

R. v. J. H. KEY.

CRIMINAL REVIEW CASE NO. 243 OF 1939.

Criminal Procedure Code section 160 (1)—award of costs—amount of costs must be reasonable and definite.

Where a Magistrate awards costs in a criminal case such costs must be reasonable and must be for a definite amount. The amount of the costs so awarded should not exceed the amount actually incurred and this is stated by CHANNEL, J. in *Attorney-General v. Clark* (1909) 2 K.B. 7 at p. 12 as follows:

“The natural limit which exists as to ordering costs of proceedings is an amount up to the sum actually incurred”.

Thomson, A.J.: The accused in this case was convicted of a motor traffic offence and sentenced to pay a fine of £10. I am not concerned here with the conviction or sentence both of which were, in my opinion, both right and proper. In addition, however, to imposing the sentence I have mentioned, the Magistrate made the following order as to costs:

“It is ordered under section 160 (1) of the Criminal Procedure Code that the accused pay to the Public Prosecutor the costs of the prosecution not exceeding £1 9s. 4d.”.

By section 160 (1) of the Criminal Procedure Code it is lawful for a Magistrate “to order any person convicted before him of an offence to pay to the public or private prosecutor, as the case may be, *such reasonable costs as to such . . . Magistrate may seem fit*, in addition to any other penalty imposed”.

It is well settled that Magistrates in Subordinate Courts in this Territory have no inherent jurisdiction. They are the creatures of statute, their powers *tanta et talia* are given to them by Statute and in exercising these powers they have no authority to go beyond the statutory provisions which confer them. Under section 160 (1) of the Criminal Procedure Code the power given to the Magistrate is clearly described and defined. It is a power to order the convicted person to pay “such reasonable costs as to such . . . Magistrate may seem fit”. In other words it is for the Magistrate in his order to say just what costs are to be paid and in my opinion it follows from the wording of the section that he must also say what the amount of the costs is, for otherwise it could hardly be said that he had applied his mind to the question of whether the costs ordered were or were not “reasonable” and “fit”. It is not open to him to make an order for the costs to be taxed by the Taxing Master and neither is it open to him to do as he has done in this case and make an order merely for costs subject to their sum not exceeding a specified amount and then leave their precise amount in the air to be ascertained how and when and by whom it is not said.

The order as made by the Magistrate cannot, therefore, stand for it was an order which he had no power to make and it must accordingly be reversed in terms of section 309 (1) of the Criminal Procedure Code.