in accordance with some few basic principles. One such must be that the person charged must be told, and told reasonably clearly, what the charge against him is. