by the plaintiff himself diverting the form out of its routine course through the labour and registration departments to the manager of the company.

For the reasons I have given I am unable to agree that the plaintiff's claim was established and I would therefore allow this appeal, set aside the judgment of the court below and enter judgment for the defendant with costs both in this court and in the court below to be taxed.

FOSTER-SUTTON, P. and LUKE, J. (Sierra Leone) concurred.

Appeal allowed.

REEKIE *v.* REGINAM

WEST AFRICAN COURT OF APPEAL (Foster-Sutton, P., Smith, C.J. (Sierra Leone) and Coussey, J.A.): April 12th, 1954
(W.A.C.A. Cr. App. No. 21/53)

[1] **Criminal Procedure—appeals—appeals against conviction—direction on evidence—in trial with assessors misdirection ground of appeal whether in judgment or summing-up:** In a trial involving the use of assessors a misdirection on the evidence is relevant to an appeal whether it is contained in the judge's summing-up to the assessors or in his judgment, and the fact that the judge makes the decision in such a case without being obliged to accept the assessors' opinions is irrelevant since he must always consider their opinions (page 376, line 39—page 377, line 7).

[2] **Criminal Procedure—appeals—appeals against conviction—direction on evidence—misdirection not fatal if no miscarriage of justice—burden on Crown to show verdict unaffected by misdirection:** The effect of the proviso to s.4(1) of the West African Court of Appeal (Criminal Cases) Ordinance (*cap.* 265) is that if there is a wrong decision on any question of law the appellant has the right to have his appeal allowed unless the Crown can show that, on a right direction, the decision must have been the same (page 376, lines 28–37).

[3] **Criminal Procedure—assessors—judge's summing-up—must direct assessors properly on law:** It is the duty of assessors to advise the presiding judge and although he is not bound to accept their opinions, it is his duty to consider them, and therefore it is essential that the assessors are properly directed as to the law (page 377, lines 8–11).

[4] **Criminal Procedure — assessors — opinion of assessors — judge not obliged to accept assessor's opinions but must consider them:** See [3] above.

[5] Criminal Procedure—judge's summing-up—must direct assessors properly on law: See [3] above.

[6] Evidence—burden of proof—appeals—misdirection on evidence—burden on Crown to show verdict unaffected by misdirection: See [2] above.

[7] Evidence—corroboration—duties of court—judge to decide whether evidence corroborative as matter of law—jury to decide weight of corroborative evidence as matter of fact: The question whether any particular evidence can be regarded as corroborative is a matter of law for the judge to determine; the weight to be attached to any corroborative evidence is a matter of fact for the jury to decide (page 376, lines 14–17).

[8] Evidence—corroboration—sexual offences—corroboration desirable but not essential—direction essential: While in cases of a sexual character it is eminently desirable that the evidence of the complainant should be strengthened by other evidence implicating the accused person in some material particular, there is nothing in law to prevent the court from convicting on the uncorroborated evidence of the complainant provided that the presiding judge directs himself and the assessors on the desirability of corroboration of the complainant's evidence (page 375, lines 10–17).

The appellant was charged in the Supreme Court with buggery, contrary to s.61 of the Offences against the Person Act, 1861.

Some six weeks after the offence charged was alleged to have been committed the appellant's employer tried to get the case settled out of court on payment by the appellant of compensation to the victim. The trial judge directed the assessors that this could be considered corroboration of the complaint against the appellant. The appellant was convicted, and on appeal the West African Court of Appeal considered whether the trial judge had misdirected the assessors on a point of law, and if so whether the misdirection had resulted in a miscarriage of justice.

Case referred to:

(1) *R.* v. *Cohen* (1909), 2 Cr. App. R. 197; 73 J.P. 352, *dictum* of Channel, J. 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 . . .
>
> 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."

Dean for the appellant;
Benka-Coker, Sol.-Gen., for the Crown.

FOSTER-SUTTON, P., delivering the judgment of the court:

The appellant was convicted of buggery, contrary to s.61 of the Offences against the Person Act, 1861. He was sentenced to two years' imprisonment, and now appeals against the conviction.

In cases of a sexual character it is eminently desirable that the evidence of the complainant should be strengthened by other evidence implicating the accused person in some material particular. It is true that there is nothing in law to prevent the court from convicting on the uncorroborated evidence of the complainant, but it is an established rule that the presiding judge must direct himself and the assessors in such a case on the desirability of there being corroboration of the complainant's evidence.

