witness was also born; that the father of Kaba Seisay was Pa Nana, the son of Orthernip; that Pa Nana died in the war; that he (the witness) was then a young man, too young to go to war.

As to ground 3, it is clear that, on the pleadings, the defence should have started. Counsel for both sides overlooked this and the plaintiff started, but the judge dealt with the question of burden of proof on the basis that the onus was on the defendant. I see nothing wrong in that.

As to the other two grounds of appeal, it is sufficient to say that in my opinion, the learned trial judge did give sufficient consideration to the plaintiffs' case and that the judgment was not against the weight of evidence.

My brother Marke considers the question of legitimacy. Did the respondent prove his legitimacy? With respect, I do not think that the question arose. Reading the pleadings and the evidence it seems to me that all references to relationship are references to legitimate relationship. It is true, as my brother has pointed out, that the witness, Alhaji Alimami Souri said: ". . . I knew the defendant. I knew his father, Kaba Seisay, I knew him as a child. I know his mother. I did not know of their marriage. . . ."

I do not know what this meant exactly. It could mean that they were married before he knew them: he knew them by repute as the parents of the defendant. It could be a hint that defendant was illegitimate: but if it was meant for the latter, I should have expected it to be pounced upon by the other side in cross-examination to make this meaning clear. But it was not mentioned in cross-examination.

I would dismiss this appeal with costs.

Freetown
July 22,
1961

Ames P.
Bankole
Jones J.
Marke J.

[COURT OF APPEAL]

SIAKA P. STEVENS AND C. A. KAMARA-TAYLOR . . *Appellants*

v.

REGINA . . . . . *Respondent*

[Cr. App. 26/61]

Criminal law—Libel—Conspiracy to publish defamatory libel—Trial—Submission of no case—Whether conviction for conspiracy could be upheld after quashing conviction for libel—Effect of acquittal of one of two persons charged with conspiracy—Whether trial judge exercised discretion as to sentence properly.

Appellants were each convicted in the Supreme Court by a judge sitting alone on two counts of libel and two counts of conspiracy to publish defamatory libel, to which they had pleaded not guilty. The first appellant (Stevens) appealed against all his convictions. The second appellant (Kamara-Taylor) appealed against his conviction on the conspiracy counts and also against his sentences.

The allegedly libellous material was contained in the copy of a letter addressed to "His Excellency the Governor, Fort Thornton, Freetown," which came to the attention of Patrick Patnelli, Assistant Editor of the "Daily Mail" newspaper on January 18 or 19, 1961. At the bottom of the copy (Exh. A) appeared the initials "C.A.K.T." and below them was typed "C. A. Kamara-Taylor for Working Committee." At the side was a rubber stamp impression, "All People's Congress—Sierra Leone." Stevens is Leader of the All People's Congress (A.P.C.).

On January 24, 1961, Patnelli received copies of two "petitions of the A.P.C." On February 1, Stevens went to Patnelli's office and said to him, "I see you have not used our petition." Patnelli assumed he was referring to Exh. A, and told him that the newspaper's solicitor had advised that it was libellous. Stevens made no comment. On April 19, Patnelli gave evidence at the preliminary investigation into the charges against appellants, and produced Exh. A, which was read in court. On April 23, when Stevens was detained in prison, he gave the Director of Prisons the draft of a cable which he wished to have sent and which referred to the allegation contained in Exh. A.

There was also evidence that appellants met about once a week and that Stevens was one of the members of the Working Committee of the A.P.C.

Held, (1) that the trial judge should have ruled that there was no case for Stevens to answer on the libel counts;

(2) that there was no evidence of any act indicative of conspiracy on the part of Stevens before January 18 or 19, 1961;

(3) that Kamara-Taylor's convictions on the conspiracy counts must be quashed, because if two persons are charged with conspiring together and one is acquitted, the other cannot be convicted; and

(4) that the trial judge exercised his discretion properly in sentencing Kamara-Taylor on the libel counts.

Cases referred to: *Regina* v. *Charlotte Smith* (1865) 10 Cox C.C. 83; *Regina* v. *Abbott* [1955] 2 Q.B. 497, [1955] 2 All E.R. 899; *Rex* v. *Cooper and Compton* (1947) 32 Cr.App.R. 102; *Regina* v. *Sweetland and Sweetland* (1957) 42 Cr.App.R. 62.

Berthan Macaulay (*Manilius Garber* with him) for the appellants.
Joseph Deane for the respondent.

