YOUMA *v.* REGEM

WEST AFRICAN COURT OF APPEAL (Blackall, P., Hallinan, J. (Nig.) and Hyne, J. (G.C.)): November 27th, 1950
(W.A.C.A. Cr. App. No. 9/50)

[1] **Criminal Law—provocation—adultery—only witnessing of adulterous act sufficient to reduce husband's offence to manslaughter:** It is only where a husband finds his wife in the act of committing adultery and in the heat of the moment kills the adulterer that there is sufficient provocation to reduce the offence from murder to manslaughter (page 71, lines 31–34).

The appellant was charged in the Supreme Court with murder of his wife.

At the trial the appellant raised two lines of defence: that he had been provoked by his wife's adulterous association with another man, and that her death occurred as the result of an accident. He was convicted, and on appeal the West African Court of Appeal considered the limits of the defence of provocation where adultery was the provocative act alleged.

The appellant appeared in person.
M.C. Marke, Crown Counsel, for the Crown.

BLACKALL, P., delivering the judgment of the court:

This is an appeal against conviction for murder of the appellant's wife. Two lines of defence were put forward: the first that the deceased had provoked him, and the second that she met her death through an accident.

With regard to the first, the prisoner in his statement to the police said that his wife had been going with another man. But that would not be sufficient to reduce the crime to manslaughter. It is only where the husband finds his wife in the act of committing adultery and kills the adulterer on the spot that this defence can operate.

Moreover, the appellant himself says that there was no quarrel between them on the day of the woman's death. He says he merely wanted to prevent her going back to town, and to prevent her doing so he put out his matchet and she ran into it. But the medical evidence is that the blow that caused her death was a downward one on the back of the neck, and the judge and assessors rejected that defence.

In the opinion of this court, the evidence was sufficient to support the conviction and the appeal must be dismissed.

Appeal dismissed.

ALLIE and OTHERS *v.* ALHADI (OFFICIAL ADMINISTRATOR)

WEST AFRICAN COURT OF APPEAL (Blackall, P., Hallinan, J. (Nig.) and Hyne, J. (G.C.)): November 28th, 1950
(W.A.C.A. Civil App. No. 8/50)

[1] **Civil Procedure—order for new trial—no order unless miscarriage of justice:** On appeal, a new trial will not be ordered unless, in the opinion of the court of appeal, some substantial wrong or miscarriage of justice has been occasioned at the first trial (page 74, lines 1–3).

[2] **Civil Procedure—stay of proceedings—proceedings to be stayed to enable prosecution of felony—rule does not apply in action against innocent third party:** The rule that a person must prosecute a felony before bringing a civil suit in respect of the same acts does not apply where the action is against a third party innocent of the felony (page 73, lines 33–39).

The plaintiffs (now the appellants) brought an action against the defendant (now the respondent) in the Supreme Court for the revocation of a will.

A dispute arose as to the genuineness of one of a series of wills allegedly left by the same testator. The plaintiffs, as executors named in one of the wills, instituted the present proceedings against the Official Administrator, who had undertaken the administration of the estate, on the ground that one of the beneficiaries had suppressed the will as originally drafted and substituted a forged one in its place.

The Supreme Court (Beoku-Betts, Ag.C.J.), after hearing the evidence adduced for the plaintiffs, adjourned the proceedings and directed the record to be forwarded to the Attorney-General to consider whether a *prima facie* case existed for a prosecution for forgery. The Attorney-General decided not to prosecute; and the Supreme Court then dismissed the action for the revocation of the will.

On appeal by the plaintiffs to the West African Court of Appeal, it was contended that: (a) the trial judge erred in staying the pro-