawful assembly, which, after all. is punishable with only six months' imprisonment, need not be used. There are more formidable weapons provided by law for such cases. Dr. Gour observes (vol. I.,

p. 568) that in the original draft of the Indian Code the words used were " to commit any assault (of course, not the same as causing hurt), mischief, or criminal trespass, or wrongfully to restrain any person, or to put any person in fear of hurt, or of assault, or wantonly to insult or annoy any person." Similarly, in clauses 1, 2, 4, 5, and 6 of section 138 of our Code serious offences against the human body are not included. Apparently they were intended to be dealt with by other means. If the absence of any reference to voluntarily causing hurt and other offences affecting the human body in clause 3 of section 138 of the Penal Code is an inadvertent omission, it is in the province of the Legislature to supply the remedy. As once observed by Jessel M.R., " we must administer the law as we find it. " (see *Bunting v. Sargent*[1]). I answer the first question in the affirmative and the second in the negative.

WOOD RENTON C.J.—

These appeals have been referred by my brother Pereira to a Bench of three Judges solely for the determination of a point of law, namely, whether under section 138 of the Penal Code an intention voluntarily to cause hurt can constitute the common object of an unlawful assembly. There have been conflicting single Judge decisions on this question. In *Muriweera v. Danta* [2] Withers J. answered it with some hesitation in the negative. In *Queen v. Nandua* [3] he disapproved of his own ruling in *Muriweera v. Danta.* [2] In *The King v. Carupiah*[4] my brother Pereira followed the case of *Muriweera v. Danta.*[2] In 174-175—D. C. (Crim.) Colombo, 284,[5] I dissented from the view expressed in *The King v. Carupiah.* [4]

We have now had the advantage of full and able argument on the whole subject at the Bar. I adhere to the decision in 174-175—D. C. (Crim.) Colombo, 384.[5] I will consider the question first as a matter of interpretation. Section 6 of the Penal Code provides that every " expression which is explained in any part of this Code is used in every part of this Code in conformity with the explanation."

The question under consideration depends on whether the words " other offence " in the third clause of section 138 are to be construed generally, or, in accordance with the rule as to *ejusdem generis*, should be restricted to offences of the same character as " mischief or criminal trespass," which precede them. Now, the term " offence " is defined in section 38 (*a*) as denoting a thing made punishable by the Code " except in the chapter and sections mentioned in clauses (*b*) and (*c*) of this section." In the sections enumerated in clause (*b*), the word " offence " is to denote " a thing punishable in Ceylon under this Code or under any law other than this Code." Section

[1] *(1879) L. R. 13 C. D. 335.*
[2] *(1895) 6 Tam. 78.*
[3] *(1895) 1 N. L. R. 317.*
[4] *(1914) 17 N. L. R. 383.*
[5] *S. C. Mins., Nov. 19, 1914.*

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138, *inter alia*, is comprised in clause (*c*), and the effect of that clause is that in section 138 the word "offence" "has the same meaning when the thing punishable under any law other than this Code is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine."

The words "the same meaning" cannot be explained by a reference to clause (*a*). We have to seek their interpretation in clause (*b*), and they appear to me necessary to involve the conclusion that in section 138 the term "offence" denotes a thing punishable either under the Code or under any other law with imprisonment for six months or more, whether with or without a fine. If that be the correct construction of section 138 of the Penal Code, the term "offence," must, by virtue of section 6, have the same meaning in section 138. It will be noted that neither in section 6 nor in section 38 is there any clause enabling the statutory interpretation to be controlled by the context.

It is argued, however, that even if this interpretation be the right one, the meaning of the term "offence" in section 138 should be held to be limited by the heading to that chapter to "offences against the public tranquillity." Assault and kindred crimes are clearly offences against the public tranquillity, and, strictly speaking, there is no need for us to consider the effect of the heading in question any further. But, as the point has been fully argued, it might be desirable to refer to it. Headings in statutes belong to two classes. Sometimes they can be read grammatically into the group of sections to which they relate. In other cases they have no direct connection with the language of such sections (see *Union Steamship Company of New Zealand* [1]). Headings of the first class constitute a sort of preamble to the sections immediately following them (*Eastern Counties Railway v. Marriage*[2]). Headings of the latter class are generally regarded as having been inserted for the purpose of convenience of reference, and not as being intended to control the interpretation of the subsequent clauses, although the fact of a clause being found in a certain group may, in some cases, throw light upon its meaning (*Union Steamship Company of New Zealand*, [1] and compare *Inglis v. Robertson*, [3] *Queen v. Tirakadu*, [4] *Queen v. Payne* [5]). The heading to the chapter which includes section 138 of the Penal Code belongs to the second of these two clauses, and in view of the unqualified language of sections 6 and 38, I am disposed to think that it cannot be held to limit the interpretation of the term "offence" in the third clause of the section last mentioned. There is, however, another view, for which something may be said. It may well be that the commission of any offence, as defined in section 38, by a concourse of five persons or more, is, in strict law, an offence against

[1] (1884) 9 *A. C.* 365.
[2] (1861) 9 *H. L. C.* 32, 41.
[3] (1898) *A. C.* 629-630.
[4] (1890) *I. L. R.* 14 *Mad.* 126.
[5] (1866) *L. R.* 1 *C. C. R.* 27.