AMES P. The appellants were convicted in the Supreme Court, in a trial by a judge sitting alone, on each of two counts of libel and of two counts of conspiracy to publish a defamatory libel, to which they had pleaded not guilty. The first appellant has appealed against all his convictions. The second appellant has appealed against his conviction on the counts of conspiracy and also against his sentences which were six months' imprisonment on each count to run concurrently. In addition an order was made on the 1st count binding him over "to keep the peace and be of good behaviour for one year within five months from date."

The counts of libel were counts 1 and 3.

Count 1, in so far as it need be set out, was as follows:

"*1st count*: *Statement of Offence*

"Libel. Particulars of offence. Siaka Probyn Stevens and C. A. Kamara-Taylor on or about the 18th day of January, 1961, at Freetown in Sierra Leone, published a defamatory libel to Patrick Patnelli, an assistant editor of the newspaper (the Sierra Leone "Daily Mail") concerning Dr. M. A. S. Margai knowing it to be false in the form of a letter addressed to His Excellency the Governor which contained the following defamatory matters concerning the said Dr. M. A. S. Margai."

This was followed by the setting out of the defamatory libel in question. It is not necessary that it should be set out in this judgment. It is sufficient to say that it was a copy of a letter, dated January 18, 1961, and addressed to "His Excellency the Governor, Fort Thornton, Freetown"; that its contents, which occupy some 76 lines, contained matter which the learned Chief Justice

very rightly described as "highly libellous" of Dr. M. A. S. Margai, and also of M. S. Mustapha, Minister of Finance; that there is no signature at the end of it, but there are the initials "C.A.K.T." and below them is typed "C. A. Kamara-Taylor for Working Committee," and at the side is a rubber stamp impression "All People's Congress—Sierra Leone"; and that below this are set out the names of some Members of Parliament of the United Kingdom, some English newspapers and "The Bow Group."

We notice that the particulars of offence of each count, when setting out this document, incorrectly set it out as on paper headed "All People's Congress" and "49b Westmoreland Street, Freetown, Sierra Leone." The original sent to, and received by the Governor may have been so (if sent to, and received by him) but the trial was and this appeal is concerned with the document received by Patrick Patnelli, which is a carbon copy on paper without a heading or address. We also notice that two newspapers which are written on this carbon copy in ink are not included in the copy of the document set out in the particulars. It would seem that the copies in the particulars may have been made from the original sent to the Governor and not from the document itself which is the actual subject-matter of the charge. Nothing turns on this and we merely point it out to stress the importance of care. In another appeal at this session, we had a count which, by error, referred to the wrong document, and led to the quashing of a conviction which would have been a good conviction, had it referred to the intended document.

In the argument before us the document was referred to as exhibit A and it will be convenient to do the same in this judgment.

The other count for libel, count 3, was the same as count 1 except of course that its particulars alleged publishing a defamatory libel "concerning M. S. Mustapha, Minister of Finance in the Government of Sierra Leone," where the particulars of count 1 had alleged a defamatory libel "concerning Dr. M. A. S. Margai."

The two counts for conspiracy to publish a libel, counts 2 and 4, referred to the same exhibit A. Count 2 at the start of the trial was:

> "*2nd Count*: *Statement of Offence*: Conspiracy to publish a defamatory libel.
>
> "*Particulars of Offence*: Siaka Probyn Stevens and C. A. Kamara-Taylor, on or about the 18th day of January, 1961, at Freetown in Sierra Leone, conspired together to publish a defamatory libel concerning Dr. M. A. S. Margai."

This was followed also by exhibit A.

Count 4 was the same at the start of the trial, except that it alleged conspiring together to publish a defamatory libel concerning M. S. Mustapha.

Towards the end of the trial while the second appellant was in the box and under cross-examination, counsel for the prosecution was given leave to amend each of these two counts by inserting, in the particulars of each, after the word "published" the words "to Patrick Patnelli."

The grounds of appeal which had been filed with notices of appeal were abandoned and the appeal was argued, by Mr. Berthan Macaulay for the appellants, on additional grounds of appeal which were filed before the argument, four grounds for the first appellant and two for the second appellant which were the same as the first and the last grounds of the first appellant.

