Administrator acts *bona fide* in the supposed or intended execution of his duty, but not where his acts are *mala fide.*

I do not consider I should deal at any length with the question of whether reasonable and probable cause existed for the prosecution or whether there was malice in fact proved. It is sufficient to say that a finding by the learned Chief Justice of improper motive, attempting to induce a witness to give false evidence in a criminal case, is sufficient to support the conclusions he came to.

I therefore agree that the appeal should be dismissed.

LEWEY, J.A. concurred.

Appeal dismissed.

WREH (or DEE) *v.* REGEM

WEST AFRICAN COURT OF APPEAL (Smith, C.J. (Sierra Leone), Lewey, J.A. and Robinson, J. (Nig.)): December 14th, 1951
(W.A.C.A. Cr. App. No. 12/51)

[1] **Criminal Law—drunkenness—relevant to intent—when drunkenness may be defence:** Drunkenness will not amount to a defence unless there is evidence that it rendered the accused incapable of forming the specific intent necessary to constitute the offence charged and rebuts the presumption that a man intends the natural consequences of his acts; or if the drunkenness has proceeded to such a degree as to produce actual insanity on his part, it is just as much a defence as insanity arising from any other cause even though it is of a temporary nature (page 157, line 5—page 158, line 15).

[2] **Criminal Law—insanity—act done in state of intoxication—insanity may result from drunkenness even though temporary:** See [1] above.

[3] **Evidence—presumptions—presumption of law—natural consequences of acts presumed intended—presumption rebuttable by evidence of drunkenness which negatives specific intent:** See [1] above.

The appellant was charged in the Supreme Court with murder.

The deceased intervened in a quarrel between the appellant and another person and the appellant then stabbed and killed the deceased. Prior to the incident the appellant had been drinking, but when arrested by the police he spoke rationally and when examined by a doctor a few hours later he showed no signs of intoxication. At the trial the appellant said that he was so drunk at the

time of the incident, and until he awoke next morning in the police station, that he could not remember what had happened. In his summing-up the trial judge instructed the jury that drunkenness could only be a defence if it had so affected the appellant as to render him temporarily insane so that he did not know the nature and quality of his acts, and that if it rendered him incapable of forming an intention to wound the deceased then he was entitled to be acquitted. The appellant was convicted of murder.

On appeal, the West African Court of Appeal considered whether the trial judge had misdirected the jury by failing to direct them that they were entitled to find the appellant guilty of manslaughter and not of murder if they were of the opinion that he was so intoxicated as not to be able to form an intent to inflict grievous bodily harm on the deceased.

Cases referred to:

(1) *D.P.P.* v. *Beard,* [1920] A.C. 479; (1920), 14 Cr. App. R. 159, *dicta* of Lord Birkenhead, L.C. applied.

(2) *R.* v. *Meakin* (1836), 7 C. & P. 297, applied.

(3) *Stirland* v. *D.P.P.,* [1944] A.C. 315; [1944] 2 All E.R. 13, *dictum* of Viscount Simon considered.

(4) *Woolmington* v. *D.P.P.,* [1935] A.C. 462; (1935), 25 Cr. App. R. 72, applied.

Legislation construed:

West African Court of Appeal (Criminal Cases) Ordinance (Laws of Sierra Leone, 1946, *cap.* 265), s.4(1):

> "The Court of Appeal on any such appeal against conviction shall allow the appeal if they think that the verdict should be set aside on the ground that it is unreasonable, or cannot be supported having regard to the evidence, or that the judgment of the Court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law, or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal;
>
> Provided that the Court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred."

Edmondson and *Dobbs* for the appellant;
M.C. Marke, Crown Counsel, for the Crown.

SMITH, C.J. (Sierra Leone), delivering the judgment of the court:

In this case the appellant was convicted of murdering one Bai Kamara and now appeals to this court on the ground that the presiding judge misdirected the jury by failing to direct them that they were entitled to find the appellant guilty of manslaughter, and not of murder, if they were of the opinion that the accused was so intoxicated as not to be able to form an intent to inflict grievous bodily harm.

As it is axiomatic that a judge's directions to the jury must be considered in the light of the evidence which they had before them and the issues raised by that evidence, it would be convenient if we should first summarise the evidence in the case. This showed that on the afternoon of Saturday February 3rd the appellant had a quarrel over a trivial matter with one Davies, and after the quarrel the appellant made what seemed to be determined attempts to attack Davies two or three times. Bai Kamara, the victim, intervened and took Davies into his house, and then came and stood outside his house when the appellant rushed at him and stabbed him with a knife, which one witness said was 7–8″ long. After stabbing the victim, the appellant ran away and went into his own house and changed his trousers.

