

**Intoxicating Liquors—Convictions—Judgments—Sentence—
Informations.**

Where a defendant is convicted of violations of the laws of Montana relating to intoxicating liquor upon an information containing three counts charging separate offenses and where the judgment imposed a jail sentence "of 60 days upon each of the first three counts" the sentence so imposed runs cumulatively and not concurrently.

Hon. H. J. Miller,
District Judge,
Livingston, Montana.

January 31, 1925.

My dear Judge Miller:

You have requested an opinion as to whether the 60 days named in each of the counts in the following judgment run concurrently:

"NOW THIS IS TO COMMAND YOU, the said Sheriff of the said County of Park, to take and safely keep and imprison the said Eddie Pyle in the County jail of the said County of Park, State of Montana, for the term of sixty (60) days upon each of the first three counts of the information, and that if the fine of two hundred dollars (\$200.00) on each of the first three counts in the information, be not paid, that the defendant Eddie Pyle serve in the County jail one day for each two dollars (\$2.00) of said fines, or he be otherwise discharged according to law. And these presents shall be your authority for the same. Therein fail not."

You state in a marginal notation upon your letter that the contention is that where both offenses were in the information as counts section 11596 does not apply.

It does not seem to me that section 11596, R. C. M. 1921, has any application to the state of facts set forth in your inquiry.

New York has an identical statute and the supreme court of that state construing it in the case of *People ex rel. Tweed vs. Liscomb*, 60 N. Y. 559, 19 Am. Rep. 211, said:

"This statute has respect to separate convictions upon distinct trials. * * * The legislature had in their minds, evidently convictions at different times, * * * convictions upon independent trials, or distinct indictments at the same terms of the court, or before sentence should be pronounced upon either. It is to such cases, and such only, that the statute has hitherto been deemed applicable."

Eliminating section 11596, therefore, as having no application it seems to me that the fundamental question involved is this: Has a district court, in the absence of statute to the contrary, power to impose cumulative sentences on conviction of several separate offenses charged in separate counts of the same information?

In order to reach a conclusion on this matter I should properly have before me the particular indictment or information involved. I assume that the information in question charged offenses for the violation of the prohibition laws, inasmuch as it appears from your letter that separate offenses were charged in the same information which, as a general rule, is not permitted except in cases for a violation of the prohibition laws. (Section 11847, R. C. M. 1921).

Prosecutions under the prohibition law are governed by a different rule (section 11078, R. C. M., 1921) which is that "separate offenses may be united in separate counts * * * and the penalty for all offenses may be imposed."

The language of the above section, "the penalty for all offenses may be imposed," clearly confers power on the court to impose the maximum penalty for each offense even though the total of such pen-

alties may be in excess of the maximum which could have been imposed upon a conviction for a single offense, which is permitted to be charged by section 11847, supra.

In the absence of a statute to the contrary the weight of authority is to the effect that courts have power to impose cumulative sentences. In 8 R. C. L. at page 240 the rule is stated as follows:

“The great weight of authority is in favor of the proposition that a court has power derived from the common law to impose cumulative sentences on conviction of several offenses, charged in separate indictments, or in separate counts of the same indictment; the imprisonment under one to commence at the termination of that under the other.”

(See also the authorities cited in the case note in support of the above text.)

In 16 C. J., 1281, the rule is stated as follows:

“As a general rule where defendant enters a plea of guilty or is convicted by a general verdict on two or more counts of an indictment charging crimes which are of the same character, although growing out of totally distinct and separate transactions, sentence may be passed and judgment may be entered for a specified term of imprisonment upon each count to run consecutively.”

It is, therefore, my opinion that cumulative sentences may be imposed for separate offenses and that they may be imposed to the extent of the maximum penalty for each offense.

Very truly yours,

L. A. FOOT,

Attorney General.