It will be convenient to start by considering the second ground of appeal of the first appellant. It was:

> " 2. The learned trial judge wrongly overruled the submission of ' no case ' on the libel counts in the information and in doing so found that there was evidence of (a) mens rea—that is, knowledge and intention to publish the said libel to the person alleged in the information, that is, Patrick Patnelli, (b) actus reus—that is, either an aiding, abetting, counselling or procuring the publication of the libel to the said Patrick Patnelli."

Only two witnesses were called by the prosecution, one was Patrick Patnelli and the other was the Director of Prisons. Exhibit A was put in evidence through Patrick Patnelli.

Examination of the notes of the evidence given by them shows that, at the close of the case for the prosecution, the evidence given was to the following effect, in so far as the case concerned the first appellant.

Patnelli is the Assistant Editor of the " Daily Mail."

The 1st appellant is the Leader of the All People's Congress (hereinafter referred to as the A.P.C.).

Patnelli first saw Exh. " A " on January 18 or 19 in his office. It is not known how it got there.

Exh. A was read and put in evidence. It is seen to be a carbon copy of a letter sent to the Governor, apparently by the second appellant for the Working Committee of the A.P.C.

Part of it is a defamatory libel of Dr. M. A. S. Margai and part of it the same of M. S. Mustapha.

First appellant's name or signature is not in Exh. A.

Patnelli had received many copies of petitions from the A.P.C., most of them signed by the first appellant.

On January 24, Patnelli received copies of two petitions of the A.P.C. (as he described them). These two petitions were not put in evidence, although there was some mention of their contents.

On February 1, first appellant went to Patnelli's office and said to him: " I see you have not used our petition." Patnelli understood him to mean a petition from the A.P.C.; did not ask him which petition he was referring to; but assumed that he was referring to Exh. A, which was then still on his desk.

Patnelli explained to the first appellant the gist of paragraphs 1, 2 and 3 and told him that the company's solicitor had advised that they were dangerous and libellous.

Patnelli could not say if the first appellant was surprised or not. The first appellant made no comment, but asked if he could have his photograph taken by the " Daily Mail " photographer as he was leaving the country that week, which Patnelli arranged to have done.

On April 19, Patnelli gave evidence at the preliminary investigation into these charges and produced Exh. A, which was read in court.

It follows, of course, that the first appellant must have had Exh. A copied in the summons which had been served upon him, and given into his possession, so that by this time he well knew the contents of Exh. A.

On April 23, when the first appellant was detained in prison, as also were the second appellant and other party members, the first appellant gave the

Director of Prisons the draft of a cable which he wished to have sent, and which was put in evidence, as Exh. B. It was not sent.

It referred, very briefly, to the allegations contained in paragraphs 1, 2 and 3 of exhibit A and to an allegation against the police, not mentioned in Exh. A. It was to be sent to four of the M.P.s and one of the newspapers listed at the end of Exh. A and also to the Prime Minister of the United Kingdom. It was to have been sent in the name of the first appellant as a request made on behalf of the A.P.C.

In his statutory statement at the preliminary investigation, the first appellant had said: "I only knew of the document in question later. It was then that I went to Patnelli."

There was no evidence (at this stage) as to the connection between the A.P.C. and the Working Committee and no evidence that the first appellant was a member of the Working Committee.

What does the foregoing examination of the evidence come to? We think it can be fairly said to come to this. On January 18 or 19, Patnelli receives Exh. A from the Working Committee. First appellant is not shown to be a member thereof. On January 24, Patnelli receives copies of two A.P.C. petitions. The first appellant is the leader of the A.P.C. On February 1 he says to Patnelli, "I see you have not used our petition." When Patnelli tells him of the libellous nature of Exh. A he makes no comment but arranges for his photograph to be taken. On April 24 when he had known of the details of Exh. A for some time and was in detention together with the secretary of the Working Committee and other members of the A.P.C. he asks to have the cable, Exh. B, sent to London.

In *Regina* v. *Charlotte Smith* (1865) 10 Cox C.C. 82, where a question was reserved by Smith J. for the court and a conviction for manslaughter by neglect to provide proper food, etc., for a servant girl of a low order of intellect was quashed, Blackburn J. said at p. 96:

> "Now, was there in this case sufficient evidence that the deceased stood in such a relation to the prisoner that, although there were no bars, locks, or bolts, she was so terrified by the prisoner that she was in effect as much restrained from withdrawing herself as if she had been so confined? If there had been such evidence, I think that it would support the conviction. But though there is some scintilla of evidence, that ought not, especially in a criminal case, to be left to the jury; and I think the evidence, upon the whole, does not amount to more than a mere scintilla."

