Hon. Mr Hanan

CRIMES BILL

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE THE SECOND TIME]

Showing the Amendment Made by the Committee of the Whole to Clause 347

Words struck out by the Committee of the Whole are shown with black rule at beginning and after last line of struck out matter; words inserted are shown with double rule before first line and after last line of new matter.

(2) After a conviction for that attempt the accused shall not be liable to be tried again for the crime which he was charged with attempting to commit.

Cf. 1908, No. 32, s. 395

339. Part of charge proved—(1) Every count shall be deemed divisible; and if the commission of the crime charged, as described in the enactment creating the crime or as charged in the count, includes the commission of any other crime, the person accused may be convicted of any crime so included which is proved, although the whole crime charged is not proved; or he may be convicted of an attempt to commit any crime so included.

(2) On a count charging murder, if the evidence proves manslaughter but does not prove murder, the jury may find the accused not guilty of murder but guilty of manslaughter, but shall not on that count, except in accordance with section 178 of this Act (which relates to infanticide), find the accused guilty of any other offence.

(3) On a count charging rape, the accused shall not be found guilty of any charge other than rape or an attempt to commit rape.

Cf. 1908, No. 32, s. 396

340. Joinder of counts—(1) Any number of counts for any crimes whatever may be joined in the same indictment, and shall be distinguished in the manner shown in form 4 in the Second Schedule to this Act, or to the like effect:

Provided that, to a count charging murder, no count charging any offence other than murder shall be joined.

(2) Where there are more counts than one in an indictment each count may be treated as a separate indictment.

(3) If the Court thinks it conducive to the ends of justice to do so it may order that the accused shall be tried upon any one or more of such counts separately.

(4) Any such order may be made either before or in the course of the trial, and if it is made in the course of the trial the jury shall be discharged from giving a verdict on the counts on which the trial is not to proceed.

(5) The counts in the indictment which are not then tried shall be proceeded upon in all respects as if they had been presented in a separate indictment.

(6) Unless there are special reasons, no order shall be made preventing the trial at the same time of any number of crimes involving dishonesty not exceeding five, alleged to have been

committed within six months from the first to the last of such crimes, whether committed against the same person or not.

(7) If one sentence is passed upon any verdict of guilty on more counts than one the sentence shall be good if any of those counts would have justified the sentence.

Cf. 1908, No. 32, s. 397

341. Charge of previous conviction—(1) Where any count contains an allegation that the accused has been previously convicted, the following provisions shall apply:

(a) He shall not at the time of his arraignment be required to plead to that allegation, unless he pleads guilty to the rest of that count and to the rest of the indictment:

(b) If he pleads not guilty to the rest of that count, or to any other count in the indictment, the allegation shall not be mentioned to the jury when he is given in charge to them:

(c) If he pleads guilty to or is convicted on any count, then, before he is called upon to say why sentence should not be passed upon him, he shall be asked whether or not he has been previously convicted as alleged, and if he says that he has not, or does not say that he has been so convicted, the jury shall be charged to inquire into the matter, as in other cases.

(2) Notwithstanding anything in subsection (1) of this section, where at the trial of the accused evidence of his good character is given on the part of the accused, the prosecutor, in answer to that evidence, may prove the previous conviction.

Cf. 1908, No. 32, s. 398

342. Objections to indictment—(1) No objection to an indictment shall be taken by way of demurrer, but if an indictment does not state in substance a crime the prosecutor or the accused may move the Court to amend it, or the accused may move the Court to quash it or in arrest of judgment, as provided in this section.

(2) If the motion is made before the accused pleads, the Court shall in its discretion either quash the indictment or amend it.

(3) If the defect in the indictment appears to the Court during the trial the Court may if it thinks fit amend it, or may in its discretion quash the indictment or leave the objection to be taken in arrest of judgment.

Cf. 1908, No. 32, s. 399

343. Indictment of parties—Every one who is a party to any crime may be convicted either upon a count charging him with having committed that crime, where the nature of the crime charged will admit of such course, or upon a count alleging how he became a party to it.

Cf. 1908, No. 32, s. 400

344. Accessories after the fact, and receivers—(1) Every one charged with being an accessory after the fact to any crime, or with receiving property knowing it to have been dishonestly obtained, may be indicted, whether the principal offender or other party to the crime or the person by whom the property was so obtained has or has not been indicted or convicted, or is or is not amenable to justice; and the accessory may be indicted either alone, as for a substantive crime, or jointly with the principal or other offender or person by whom the property was dishonestly obtained.

(2) Where any property has been dishonestly obtained, any number of receivers at different times of that property, or of any part or parts thereof, may be charged with substantive crimes, and may be tried together, whether the person by whom the property was so obtained is or is not indicted with them, or is or is not in custody or amenable to justice.

