evidence which should have led the learned judge to say that the prosecution had not proved the lack of consent, proof of which was upon them, and that the evidence for the prosecution was inconsistent.

Mr. Smythe has argued that the two counts are distinct and separate and that the conviction on the first was proper, notwithstanding the acquittal on the second. This may be so, in a general sense. We are, however, of opinion that in the particular and perhaps peculiar circumstances of this case, it was not possible.

The acquittal of the appellant on the second count implied that the assault with intent to ravish was not proved and the conviction on the first count was founded on the same facts as negativing the consent of the complainant.

Consequently we think, but with reluctance, that the conviction and sentence on the first count must be quashed and they are so quashed.

The conviction and sentence on the third count are not affected, of course, and stand good.

Freetown
July 5,
1961

Ames P.
Benka-Coker C.J.
Bankole Jones J.

[COURT OF APPEAL]

MICHAEL J. M. HAROUN . . . . . *Appellant*

v.

GEORGE BERESFORD COLE . . . . . *Respondent*

[Civil Appeal 22/61]

Valuation of property—Compensation for making valuation.

Abraham J. Milhem Haroun died testate, leaving an estate which included a third share in several properties in Freetown. Appellant was one of the executors of the will, and he instructed Mr. C. B. Rogers-Wright to obtain probate. To do this it was necessary to know the value of the deceased's share in the properties, and Mr. Rogers Wright instructed respondent to make a valuation. Respondent did so, arriving at a value of £104,000, and then made a charge for his services of £3,120, which was 3 per cent. of £104,000. Appellant paid £2,100, but refused to pay the balance of £1,020. When respondent brought suit for £1,020 and obtained a judgment, appellant appealed.

Held, that the charge of £3,120 was unreasonable having regard to the circumstances of the case.

Rowland E. A. Harding for the appellant.
Mrs. Ursula D. Khan for the respondent.

AMES P. This is an appeal by a defendant from a judgment of the Supreme Court given for the plaintiff for £1,020 and costs.

Abraham J. Milhem Haroun died testate leaving an estate, which included a third share in several properties in Freetown. The defendant/appellant was one of the executors of the will and he instructed Mr. C. B. Rogers-Wright to obtain probate. It was, of course, necessary to know the value of the deceased's share in the properties and Mr. Rogers-Wright instructed the plaintiff/respondent, who is an auctioneer and valuer, to make a valuation.

It is disputed as to whether the contract was that the respondent should find the value of the deceased's third share or the whole value of the properties, but,

as will appear later, this aspect of the matter is not material. It is not possible to arrive at the value of an undivided third share in property without first making a valuation of the whole.

A valuation was made by the respondent, totalling £90,000 (the whole and not one-third). Mr. Rogers-Wright had found there were other properties to be valued and the respondent was instructed to value them, and he valued these at £14,000. The grand total, therefore, is £104,000. The respondent submitted two bills, for £2,700 and £420, totalling £3,120, for his services. These sums were arrived at by charging 3 per cent. of the total value of the properties.

Mr. Rogers-Wright's first instruction was given on January 12, and the valuation supplied on the 13th, and the other valuation was supplied on the 14th.

There was a meeting on February 12, to discuss the matter of the bill, at which were present the respondent, Mr. Rogers-Wright, the appellant and another person who accompanied the appellant (and was a witness for him). There is some conflict in the evidence as to what happened, but the learned judge accepted the respondent's evidence that Mr. Rogers-Wright, on the appellant's behalf, suggested that the bills should be reduced to £2,700. The respondent asked for time to consider the suggestion.

On the 13th he wrote to Mr. Rogers-Wright saying that he would accept £2,700 if it was paid that same day. It was not paid, and on the 14th he wrote withdrawing his acceptance and requiring payment of the £3,120 by noon of the 17th, failing which he would institute legal proceedings for its recovery. This letter was exhibit A and it included the following paragraph:

> "I am to observe that whilst both of these persons, particularly Mr. Moukarzel, are well aware that I am by law and by virtue of work done, well entitled to my professional fees charged, though this amount is not to be paid personally by either of them, but from the estate of the deceased and in fair proportion to the extent of the estate, they would however consider £3,120 (Three thousand one hundred and twenty pounds) too large and fantastic an amount to be paid to me for professional services rendered regardless of the law or my entitlement to it."

A cheque for £2,100 was sent by Mr. Rogers-Wright on a date which has not been stated, but the respondent issued a receipt dated February 18, accepting the amount on account of the £3,120 of his bills.

The balance was not paid and so the respondent took action to recover it, and obtained judgment therefor, as I have already said.

The learned judge said in his judgment:

> "I find this case to be one in which the plaintiff did work for the defendant under a contract that it should be paid for, but the price for the work was not agreed upon. That being the case the plaintiff can recover only what is reasonable remuneration."

And later on:

> ". . . I find that in all the circumstances 3 per cent. was reasonable. . . ."

In his letter of February 14, the respondent appears to infer that he could by law charge the 3 per cent. which he did charge and there was some argument in the Supreme Court to the same effect, and it was mentioned before us. All

such argument is without any basis. There is no law in this country authorising a valuer of real property to charge, as his remuneration, 3 per cent. of the sum at which he values it, or any other percentage.