In this case the learned trial judge did direct the assessors as to the desirability of corroboration, but counsel for the appellant took the point, amongst others, that the learned trial judge misdirected himself and the assessors on what could be regarded as corroboration. He referred to several passages in the summing-up in support of this submission, the most important being two passages which appear at pp. 67 and 68 of the record, which read as follows:

"Well, you are not concerned with the propriety or otherwise of the conduct of Mr. Moss. In fact, from what Mr. Oldham said that Mr. Moss told him, you may think there is a case against the accused. That is some evidence that the story of the complainant John Sesay may be true.

That is the case for the prosecution, that if there was not something, those interested would not be trying to get this case settled out of court, and the general manager would not have insisted that the accused should pay; and they say you should infer from that that the accused must have done this act. It is for you to decide whether that is so when you consider all the evidence, and it is for you also, if you consider that that is so, to decide whether it is corroborative of the evidence given by the complainant. As I have told you, it is necessary that you get some corroboration of the complainant's story and this is put forward by the prosecution as that corroboration."

Mr. Moss was the police officer investigating the case, and Mr.

Oldham was the general manager of the concern in which the appellant was employed. The incidents referred to in the passages I have quoted had reference to matters which took place some six weeks after the offence was alleged to have been committed, to something alleged to have been said by Mr. Moss, and to the action taken by Mr. Oldham when the matter was reported to him.

It is quite clear that the opinion of Mr. Moss and the action taken by Mr. Oldham could not be corroboration of the evidence of the complainant regarding the incident which the latter said took place on July 2nd, 1953, and we think it fair to say that the learned Solicitor-General, who appeared for the prosecution at the trial and at the hearing of this appeal, did not suggest that such matters could be.

The question whether any particular evidence can be regarded as corroboration is a matter of law for the judge to determine; the weight to be attached to corroborative evidence is a matter of fact for the jury to decide.

The Solicitor-General submitted that the evidence fully justified the verdict, and that the misdirection did not, therefore, result in a miscarriage of justice, and he strongly urged that this is a case where the proviso to s.4(1) of the West African Court of Appeal (Criminal Cases) Ordinance (*cap.* 265) should be applied. The proviso in question is the same as the proviso to s.4(1) of the English Criminal Appeal Act, 1907, and it enables this court, notwithstanding that we may be of the opinion that the point raised in an appeal might be decided in favour of the appellant, to dismiss the appeal if we consider that no substantial miscarriage of justice has occurred.

The proper interpretation of the proviso was the subject of a considered judgment of the Court of Criminal Appeal in England in the case of *R.* v. *Cohen* (1), where Channel, J. said (2 Cr. App. R. at 207; 73 J.P. at 352):

> "Taking sect. 4 with its proviso, the effect is that if there is a wrong decision of any question of law the appellant has the right to have his appeal allowed, unless the case can be brought within the proviso. In that case, the Crown have to shew that, on a right direction, the jury *must* have come to the same conclusion."

Different considerations apply in cases where there has been a misdirection on a question of fact. The statement of the law to which I have referred has stood for 45 years and, as far as we are aware, has never been the subject of adverse comment.

The Solicitor-General also argued that since the decision in this case was that of the judge, we must look at his judgment and not at his summing-up to the assessors, a proposition with which we are unable to agree. In our view both must be looked at. It by no means follows that because the misdirection in the summing-up is not repeated in the judgment it did not influence the learned trial judge in reaching his own conclusion. Indeed the inference is the other way. Moreover, the assessors are there to advise the presiding judge and although he is not bound to accept their opinions it is his duty to consider them, and it was obviously necessary that they should be properly directed as to the law.

The misdirection in this case was an important one and we are quite unable to say that had the learned trial judge properly directed himself and the assessors on the matter they must have come to the same conclusion. In this connection it is relevant to observe that in spite of the misdirection one of the assessors expressed the opinion that the accused was not guilty.

It follows that, in our view, the appellant is entitled to have his appeal allowed, and we accordingly quash the conviction and direct a judgment and verdict of acquittal to be entered.

Appeal allowed.

YEMEN COMPANY LIMITED *v.* WILKINS

SUPREME COURT (Kingsley, J.): August 10th, 1954
(Civil Case No. 193/54)

[1] **Civil Procedure—judgments and orders—default judgment—must be strict compliance with rules of procedure:** Where a plaintiff proceeds by default, every step in the proceedings must strictly comply with the rules of procedure (page 382, lines 3–5).

[2] **Civil Procedure—judgments and orders—default judgment—on application to set aside, irregularities must be apparent on face of summons or specified in supporting affidavit—applicant confined to irregularities stated therein:** Unless irregularities are apparent on the face of a summons to set aside a default judgment, a supporting affidavit is always necessary; and since, under O.L., r.3 of the Supreme Court Rules, 1947, any objections "shall be stated in the summons or notice of motion," an applicant is confined to the irregularities stated therein (page 379, lines 29–32; page 380, lines 13–35).