Cf. 1908, No. 32, s. 401

Presenting Indictment

345. Presenting indictment—(1) Where any person is committed for trial, an indictment may be presented in the Supreme Court for any charge founded on the evidence disclosed in the depositions.

(2) An indictment under subsection (1) of this section may be presented by the Attorney-General or a Crown Solicitor in any case, or by the informant in the case of a private prosecution.

(3) Notwithstanding anything in subsection (1) of this section, the Attorney-General, or any one with the written consent of a Judge of the Supreme Court or of the Attorney-General, may present an indictment for any offence.

(4) It shall not be necessary to specify any such consent as aforesaid in the indictment; and any objection to an indictment for want of such consent shall be taken by motion to quash the indictment before the accused is given in charge to the jury.

(5) Except where an indictment is presented under subsection (3) of this section, the accused may, at any time before he is given in charge to the jury, apply to the Court to quash any count in the indictment, on the ground that it is

not founded on the evidence disclosed in the depositions; and the Court shall quash that count if satisfied that it is not so founded.

(6) If at any time during the trial it appears to the Court that any count is not so founded, and that injustice has been or is likely to be done to the accused in consequence of that count remaining in the indictment, the Court may quash that count and discharge the jury from finding any verdict on it; but the Court shall not do so unless it is satisfied that justice requires it.

(7) No indictment shall be presented except as hereinbefore provided.

Cf. 1908, No. 32, s. 407

346. Failure of private prosecutor to present indictment—(1) If in the case of a private prosecution the prosecutor does not present an indictment at the sittings of the Court to which the accused has been committed, the Court may direct that the accused be discharged; and in that event he shall be deemed not to have been committed for trial.

(2) In any such case the Court may order the prosecutor to pay the costs of the accused.

Struck Out

347. Power to discharge accused—(1) Where any person is committed for trial, the Judge may in his discretion—

(a) After perusal of the depositions, direct that no indictment shall be presented, or, if an indictment has been presented, direct that the accused shall not be arraigned thereon; and in either case direct that the accused be discharged:

(b) At any stage of the trial, whether before or after verdict, direct that the accused be discharged.

New

347. Power to discharge accused—(1) Where any person is committed for trial, the Judge may in his discretion, after perusal of the depositions, direct that no indictment shall be presented, or, if an indictment has been presented, direct that the accused shall not be arraigned thereon; and in either case direct that the accused be discharged.

(1A) Where an indictment is presented by the Attorney-General, or by any one with the consent of the Attorney-General, under subsection (3) of section 345 of this Act, the

New

Judge may in his discretion, after perusal of the statements of the witnesses for the prosecution, or after hearing those witnesses, direct that the accused shall not be arraigned on the indictment, and direct that he be discharged.

(1B) The Judge may in his discretion, at any stage of any trial, whether before or after verdict, direct that the accused be discharged.

(2) A discharge under this section shall be deemed to be an acquittal.

(3) The provisions of subsection (5) of section 42 of the Criminal Justice Act 1954 shall extend and apply to a discharge under this section.

(4) Nothing in this section shall affect the power of the Court to convict and discharge any person.

Cf. 1954, No. 50, s. 42 (3), (4), (6); 1960, No. 116, s. 10

348. Copy of indictment—After the indictment is presented, every one charged therein shall be entitled to have a copy thereof, free of charge, from the Registrar.

Cf. 1908, No. 32, s. 410

349. Special provisions in case of treason—(1) Where any one is indicted for treason, or for being accessory after the fact to treason, the following documents shall be delivered to him after the indictment has been presented, and at least ten days before his arraignment, that is to say:

(a) A copy of the indictment:

(b) A list of the witnesses to be produced on the trial to prove the indictment:

(c) A copy of the panel of the jurors who are to try him, returned by the Sheriff.

(2) The list of the witnesses and the copy of the panel of the jurors shall mention the names, occupations, and places of abode of the said witnesses and jurors.

(3) The documents aforesaid shall all be given to the accused at the same time and in the presence of two witnesses.

Cf. 1908, No. 32, s. 411

Trial and Sentence

350. Bench warrant—(1) Where any one against whom an indictment has been presented, or who has been committed for sentence, does not attend to plead to the indictment or, as the case may require, to be sentenced, the Court

before which he would have been tried or by which he would have been sentenced may issue a warrant for his arrest, whether or not he is under bond to attend.

(2) If when any one against whom an indictment has been presented is arrested pursuant to a warrant issued under subsection (1) of this section that Court is not in session for the trial of criminal cases, he shall be brought before a Justice, who may remand him in custody to attend before the Court at its next sittings or may grant him bail:

Provided that if the accused has failed without reasonable excuse to attend according to his bond he shall not be bailable as of right.

(3) Where any one who has been committed for sentence is arrested pursuant to a warrant issued under subsection (1) of this section, he shall be brought before a Judge of the Supreme Court at the most convenient place.

