

## R. v. SAMUEL BANDA.

CRIMINAL REVIEW CASE No. 18 OF 1942.

*Embezzlement—general deficiency—proper method of framing charge.*

Where there is a charge of embezzlement the particulars of the charge should contain the specific gross sum which the accused is charged with embezzling. See also *R. v. Milimo James* p. 94 *ante*; *R. v. Kozi Makokwa* p. 210 *post*; *Abel Kabaya v. The King* 5 N.R.L.R. 13, all of which cases, and the present one, should be read in the light of *R. v. Lawson* 36 Cr. App. Rep. 30, 1952 1 A.E.R. 804, and *R. v. Tomlin* 38 Cr. App. Rep. 82, 1954 2 A.E.R. 272.

Law, C.J.: Mr. Cooper took stock on the 10th September, 1941, and again on the 8th December, 1941. The accused had to account for the difference in value of those two stocktakings. This he could do by showing cash in hand and value of goods sold on credit. The balance would no doubt be the figure with which he should have been charged in this case. In such cases it is not necessary—in fact it is seldom possible—to prove each theft but some item of larceny must always be proved. This was done in this case, though the form of the Particulars of Offence in count 1 “approximately £100” was incorrect. It does not appear, however, that any injustice was done to the accused in his trial by reason of this irregularity and the conviction, therefore, is good. It is proper to charge an accused person in these cases with a specific gross sum, as will be seen from section 174 Criminal Procedure Code which was declaratory of the English procedure in such matters. That section, however, was repealed by section 22 Ordinance 28/1940 and not replaced. But, on general principles, it is considered that this practice should continue to be observed, because it gives in effect reasonable information as to the nature of the offence charged, which I would understand is what is required by the present section 127 Criminal Procedure Code as amended by section 13 Ordinance 28/1940. After all “approximately £100” is vague, whereas a specified gross sum can be checked up which might assist the accused person in showing that an item thereof—of which proof of larceny is being led—is incorrect. As regards the sentences they should be concurrent and not consecutive as both offences were virtually one theft. In effect, therefore, the accused should suffer twenty-one months I.H.L. in all.