The appellant did not seriously contest this evidence, but said that he had been drinking that afternoon—a fact which was confirmed by a witness for the prosecution and two defence witnesses —and that at the time of the incident he was so drunk that he did not remember anything that happened between leaving the last bar he visited in a car until he found himself in the Central Police Station next morning. No witness on either side confirmed that the appellant had reached anything like this degree of intoxication. Davies said that he staggered a little and smelt of liquor when they were quarrelling, but no other witness said he appeared to be intoxicated. He ran away after stabbing the victim, changed his trousers, spoke apparently rationally to the police when they arrested him a few hours after the incident, and showed no signs of intoxication to the doctor who examined him 5–6 hours later.

In his address to the jury, defending counsel is recorded as submitting: "The defence is drunkenness. To be a defence drunkenness must render the accused practically insane. If the accused was incapable of forming intent, murder may be reduced to manslaughter." Crown Counsel is recorded as saying: "If the accused

was so drunk as to be incapable of forming intent, acquit of murder." In his summing-up the learned judge referred to this point on a number of occasions, which we will quote. In referring to the defence, he said:

"What they say is that the accused was so drunk that he did not know what he was doing, so drunk that he was incapable of forming the intention of doing serious injury to Bai Kamara.

Now, in the first place, I must tell you that the law presumes that every sane man intends the natural consequences of his acts. If a sane man stabs another in the way Bai Kamara was stabbed, then the law will presume an intention to kill that man if that man dies. There can be no doubt about that. Drunkenness in itself is no defence to a charge of this nature, but it would be a defence if it so affected the accused as to render him, for the time being, temporarily insane, so that he did not know the nature and quality of his acts. If the drunkenness was so severe as to render the accused altogether incapable of forming an intention to inflict that serious injury upon Bai Kamara, then he is entitled to be acquitted of the charge of murder.

Now, you will have to consider whether the degree of drunkenness of the accused on that evening was so severe that it can be said to have rendered him incapable of forming such an intention, the drunkenness was so serious as to prevent him knowing the nature and quality of his acts."

Again, a little later, he said:

"If you accept the evidence for the prosecution that he did inflict that stab, was the accused at the time so drunk that he did not know the nature and quality of his acts? And in coming to a decision upon that point you have to bear in mind that the only evidence that he (the accused) was so seriously drunk is the evidence of himself."

And towards the end of his summing-up, he said:

"Now, you are not entitled to bring in the accused guilty of murder unless you are satisfied beyond reasonable doubt that he (the accused) inflicted that wound on the deceased and at the time he inflicted it he had the intention of doing so."

With the greatest respect to the presiding judge and the counsel engaged at the trial, the passages which we have quoted indicate that they did not clearly distinguish between the defences of drunkenness and insanity as laid down by the House of Lords in

D.P.P. v. *Beard* (1). In that case, apart from drunkenness arising from the malicious or negligent act of a third party, which is irrelevant here, Lord Birkenhead, L.C. stated his conclusions under three heads, first of all ([1920] A.C. at 500; 14 Cr. App. R. at 193):

> "That insanity, whether produced by drunkenness or otherwise, is a defence to the crime charged. The law takes no note of the cause of insanity. If actual insanity in fact supervenes, as the result of alcoholic excess, it furnishes as complete an answer to a criminal charge as insanity induced by any other cause."

In cases under this head the McNaghten rules should be applied and the jury directed that if they found that the accused was in such a state that he did not know the nature and quality of the act or that his act was wrongful, his act would be excusable on the ground of insanity and they should return the special verdict of "Guilty but insane." Secondly, he stated (*ibid.*, at 501–502; 194):

> "That evidence of drunkennness which renders the accused incapable of forming a specific intent essential to constitute the crime should be taken into consideration with the other facts proved in order to determine whether or not he had this intent."

One very important "other fact" is whether a dangerous or deadly weapon is used (*R.* v. *Meakin* (2)), which may show the malicious intent so clearly that the drunkenness of the accused could not alter it. Thirdly, he stated (*ibid.*, at 502; 194):

> "That evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime, and merely establishing that his mind was affected by drink, so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts."