the public tranquillity, although it might well be expedient that some of the offences that fall within section 38 should, when so committed, be prosecuted under section 138 of the Penal Code. But to return to the question now immediately before us, I think that the rule of *ejusdem generis* is excluded, not only by the considerations which I have already endeavoured to set forth, but by the fact that it is not possible to find any group of offences *ejusdem generis* with mischief and criminal trespass that will furnish a satisfactory explanation of the words " other offence " in the third clause of section 138. It may be remarked, in passing, that the offence of assault is certainly not *ejusdem generis* with mischief and criminal trespass, and that, therefore, the point referred for our decision cannot be disposed of on that basis. So far as that point is concerned, the construction which I have here put on section 138 of the Penal Code is in accordance with the views of all the commentators on the corresponding section (section 141) of the Indian Penal Code whose works I have had the opportunity of consulting (see *Gour's Penal Law of India, vol. I., p. 568*, and *Ratanlal and Dhirajlal's Law of Crimes 177*), with the inveterate practice of the Courts in India, where such offences as abduction (see *Queen v. Golam Arfin* [1]) and assault (see *Queen Empress v. Rajcoomar Singh*, [2] *Babir v. Queen Empress* [3]) have always been regarded as possible common objects of an unlawful assembly, and, so far as my own ten years' experience in this Colony extends, of the Courts in Ceylon also, with the law of England, according to which the offence of unlawful assembly is committed by a concourse of three or more persons with the intention of committing any crime by open force or violence, and with reason itself. It is scarcely credible that the Legislature could have intended to penalize the act of a number of persons whose common object is to commit mischief by killing a cow, and to exempt from the consequences of unlawful assembly the conduct of the same persons if they waylaid a man on the highway with the intention of murdering him or of causing him grievous hurt.

I would answer the question in the affirmative, and would remit the case for adjudication on the merits.

ENNIS J.—

The accused-appellants in this case have been charged and convicted of being members of an unlawful assembly, the common object of which was to commit the offence of voluntarily causing hurt. The point for determination on the appeal is whether this is an offence under section 138 of the Penal Code, the material part of which runs: " An assembly of five or more persons is designated an ' unlawful assembly ' if the common object of the

[1] *(1870) 13 W. R. 33.* [2] *(1878) I. L. R. 3 Cal. 584, 585 and 586.*
[3] *(1894) I. L. R. 22 Cal. 276, 284 and 285.*

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persons composing that assembly is . . . . . " (Third) " To commit any mischief or criminal trespass or other offence."

The word " offence " in this section is defined in section 38, which runs:—

" (a) Except in the chapter and sections mentioned in clauses (*b*) and (*c*) of this section, the word ' offence ' denotes a thing made punishable by this Code.

" (*b*) In chapter IV and in the following sections, namely, sections 60, 61, 62, 63, 67, 100, 101, 102, 103, 105, 107, 108, 109, 110, 111, 112, 113, 184, 191, 192, 200, 208, 210, 211, 216, 217, 218, 219, 220, 318, 319, 320, 321, 322, 338, 339, 377, 378, and 431, the word ' offence ' denotes a thing punishable in Ceylon under this Code, or under any law other than this Code.

" (*c*) And in sections 138, 174, 175, 198, 199, 209, 213, and 427, the word ' offence ' has the same meaning when the thing punishable under any law other than this Code is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine."

The words " have the same meaning " in sub-section (*c*), in my opinion, refer to the definition at the end of sub-section (*b*), and, substituting this for the words " has the same meaning," gives the following definition:—

" In section 138 . . . . . .the word ' offence ' (denotes a thing punishable in Ceylon under this Code, or under any law other than this Code) when the thing punishable under any law other than this Code is punishable with imprisonment for a term of six months, whether with or without fine."

It was argued for the appellants that the general words following the specific words " to commit mischief or criminal trespass " must be construed *ejusdem generis*, and the case of *The King v. Carupiah* [1] was cited in support. I find a difficulty in applying this rule, in that I cannot call to mind any offence under the Code or any other law which can be said to be *ejusdem generis* with mischief and criminal trespass. Moreover, in *Maxwell on the Interpretation of Statutes, 4th edition, p. 507*, I find the following passage relating to this rule of construction:—

" Of course, the restricted meaning which primarily attaches to the general word, in such circumstances, is rejected when there are adequate grounds to show that it is not used in the limited order of ideas to which its predecessors belong. If it can be seen from a wider inspection of the scope of the legislation that the general words, notwithstanding that they follow particular words, are nevertheless to be construed generally, effect must be given to the intention of the Legislature as gathered from the larger survey."

[1] *(1914) 17 N. L. R. 383.*

The definition in section 38 makes the word " offence " in section 138 very little less general than if it stood undefined, and for the respondent it was argued that the express definition showed that the Legislature intended the general words to be construed generally.

Against this it was argued that if this were so, there was no need to specify mischief and criminal trespass at all, as they are offences under the Code, and for the same reason it would render the words " by means of criminal force " in the fourth and fifth sub-paragraphs of section 138 redundant. It seems to me that the intention of the Legislature and the scope of the legislation must be sought, if all the words in section 138 are to receive full weight, not only in the definition, but elsewhere in the Code. Now chapter VIII, in which section 138 appears, relates to " offences against the public tranquillity." If this be taken as the scope of the legislation, it is possible to assign a reason for the specific mention of mischief and criminal force and to place a limit to the otherwise very extensive operation of section 138.

Mischief and criminal trespass, in so far as they provide for the protection of private rights, do not necessarily affect public tranquillity, but the express mention of these specific offences in section 138 shows that the Legislature intended to regard the commission of these offences by a number of persons acting in concert as a matter affecting public tranquillity. The use of the general words in the section would be limited by the scope, and it would be a question in each particular case whether the common object of the assembly was to commit an offence affecting the public tranquillity. In the present case I entertain no doubt that the voluntary causing of hur would come within the scope and terms of the section.