What have we in the instant case? With all respect to the learned Chief Justice, we think that there was no more than a mere scintilla of evidence such as should not have been left to a jury, had there been one. We think that the learned Chief Justice should have ruled that there was no case for the first appellant to answer on counts 1 and 3 and should have acquitted him on those counts.

The case of *Regina* v. *Abbott* [1955] 2 Q.B. 497, [1955] 3 W.L.R. 369, is sufficient authority for saying (as the headnote puts it):

> "that the appellant was entitled to have his appeal allowed as the judge had come to a wrong decision in point of law in rejecting the submission of no case and in leaving the case to the jury when there was no evidence against him at the close of the case for the prosecution. In those circumstances the Court of Criminal Appeal was not obliged to take into account

the adverse evidence given against him when the case was wrongly left to the jury."

The first appellant's conviction on counts 1 and 3 is therefore quashed.

For some reason which is not apparent to us Mr. Macaulay's submission at the close of the prosecution only referred to counts 1 and 3.

We will now pass to consider the case of the first appellant as to counts 2 and 4.

In the case of *Rex* v. *Cooper and Compton* (1947) 32 Cr.App.R. 102, the appellants were charged with conspiracy to steal and also with robbery, and alternatively with larceny (in pursuance of the conspiracy). They were convicted of conspiracy to steal and acquitted on the other counts.

Humphreys J. delivering the judgment of the Court of Criminal Appeal said:

> "Now is it possible that this court can uphold that verdict as being a reasonable one? In a great many cases there is no doubt at all that a verdict of Guilty of conspiracy but Not Guilty of the particular acts charged is a perfectly proper and reasonable one. In such cases it would be very wrong not to insert in the indictment a charge of conspiracy. Criminal lawyers know that often while a general conspiracy, for example, a conspiracy to steal, is likely to be inferred by the jury from the evidence, it may be that the evidence of the particular acts forming the larcenies, which are charged in the indictment, are supported by rather nebulous evidence. In such a case the jury may say, and very likely will say, Not Guilty of larceny, but Guilty of conspiracy to commit larceny."

In the case of *Regina* v. *Sweetland and Sweetland* (1957) 42 Cr.App.R. 62, the appellants were charged with conspiring together and with others to cheat and defraud certain people of their goods and money by false pretences and also with several counts of obtaining money by false pretences from those people. They were acquitted of conspiracy and convicted of obtaining money by false pretences.

Lord Goddard, delivering the judgment of the court (quashing the convictions) said:

> "This court is not laying down in this case, and has no intention of allowing this case to be quoted as an authority for saying, that, whenever a verdict of Not Guilty is returned on a count for conspiracy to commit offences and Guilty on other counts in the same indictment charging those specific offences, or contrariwise when a verdict of Guilty is returned on the count of conspiracy and Not Guilty on the counts charging specific offences, the verdict is necessarily inconsistent. Each case must depend on its particular circumstances, and it is very dangerous in circumstances of this sort to lay down general rules which could be quoted when the facts might be entirely different."

In the instant case, the learned Chief Justice said:

> "I am aware that it is not a desirable practice to include in an information charging a substantive offence, a conspiracy charge. In this case, it seems to me, there are different considerations. The case on both sets of charges is founded entirely on the same facts—same evidence—against both."

Both Mr. Deane, for the respondent, and Mr. Macaulay agreed that the counts were founded on the same evidence.

Mr. Deane had submitted, in reference to counts 1 and 3, that it was a possible conclusion for a jury to say that the second appellant had published the libel without the first appellant's knowledge: but if a jury did convict the first appellant, it could not be said that the conviction was unreasonable.

He also submitted that as there was no submission of " no case " on counts 2 and 4 the court was entitled to look at the whole of the evidence; that all evidence relating to the part played by each appellant in the A.P.C. in its short life went to show an agreement to publish; that all the evidence was one way, except the first appellant's statement to the magistrate and the second appellant's evidence which the Chief Justice disbelieved; and that as the first appellant did not go into the witness-box, the evidence against him was uncontradicted.

In order to succeed on these counts of conspiracy, it was necessary to prove conspiracy before January 18 and 19.

What was the evidence at the end of the case? There was evidence of opportunity to conspire; they both lived in Freetown; they met about once a week and the first appellant was one of the members of the Working Committee (not the chairman; the evidence was that a chairman was elected at each meeting).