There was, until it was repealed by the Auctioneers Amendment Ordinance, No. 15 of 1950, a provision in the Auctioneers Ordinance in its section 17 a provision for an appraisement duty. The section reads:

> "17. In all cases where an appraisement of ships or vessels, lands and tenements, or lots and parcels of goods and merchandise takes place, and not an auction, there shall be paid into the general revenue of the Colony a duty of two pounds per centum."

But this is not authority in law for charging 3 per cent. of the valuation. It may be, I do not know, that in those days valuers did charge 3 per cent, and paid this duty out of it and kept 1 per cent. as their remuneration. The section did not say whether the valuer or the client should pay: but my opinion is, not having heard any argument, that the intention of the Ordinance was to make the valuer liable.

It is, and no doubt was then, the auctioneers who are usually valuers also. The remuneration of auctioneers as such, then was and still is regulated by statute, in section 16 of the Auctioneers' Ordinance, now Cap. 224. It is by a percentage on the gross amount realised at a sale by auction, and is not to exceed 5 per cent., or if it is bought in by or for the owner then not exceeding 3 per cent. if the gross amount is under £100; otherwise 2 per cent. But remuneration for a sale by auction is a different matter from remuneration of valuers for valuations, and as I have said, the latter is not regulated by law.

In his statement of claim, in paragraph 4, the respondent pleaded:

> "4. The plaintiff claimed payment for his services on the basis of £3 per centum of the total value of all the properties valued amounting to £3,120."

At the hearing, the respondent called a witness, Mr. Percy R. Davies, the Official Administrator of Estates and Registrar-General, seeking to prove that there exists in Sierra Leone a "custom" by which a valuer's remuneration is fixed at 3 per cent. of the valuation given to the property, and Mrs. Khan, for the respondent, repeated the argument before us.

It would be more properly termed, I think, an alleged usage of the valuers' profession of business, in Sierra Leone. This alleged usage had not been pleaded or at any time mentioned, apparently, until the respondent's case was being heard. No rebutting evidence was adduced for the appellant and no adjournment was asked for to enable that to be done. The learned judge did not find that there was in fact any such custom or usage; he accepted the evidence as an indication of the reasonableness of the charges made by the respondent.

Well, now, was it a reasonable remuneration, and if it was not, what is a reasonable figure?

In my opinion, and I am strongly of the opinion, the charge exceeded what was reasonable, having regard to the circumstances as disclosed by the evidence, namely, the number of the properties to be valued and the situation of each, the time taken to complete the work, the certificates of valuation, which, although commendable in their form and manner, indicate that very few actual measurements needed to be made. No doubt the only difficult part of the

services rendered was the application to what was observed in the properties of the valuer's knowledge of current site values and building costs and so on.

Being of opinion that it was an unreasonable charge, what was a reasonable charge? As to this, all I need to say is that the appellant has paid voluntarily £2,100. He has not complained of that, but objects to paying more. In my opinion the £2,100 already paid cannot fail to be reasonable remuneration, to say the least. To add more could not fail to be unreasonable.

I would allow this appeal and set aside the judgment for £1,020 and costs, given for the respondent and instead dismiss the respondent's claim and enter judgment for the defendant with costs, here and in the court below.

[COURT OF APPEAL]

Freetown
July 5,
1961

TRYPHENA LANGLEY . . . . . *Appellant*

v.

E. D. E. M. COKER . . . . . *Respondent*

Ames P.
Bankole
Jones Ag.C.J
Marke J.

[Cr.App. No. 14/61]

Criminal law—Common assault—Evidence of complainant alone—Whether corroborative evidence necessary—Whether hospital prescription form admissible—Whether defendant should have been allowed to make submissions at trial—Criminal Procedure Act, s. 63 (2).

Appellant prosecuted her brother, the respondent, for common assault in a magistrate's court. At the trial, respondent asked to be allowed to make certain "submissions and applications," which request was denied. He was then found guilty and fined. On appeal, the Supreme Court quashed the conviction, holding that a hospital prescription form which had been admitted in evidence should not have been admitted and that the conviction could not be supported by complainant's (appellant's) uncorroborated evidence. From this decision, appellant appealed.

Held, dismissing the appeal, that respondent should have been allowed to make his submissions in the magistrate's court.

The court also said, by way of obiter dictum, that the hospital prescription form, although it was admissible was of no probative value, but that the conviction could have been supported by the uncorroborated evidence of appellant.

W. S. Marcus-Jones for the appellant.

The Respondent appeared in person.

AMES P. This appeal is the outcome of what started as a private prosecution in a magistrate's court, constituted by two justices of the peace, for common assault. The appellant was the prosecutor and the respondent the accused. They are sister and brother respectively.

The prosecution succeeded and the brother was found guilty and fined 40s. or one month, with costs. He appealed to the Supreme Court, which allowed the appeal with costs, and quashed the conviction and ordered the fine, if paid, to be refunded.