

30th April, 1954

Judges :—

His Hon. Dr. L. A. Camilleri, LL.D., *Chief Justice*;
 The Hon. Mr. Justice A. J. Montanaro Gauci,
 C.B.E., LL.D.;
 The Hon. Mr. Justice W. Harding, B.Litt., LL.D.

Her Majesty the Queen *versus* Victor William Harris

**Forgery of Documents — Use of Forged Documents —
 Merger of Offences — Natural or Juridical Inseparability —
 Accidental Inseparability — Concurrent Offences**

In the case of a charge of forgery of documents and of use of the forged documents, there is no consolidation of offences; because the 'nexus' or inseparability between the two offences is not natural or juridical, but merely accidental, that is, created by the offender himself who is alleged to have forged the documents and to have made use of them for the commission of a crime, when he could very well have stopped at the forgery.

The rejection of the plea of merger of the offences will not, of course, be a bar, in case of conviction, and if the circumstances warrant, to the applicability of the provisions of the law relating to the mitigation of punishment in the case of concurrent offences, or of offences being, vis-a-vis each other, a means to an end. That, however, is a matter for the trial judge in case of conviction, and if he thinks proper.

The Court; — Upon seeing Bill of Indictment no. 9045;
 Upon seeing the plea in bar set up by the accused, where-

by he impugns the validity of the bill of indictment, on the ground that the first and second counts should have been merged in a single count:

Upon seeing the reply of the Attorney General, whereby he contests the aforementioned plea;

Upon hearing the oral submissions;

Considers:

In the first count, the accused is charged with the offence of forgery, as therein detailed. In the second count, he is charged with embezzlement;

In terms of the charge, the accused "forged" the documents in question, and then "made use" of them to misapply or purloin movable property. It has been held, times without number, that in such cases there is no consolidation of offences, because the nexus, or inseparability between the two offences is not natural or juridical, but merely accidental, that is, created by the offender himself, who (it is alleged) forged the documents, and then made use of them to embezzle the property. He could very well have stopped at the forgery. That he went on to embezzle property by means of the forged documents was an act of his own volition entirely (see, for a parallel case, "Rex vs. Caruana" 27th January, 1952, and for similar cases laying down the principle afore quoted, "Rex vs. Simler" 11th March, 1921, "Rex vs. Farrugia" 6th December, 1926, "Rex vs. Caruana" 16th November, 1928, and "Rex vs. Degiorgio" 29th January, 1937);

Of course, the rejection of the plea of merger of the offences will not constitute a bar, in case of conviction, and if the circumstances warrant, to the applicability of the provisions of the law relating to the mitigation of punishment in the case of concurrent offences, or of offences being, vis-a-vis each other, a means to an end. That, however, is a matter for the trial judge in case of conviction, and if he thinks proper;

For these reasons, the plea is disallowed, and the record is hereby remitted to the trial Judge.