1946 *Present :* **Soertsz A.C.J. (President), Wijeyewardene and Canekeratne JJ.**

THE KING *v.* EDWIN *et al.*

APPEALS 59–60.

S. C. 99—M. C. Gampaha, 27,853.

Court of Criminal Appeal—Sentence—Reduction when excessive.

The Court of Criminal Appeal will reduce a sentence when it is manifestly excessive.

APPEALS, with leave obtained, against two convictions in a trial before the Supreme Court.

G. E. Chitty, for the appellants.

H. A. Wijemanne, C.C., for the Crown.

December 6, 1946. SOERTSZ A.C.J.—

This is an appeal, with leave obtained, only against the sentences passed on the two appellants on a conviction in the case of each of them of the offence of attempt to commit murder. There is some significance, we think, in the fact that three Judges on an earlier occasion thought fit to give the appellants leave to appeal in this case, and, speaking for the three of us now on the Bench, each of us has reacted in the same manner on hearing the sentence that was imposed on the two appellants. This is not adduced as a strong argument in support of the order we are about to make, but it is put forward as a matter which has some bearing when the question of whether the sentences passed were excessive or not is being considered. I think we can also say, each one of us, that in our experience as Judges it is rarely, if at all, that we have had occasion in a conviction for attempt to commit murder to pass a sentence of 15 years' rigorous imprisonment unless there were circumstances of a kind that compelled us to pass such a sentence. In this case, so far as we have been able to ascertain, not only are there no circumstances of a peculiarly aggravating character but there seem to be one or two matters that can be urged in favour of the appellants. For instance, in the case of both of them they appear to be men of good character. No attempt was made by the Crown to suggest that they were lawless or violent men who were disposed to take the law into their own hands. In the case of one of the accused, the 1st accused, the evidence shows that he is only 23 years of age and that is a matter which Courts always take into account when considering the question of sentence in a particular case. The other accused is said to be 50 years of age. It is true that he is not in as favourable a position in that respect as the other accused is, but still, for him it can be said that although he had lived to be 50 years of age he had not compromised his character in any way at all and we think that that is a matter which should be taken into account. Apart from that, there are other circumstances in this case which seem to tell in favour of the accused rather than against them. This trouble about the foot-path, which was the matter over which these parties appear to have

come into conflict on the day in question, had been brewing for some time and there had been petitions sent up to the Police on the very day of this conflict; but the Police, in characteristic fashion, contented themselves merely with warning both parties to keep the peace and be of good behaviour—a counsel of perfection which very rarely results in any practical manner. Another point which one might refer to as a point telling in favour of the accused is that if, as is suggested by the Crown, this was a case in which this attack upon the injured men had been concerted and plotted and planned, it is hardly likely that the weapons that were used on the injured men would have been the weapons which we are told were used—sticks or clubs, and that is a fact which seems to suggest, as Counsel for the appellants submitted it did, that the assailants when suddenly faced with this situation resorted to such weapons as were most readily to hand.

In view of all these circumstances, while appreciating the fact that a Court of Appeal should be slow to interfere with the discretion of a trial Judge on matters of sentence, we think that in this case the interests of justice would be sufficiently served by a sentence of 10 years' rigorous imprisonment.

Sentence reduced.