

that no human being can get in and that area cannot therefore be kept clean. On grounds of sanitation the position is either that the plaintiffs' house should be removed from its present position or the wall should be removed from its present position.

5 It seems quite reasonable that the plaintiffs' house should not be removed from its present position, since it is on their land. The other alternative is that the defendant's wall should be removed. The balance of convenience, and what would cause less expense, is for the wall to be removed. On all the circumstances of the case
10 and acting on the principles of the legal authorities cited, I am of the opinion that the proper remedy in this case is to order that the portion of the concrete wall which encroaches on the property of the plaintiffs should be removed, so as to make the southern boundary of the plaintiffs' land 75 ft. 9ins. in a straight line, and
15 in order to be more exact the wall should be removed so that the boundary of the plaintiffs' land shall be east 52 ft., west 51 ft., north 75 ft. 10 ins. and south 75 ft. 9in. I therefore make an order that the wall erected on the plaintiffs' land by the defendant be removed in the manner and to the extent stated above, that the
20 defendant, his servants, or agents be restrained from continuing or repeating the act of erecting a wall on the plaintiffs' land, and that the defendant pays the costs of the plaintiff of and incidental to this action.

Order accordingly.

MOHAMMED ABDALLA v. REGEM

30 WEST AFRICAN COURT OF APPEAL (Blackall, P., Lucie-Smith, C.J. (Sierra Leone) and Lewey, J.A.): March 22nd, 1950 (W.A.C.A. Cr. App. No. 4/50)

35 [1] **Criminal Procedure—assessors—judge's summing-up—judge may express strong view on facts provided decision left to assessors:** The mere fact that, in considering the evidence in his summing-up, a judge expresses a strong view on the facts is not sufficient to entitle a person to have his conviction set aside; a judge is entitled to express his views on the way the facts should be dealt with provided that he does not take the actual decision out of the hands of the assessors (page 30, lines 11-20).

40 [2] **Criminal Procedure — assessors — judge's summing-up — judge must direct assessors' attention to salient points of case—if case properly**

put, appeal court should not scrutinise summing-up too strictly: The purpose of a judge's summing-up to assessors is to direct their attention to the salient points of the case; and although an appeal court must take care that the case was properly put to the assessors so that they understood the points at issue, it would be wrong to scrutinise the summing-up too strictly (page 29, line 38—page 30, line 2).

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[3] Criminal Procedure—judge's summing-up—contents—judge may express strong view on facts provided decision left to assessors: See [1] above.

[4] Criminal Procedure — judge's summing-up — contents — judge must direct assessors' attention to salient points of case—appeal court should not scrutinise summing-up too strictly: See [2] above.

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[5] Evidence—functions of court—direction on evidence—judge may express strong view on facts provided decision left to assessors: See [1] above.

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[6] Evidence—functions of court—direction on evidence—judge must direct assessors' attention to salient points of case—if case properly put, appeal court should not scrutinise summing-up too strictly: See [2] above.

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The appellant appealed against his conviction by the Supreme Court on the ground that the trial judge misdirected the assessors in his summing-up by failing to put the case for both sides to the assessors, and by expressing strong views on the facts which influenced the assessors' decision.

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Cases referred to:

(1) *R. v. Bryant* (1917), 13 Cr. App. R. 49, *dictum* of Lord Reading, C.J. applied.

(2) *R. v. Mason* (1924), 18 Cr. App. R. 131, *dictum* of Lord Hewart, C.J. applied.

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(3) *R. v. Smith* (1915), 11 Cr. App. R. 81, observations of Lord Reading, C.J. applied.

R.W. Beoku-Betts for the appellant;
Benka-Coker, Ag. Sol.-Gen., for the Crown.

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

In this appeal, the learned judge's summing-up was subjected to a minute scrutiny. But as was said in *R. v. Smith* (3) (11 Cr. App. R. at 84, *per* Lord Reading, C.J.) the court does not look too minutely into the summing-up of a judge. The summing-up is to direct the attention of the jury or assessors to the salient points, and it would

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be wrong and lead to pedantry and technicality in those circumstances if we scrutinised it too strictly. On the other hand the court must take care that the case was properly put to the assessors so that they understood the points at issue. In our opinion, the case for both sides was put perfectly fairly by the trial judge.

Objection was also taken that the learned judge expressed his own views on some aspects of the case and that they influenced the assessors. Here again, I will quote from a couple of reported cases of which learned counsel did not seem to be aware. In *R. v. Bryant* (1), Lord Reading, C.J. said (13 Cr. App. R. at 51):

“... [T]his Court has often said that the mere fact that a judge expresses a strong view on the facts is not sufficient to entitle a prisoner to have his conviction quashed. A judge is entitled to express his views, so long as he does not take the decision out of the hands of the jury.”

Again in the case of *R. v. Mason* (2) Lord Hewart, C.J. said (18 Cr. App. R. at 132):

“... [I]t is proper for a judge, in dealing with the evidence, to express, sometimes strongly, the view that the facts ought to be dealt with in a particular way”

In the present case, we can see nothing in which the learned trial judge contravened the principles laid down in those cases. There is no merit in the appeal, and the appeal is dismissed.

Appeal dismissed.

IN RE REGISTRATION OF MARGAI and IN RE APPEAL FROM
DECISION OF REVISING OFFICER

SUPREME COURT (Smith, C.J.): April 3rd, 1950
(Civil Case No. 96/50)

[1] Elections—qualifications of electors—alteration—revising officer not permitted to change nature of elector’s qualification—only correction of errors in register permitted: While a revising officer has the power under s.6(6), as amended, of the Schedule to the Sierra Leone (Legislative Council) Order in Council, 1924 to correct any apparent errors or mistakes in the register of electors, he has no similar power to change the nature of the qualification put forward by a prospective elector (page 32, lines 28–31).

The appellant appealed against the respondent’s decision to strike his name off the register of voters.