Apart from this we find no evidence of any act indicative of conspiring before January 18 or 19, and it would have had to be inferred from proof that the first appellant was privy to the publishing of the libel. But we have quashed his conviction on counts 1 and 3, holding, with all respect, that he should have been acquitted on those counts at the close of the case for the prosecution. Consequently, we fail to see how he can be convicted on the counts for conspiracy because in these circumstances there could be no proof of his privity to publication from which it could be inferred.

This aspect of the matter is raised in grounds of appeal 3 and 4 which are:

> " 3. The learned trial judge in his judgment, in dealing with the conspiracy charges and the libel charges against the appellant said: ' The case on both sets of charges is founded entirely on the same facts—same evidence—against both.' The mens rea referred to in the foregoing ground 2 of appeal being the same as in the conspiracy charges, it follows that having wrongly held that there was evidence of a mens rea on the libel charges, he erred as a matter of law in convicting the appellant on the conspiracy charges.
>
> " 4. The reasons given by the trial judge for convicting the appellant were not based on the view he took of the credibility of the witnesses but on his evaluation of the evidence which he accepted and believed. In doing so, the judge erred in drawing the wrong inferences from his specific findings of fact. The verdict was therefore unreasonable and having regard to this could not be supported."

The conviction of the first appellant on counts 2 and 4 is also quashed. It therefore becomes unnecessary to consider, although the point was not raised before us, whether or not it is proper to have two counts of conspiracy where what is alleged is a conspiracy to publish one document containing two libels.

It is also unnecessary to consider this appellant's first ground of appeal, which relates to counts 2 and 4.

The appeal of the second appellant can be disposed of very briefly. If two persons are charged with conspiring together, and one is acquitted, the other

cannot be convicted. So the second appellant's convictions on counts 2 and 4 are therefore quashed.

He has appealed against his sentences on counts 1 and 3. He has not shown that the learned Chief Justice exercised his discretion as to sentence otherwise than properly and judicially. Indeed we think, respectfully, that it was a very suitable sentence in the circumstances and the appeal against sentence is dismissed.

In order to avoid any doubt, we feel it necessary to point out that the second appellant was not convicted on counts 1 and 3 as charged, namely, of publishing a defamatory libel knowing it to be false, but of publishing a defamatory libel, under the provisions of section 5 of the Libel Act, 1843, and we direct that the record of his conviction be amended accordingly.

[COURT OF APPEAL]

Freetown
Oct. 30,
1961

Ames Ag.P.
Benka-Coker
and Wiseham
C.JJ.

MOHAMED AMADU . . . . . *Appellant*

v.

REGINA . . . . . *Respondent*

[Criminal Appeal 15/61]

Criminal law—Fraudulent conversion—Larceny Act, 1916, *s.* 20 (1) (iv) (*a*)—*Conflicting evidence—Omission of certain matters of fact from judge's summing-up to assessors.*

Appellant was convicted of fraudulent conversion of £800 contrary to the Larceny Act, 1916, in a trial before a judge and assessors. He was a licensed diamond dealer, and it was alleged that the complainant asked him to buy a Land Rover for him in Freetown, that complainant gave him £800 for that purpose and that appellant failed to buy the Land Rover and failed to return the £800.

Appellant claimed that the complainant, who had no diamond licence, brought a 14 carat diamond to him which complainant said he wanted to sell for £110; that appellant sold it to the Diamond Corporation for £900, out of which he paid £110 to complainant and kept £790 himself; and that it was two months later before anything was said about £800 having been entrusted to him to buy a Land Rover.

At the trial, there was evidence that the Land Rover would have cost £1,200; that, after appellant returned from Freetown, complainant sent a message to him saying "that if he (appellant) knew that the money was his (complainant's) he should pay him, but if he thought that the money was his (appellant's) he should tell him"; and that appellant had in fact sold a diamond to the Diamond Corporation on January 4, 1961.

The judge, however, failed to mention this evidence in his summing-up to the assessors.

Held, quashing the conviction, that the trial judge erred in failing to mention certain evidence favourable to the accused in his summing-up to the assessors.

The appellant appeared in person.

John H. Smythe (Solicitor-General) for the respondent.

AMES AG. P. The appellant was convicted of fraudulent conversion of £800, in contravention of section 20 (1) (iv) (*a*) of the Larceny Act, 1916, and