In our view there was no evidence upon which the jury could find that the accused was insane at the material time, and the learned judge ought not to have directed them to consider whether he knew the nature and quality of his acts. If there had been such evidence, the jury should have been directed to return the special verdict if they found in favour of the accused. He would not have been entitled to a plain verdict of "Not guilty." If there was evidence upon which the jury might reasonably find that the accused was so drunk as to be incapable of forming a malicious intent, then the presiding judge should have directed them that if they so found the

accused should be acquitted of murder but found guilty of manslaughter.

In the light of these observations we have to consider what effect the directions of the presiding judge that the jury should apply both tests under heads 1 and 2 as stated in *Beard's* case (1) could have had upon this verdict, and whether they might reasonably have returned a different verdict if he had directed them correctly. Furthermore, it is to be noted that if the jury followed the directions of the learned judge they could only return the verdicts of "Guilty of murder" or "Not guilty." They were not directed that, in the unlikely event of their finding the appellant to be temporarily insane, they should return the special verdict of "Guilty but insane," nor that if they found that the appellant was so drunk as to be incapable of forming a malicious intent, they should acquit him of murder but find him guilty of manslaughter.

The objection taken by the appellant to the summing-up is, therefore, well founded, and it now remains for us to consider whether the proviso to s.4(1) of the West African Court of Appeal (Criminal Cases) Ordinance (*cap.* 265) should be applied.

This section is in the same terms as the proviso to s.4(1) of the Criminal Appeal Act, 1907, and in applying it we are bound to follow the *dictum* of Viscount Sankey in *Woolmington* v. *D.P.P.* (4) ([1935] A.C. at 482; 25 Cr. App. R. at 96), as explained and clarified by Viscount Simon in *Stirland* v. *D.P.P.* (3). In the latter case Viscount Simon said ([1944] A.C. at 321; [1944] 2 All E.R. at 15):

> "The provision that the Court of Appeal may dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred in convicting the accused assumes a situation where a reasonable jury, after being properly directed, would, on the evidence properly admissible, without doubt convict."

In this case, although the evidence that the accused was too drunk to form a malicious intent was weak and was in conflict with other evidence in the case, we cannot be sure that the jury with a proper direction might not reasonably have returned a verdict of manslaughter instead of murder. This being our conclusion, we are unable to apply the proviso to uphold the conviction for murder. We are, however, in no doubt but that if the jury had acquitted the appellant of murder they would have been bound to find him guilty of manslaughter.

The conviction and sentence for murder are therefore set aside

and a conviction for manslaughter substituted. The appellant is sentenced to 12 years' imprisonment with hard labour.

Appeal allowed; conviction for manslaughter substituted.

MUSTAPHA HASSAN *v.* GIDWANI

SUPREME COURT (Beoku-Betts, J.): January 1st, 1952
(Civil Case No. 104/51)

[1] **Hire-Purchase—hirer's rights—right to assign—assignee bound by hire-purchase agreement:** In a hire-purchase agreement, the ownership of the chattel hired remains in the owner and the owner has no right to sell it in the absence of a contrary provision in the agreement; but if the hirer has such a right under the agreement and exercises it, or if he exercises his right to assign the chattel, the seller or assignee becomes liable to observe the conditions of the agreement (page 161, lines 9–13).

[2] **Hire-Purchase—hirer's rights—right to sell—hirer has no right to sell in absence of contrary provision—if agreement permits sale, buyer bound by its conditions:** See [1] above.

[3] **Hire Purchase—owner's rights—rights against third parties—disposal by hirer of chattel inconsistent with agreement—actions in trover and detinue lie against purchaser from hirer:** Where a hirer deals with the hired chattel in a way which is entirely inconsistent with the bailment, as by selling, assigning, or otherwise disposing of it, when the terms of the hire-purchase agreement prohibit such dealing, the owner of the chattel may maintain against any third party to whom the hirer has sold, assigned or otherwise disposed of the chattel, an action in trover or detinue, or such other action as may be appropriate, unless the third party is protected by the law relating to sales in market overt, or by the Factors Act, 1889 or the Sale of Goods Act, 1893 (page 161, lines 13–35).

The plaintiff brought an action against the defendant for the recovery of a car, or its value, and damages for its wrongful detention.

The plaintiff hired a car to a third party under a hire-purchase agreement. By the terms of the agreement the hirer undertook, *inter alia*, not to sell, charge, pledge, assign or part with possession of the car during the period of hire without the permission of the owner. He also undertook to affix metal plates bearing the plaintiff's