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.

Now the sister has appealed to this court on three grounds of appeal, namely:

"1. The learned judge on appeal was wrong in law in holding that a hospital prescription form had been wrongly received in evidence.

2. The learned judge on appeal erred in law in holding that in the absence of corroboration the appellant herein had failed to discharge the burden of proof.

3. That the learned judge on appeal wrongly condemned the appellant in the costs of the appeal."

In the magistrate's court the sister's case consisted only of her own oral evidence, as to the facts of the assault and she tendered a prescription form, which was given to her at the hospital, and it was admitted in evidence.

The learned judge held that its admission in evidence contravened section 63 (2) of the Criminal Procedure Ordinance (Cap. 39), and continued:

"If the medical report is expunged from the notes of evidence together with the not calling of any witness who could support complainant's story that on the day in question defendant assaulted her the burden of proof in a criminal case which is cast upon complainant to prove case beyond any doubt would not have been discharged."

With all respect, if this statement is meant to be of general application, we disagree with it. Corroborative evidence is not needed in common assault. The evidence of a complainant alone is sufficient, if believed.

As to the admission of the prescription form, this was not ruled out by section 63 (2). The point of the section is that medical reports, in the circumstances set out in the section, are admissible as evidence of the truth of the facts stated in them. In our opinion this prescription form was admissible but of no probative value whatever as to any injury received by the complainant. The two justices of the peace gave no reasons for their finding, and in the absence of any comment we think it inevitable that they attached probative value to it, which it did not deserve. Nevertheless there was the sister's own evidence that she had been assaulted and no evidence to contradict it.

The reason that there was no evidence for the brother was, as noted in the record:

". . . The defendant states in the witness-box that as he has certain submissions to make which the court did not allow he has not anything to say further in the matter as he would appeal."

This was the subject-matter of the first ground of his appeal to the Supreme Court, which was:

"(a) The said magistrates wrongfully refused to hear the petitioner in respect of certain submissions and applications at the trial."

This ground was argued at the hearing in the Supreme Court but the learned judge did not give any decision as to it, no doubt because he allowed the appeal upon the other two grounds, which in our respectful opinion he should not have done.

Consequently it becomes necessary to consider the ground of appeal (a) which was not considered in the Supreme Court. We are in as good a position to do so as was that court. We have before us the arguments of counsel. We find that the argument of counsel for the brother was sound: and that the

magistrate's court should have allowed the brother to make his submissions and should have considered them and made a ruling on them, and then, if the rulings were against him, should have called upon him for his defence. We note that the record states that the brother's behaviour in court was " awfully bad " and that he had to be warned to behave better. But nevertheless he should have been allowed to make his submission and as he was not, but was convicted " out of hand " so to speak, we are of opinion that there was a serious irregularity in the proceedings in the magistrate's court which made the trial unfair. We do not know what the submissions were; there is no note on the record except that he was not allowed to make them. For all we can tell, they might have made the trial result otherwise.

We have reached the same conclusion as did the learned judge, although for different reasons. Consequently this appeal against his order must be dismissed.

[COURT OF APPEAL]

Freetown
July 6,
1961

Ames P.
Marke and
Cole JJ.

COLUMBUS MOSES ANRITI THOMPSON . . . . *Appellant*

v.

REGINA . . . . . *Respondent*

[Criminal Appeal 20/61]

Criminal law—Forgery—Trial with assessors—Whether judge usurped function of assessors—Whether judge misdirected assessors—Weight of evidence—Whether judge gave sufficient consideration to defence.

Appellant was charged with forgery, uttering a forged document, obtaining money on a forged document, obtaining money by false pretences and conversion in an information containing eleven counts. He was acquitted on the first, second, sixth and eleventh counts, and convicted on the others. He appealed on the grounds that " the learned trial judge failed to leave the facts to the assessors to decide," that " the learned trial judge misdirected the assessors as to the facts disclosed in the evidence in support of all the offences charged "; that there was insufficient evidence to support the convictions; and that the judge failed to give sufficient consideration to the defence.

Held, (1) that the judge did not usurp the fact-finding function of the assessors;

(2) that the judge did not misdirect the assessors as to the facts disclosed in the evidence;

(3) that there was sufficient evidence to support the convictions; and

(4) that the defence was presented to the assessors fairly by the judge in his summing-up.

The court also said, obiter, that, " Where there are alternative counts and a conviction is had on one of them, no verdict should be required from a jury, or opinion from assessors, upon any alternative counts."

Cases referred to: *Rex* v. *Frampton* (1917) 12 Cr.App.R. 202; *Rex* v. *Beeby* (1911) 6 Cr.App.R. 138.

James E. Mahoney for the appellant.
John H. Smythe (Solicitor-General) for the respondent.