

Present : Pereira J.

THE KING *v.* CARUPIAH *et al.*

86-96—D. C. (Crim.) Ratnapura, 1,074.

*Unlawful assembly—Common object—“ Other offence ”—Causing hurt—
Penal Code, s. 138.*

The expression “ other offence ” in section 138, sub-section (3), of the Ceylon Penal Code means an offence *eiusdem generis* with those expressly mentioned in the sub-section; and therefore, when the common object of an assembly was to commit an offence other than one in the nature of mischief or criminal trespass, the assembly could not be said to be an “ unlawful assembly,” unless, of course, it would be such an assembly under the other sub-sections of section 138.

THE facts are set out in the judgment.

A. St. V. Jayewardene, for appellants.—The offence of “ causing hurt ” cannot constitute the common object of the members of an unlawful assembly. The offence must be one *eiusdem generis* with those mentioned previously, viz., mischief and criminal trespass. “ Causing hurt ” does not come under the category. (See *Muniweera v. Danta*.¹)

Cooray, C.C., for respondent.—“ Offence ” is defined as anything made punishable under the Penal Code (see section 38) (also *Gour.*, p. 568, vol. I.)

Cur. adv. vult.

¹ 6 Tam. 78.

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In this case the accused have been convicted of being members of an unlawful assembly, of rioting, and of voluntarily causing grievous hurt in the prosecution of the common object of an unlawful assembly. It is quite clear that none of those convictions can stand. Charges 1, 2, and 3 of the indictment presuppose that the accused were members of an unlawful assembly. Now, there could have been no unlawful assembly unless the accused had in view such a common object as is mentioned in section 138 of the Penal Code. Had they such a common object? The common object relied on by the District Judge is causing hurt to one Mr. Eaton, and it has been argued that the commission of any offence is an object mentioned in sub-section (3) of section 138 of the Penal Code. In my view that sub-section does not make the commission of any offence a common object sufficient, the other elements being present, to constitute an unlawful assembly. The words of the sub-section are, "To commit any mischief or criminal trespass or other offence." It is manifest that the words "other offence" mean an offence *ejusdem generis* with the offence mentioned immediately before because, otherwise, there was no necessity for the mention of those offences at all. It would have been sufficient simply to say "To commit any offence." It is clear that an assembly of five or more persons to commit theft or forgery or criminal misappropriation of property cannot be said to be such an unlawful assembly as is contemplated by section 138. The commentary and cases cited at page 247 of Mr. Tambyah's work on the Penal Code support this view, and the case reported at page 78 of volume VI. of *Tambyah's Reports* is authority, if authority were needed, that causing hurt is not an offence *ejusdem generis* with mischief and criminal trespass. The present conviction cannot be supported. But it is clear that the accused voluntarily caused grievous hurt to Mr. Eaton, and that they were acting more or less in concert. Each is therefore liable for the acts of the other. At the same time Mr. Eaton beat the first accused with a stick, and the acts of the accused were more or less retaliatory. The injuries on Mr. Eaton were not very serious in themselves, but they amounted technically to grievous hurt, inasmuch as he was not able to follow his ordinary pursuits for twenty days.

I set aside the conviction on the 1st, 2nd, and 3rd counts of the indictment, and convict the accused under the 4th count of voluntarily causing grievous hurt, and sentence the first accused to three months' rigorous imprisonment; the second, third, fourth, and fifth accused to two months' rigorous imprisonment each; and the seventh, eighth, ninth, tenth, and eleventh accused to pay a fine of Rs. 10 each (in default two weeks' simple imprisonment).

Varied.