

causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating, that is to say, to imprisonment for a term not exceeding one year, if the hurt which he has voluntarily caused is not grievous, and for a term not exceeding ten years, nor less than six months, if the hurt which he has voluntarily caused is grievous.

(b) But if, while A is beating Z, Y interferes, and A strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

61. In all cases in which judgment is given in the manner prescribed in the law of procedure that a person is guilty of an offence, but that it is doubtful under which of certain penal provisions of this Code he is punishable, the offender shall be liable to be punished with whatever punishment is common to the penal provisions between which the doubt lies, and if imprisonment is common to the penal provisions between which the doubt lies, and any one of those provisions admits of simple imprisonment, the offender may be sentenced to simple imprisonment.

Illustrations.

(a) Judgment is given in the manner prescribed in the law of procedure that A is guilty either of murdering Z, or of previously abetting by aid the murder of Z. The punishment of murder, and that of previously abetting murder by aid, are the same. A is therefore liable to that punishment.

(b) Judgment is given in the manner prescribed in the law of procedure that A has committed an offence, but that it is doubtful whether that offence be theft or criminal breach of trust. Theft is punishable with rigorous imprisonment for three years, or fine, or both; criminal breach of trust is punishable with imprisonment of either description for the same term, or fine, or both. A is therefore liable to fine, which is common to both the penal provisions, and to rigorous imprisonment for three years, which is common to both the penal provisions. But he may be sentenced to simple imprisonment because one of the penal provisions admits of simple imprisonment.

(c) Judgment is given in the manner prescribed in the law of procedure that A has committed either theft, or criminal misappropriation of property not in possession. Here, as the punishment of fine is common to theft and to criminal misappropriation of property not in possession, A is liable to fine. Theft is punishable with imprisonment for a term which may extend to three years; criminal misappropriation of property not in possession is punishable with imprisonment for a term which may extend to two years. Imprisonment for two years is therefore common to both, and A may be punished with imprisonment for a term not exceeding two years. The imprisonment in both cases may be rigorous. A's imprisonment may therefore be rigorous. But the imprisonment for criminal misappropriation of property not in possession may be simple. Therefore A is liable to imprisonment of either description.

CHAPTER III.*

GENERAL EXCEPTIONS.

→ 62. Nothing is an offence which is done by a person who is or in good faith believes himself to be commanded by law to do it.

Illustrations.

(a) A, a Soldier, fires on a mob, by the order of his superior Officer, in conformity with the commands of the law. A has committed no offence.

(b) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and being led into a belief that Z is Y, arrests Z, believing in good faith that in arresting Z he is obeying an order which he is commanded by law to obey. Here A may, under certain circumstances, be liable to a civil action, but he has committed no offence.

→ 63. Nothing is an offence which is done by a person in the exercise, to the best of his judgment exerted in good faith, of any power given to him by law.

Illustration.

A sees Z commit what appears to A to be a murder. A in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offence.

* See Note B.