

## R. v. IEVERS.

CRIMINAL REVIEW CASE NO. 67 OF 1940.

*Criminal case—outstanding charges—procedure in considering outstanding charges in sentence.*

The procedure to be adopted by the Court in considering outstanding charges appears fully in the judgment hereunder.

See also *R. v. Ebrahim Mohmed Dudhia and Others* 3 N.R.L.R. 4.

Robinson, J.: The learned Magistrate has sent this case for review because, when sentencing the accused person, he took into consideration at the request of the accused, ten outstanding charges of a similar nature which were admitted. He held that the practice in England applied to the Subordinate Courts here. I am told that it has not been done before in this Territory and therefore the learned Magistrate thought it right to seek the opinion of the High Court.

2. The practice in England is clearly set out in *Archbold*, 30th Edition, page 226,<sup>1</sup> where the authorities are collected. It is as follows:

“Where offences other than the one for which the prisoner has been convicted have been committed by him, and he desires that they should be taken into account in determining the sentence, the Judge may properly take them into account if the offences are similar to the one for which the prisoner has been convicted, whether there has already been a committal for trial in another jurisdiction or not. But if in fact there has been a committal in another jurisdiction the Judge should first be satisfied that the prosecution consents, and such consent should not be withheld except on good grounds. If the offences desired to be taken into consideration are dissimilar to the one of which the prisoner has been convicted, the Judge should not take them into consideration, even with the consent of the prosecution, without first considering whether under all the circumstances it is proper so to do.

It is important that it shall be quite clear that the accused admits his guilt with regard to the charges. Where outstanding charges are taken into consideration it is convenient that a list should be made giving the date, nature and place of each such offence, and whether a warrant has been issued in respect of it and that the list be filed in the Court of trial and be available in the case of an appeal.”

<sup>1</sup> See paragraph 615 of the 34th Edition.—*Editor*.

3. The leading case on the point is *Rex v. McLean* (1911) 1 K.B. 332 in which LORD ALVERSTONE, C.J., delivering the judgment of the Court, stated the practice and said:

“No doubt it is desirable that a man who has been sentenced to a term of imprisonment should come out of prison with a clean sheet, for he is more likely in that case to get work and less likely to be subject to interference of an unauthorised character on the part of the police.”

4. The practice also applies to courts of summary jurisdiction in England, see *Paley*, 9th Edition, p. 389<sup>1</sup> and the authorities there cited.

5. The only point to consider is whether it can apply to Subordinate Courts in this Territory. Section 13 of the Subordinate Courts Ordinance is as follows:

“The jurisdiction vested in Subordinate Courts shall be exercised (so far as regards practice and procedure) in the manner provided by this Ordinance and the Criminal Procedure Code, or by such rules and orders of court as may be made pursuant to this Ordinance and the Criminal Procedure Code, and, in default thereof, in substantial conformity with the law and practice for the time being observed in England in the county courts and courts of summary jurisdiction.”

6. The Criminal Procedure Code is silent but being satisfied that the question of taking into consideration outstanding charges is a matter of practice I have no hesitation in saying that the learned Magistrate was perfectly correct in taking the course he did in this case under review. I am glad to note that all the points alluded to above have been incorporated in the case file, the whole forming a complete record of the proper procedure.

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<sup>1</sup> At page 69 of the 10th Edition.—*Editor*.