Cf. 1908, No. 32, s. 412; 1937, No. 38, s. 5

351. Failure of witness to attend—(1) If any witness who has been summoned to give evidence at any trial, or who has been served with a notice to attend under section 181 of the Summary Proceedings Act 1957, fails to attend at the time and place appointed, the Court may issue a warrant to arrest him and bring him before the Court, and may adjourn the trial.

(2) The Court may impose on any such witness who fails to attend as aforesaid a fine not exceeding fifty pounds.

352. Refusal of witness to give evidence—(1) If any witness, without offering any just excuse, refuses to give evidence when required, or refuses to be sworn, or having been sworn refuses to answer such questions concerning the charge as are put to him, the Court may order that, unless he sooner consents to give evidence or to be sworn or to answer the questions put to him, as the case may be, he be detained in custody for any period not exceeding seven days, and may issue a warrant for his arrest and detention in accordance with the order.

(2) If the person so detained, on being brought up again at the trial, again refuses to give evidence or to be sworn or, having been sworn, to answer the questions put to him, the Court, if it thinks fit, may again direct that the witness be detained in custody for the like period, and so again from time to time until he consents to give evidence or to be sworn or to answer as aforesaid.

(3) Nothing in this section shall limit or affect any power or authority of the Court to punish any witness for contempt of Court in any case to which this section does not apply.

353. Record of proceedings—(1) It shall not in any case be necessary to draw up any formal record of the proceedings on a trial for a crime; but the Registrar of the Court before which the trial takes place shall cause to be preserved all indictments and all depositions transmitted to him. He shall keep a book to be called the Crown Book, which shall be the property of the Court and shall be deemed a record thereof, and its contents shall be provable by a certified copy or extract without production of the original.

(2) The Registrar shall cause to be entered in the Crown Book a statement of the following particulars:

(a) The name or names of the committing Magistrate or Justices, and the charge on which the accused was committed, or, if the accused was not committed, the name of the prosecutor:

(b) If the indictment is presented by leave, the name of the Court or other authority granting such leave:

Provided that the absence of such a statement, or any mistake therein, shall not be a ground of objection to the proceedings; but the Court to which the Crown Book belongs may, and shall on the application at any time of either the prosecutor or the accused, order a statement of those particulars to be entered, or amend the statement where it is erroneous or defective.

(3) In the Crown Book there shall also be entered the name of the Judge of the Court, and a memorandum of the substance of all proceedings at every trial and of the result of every trial.

(4) Such entries, or a certified copy thereof or of so much thereof as is material, may be referred to in any proceeding by way of appeal.

(5) A certificate of any indictment, trial, conviction, or acquittal, or of the substance thereof, made up from the memorandum in the Crown Book, shall be received in evidence for the same purpose and to the same extent as certificates of records, or the substantial parts thereof, are receivable.

(6) Any erroneous or defective entry in the Crown Book may at any time be amended by the Judge who presided at the trial or, if that Judge is not available, by any Judge.

(7) If the trial takes place before any Court other than that to which the accused was committed for trial, or before which the indictment was presented, a statement shall be made in the Crown Book of the order under which the trial is held, and by whom or where it was made.

(8) Nothing in this section shall dispense with the taking of notes by the Judge presiding at the trial.

Cf. 1908, No. 32, s. 414

354. Right to be defended—Every person accused of any crime may make his full defence thereto by himself or by counsel.

Cf. 1908, No. 32, s. 415

355. Arraignment—Every accused person shall, upon being called upon to plead, be entitled to have the indictment on which he is to be tried read over to him, if he so requires.

Cf. 1908, No. 32, s. 417

356. Plea—(1) When the accused is called upon to plead he may plead either guilty or not guilty, or such special pleas as are hereinafter provided for.

(2) If the accused wilfully refuses to plead, or will not answer directly, the Court may, if it thinks fit, order the Registrar to enter a plea of not guilty.

Cf. 1908, No. 32, s. 419

357. Special pleas—(1) The following special pleas, and no others, may be pleaded according to the provisions hereinafter contained—that is to say, a plea of previous acquittal, a plea of previous conviction, and a plea of pardon.

(2) All other grounds of defence may be relied on under the plea of not guilty.

(3) The pleas of previous acquittal, or previous conviction, and pardon may be pleaded together, and if pleaded shall be disposed of by the Judge, without a jury, before the accused is called on to plead further; and, if every such plea is disposed of against the accused, he shall be allowed to plead not guilty.

(4) In any plea of previous acquittal or previous conviction it shall be sufficient for the accused to state that he has been lawfully acquitted or convicted, as the case may be, of the offence charged in the count or counts to which that plea is pleaded.

(5) Nothing in this section shall be taken to restrict or modify the provisions of section 214 of this Act relating to the manner of pleading to an indictment for criminal libel or criminal slander.

Cf. 1908, No. 32, s. 402; Criminal Code (1954), s. 516 (3) (Canada)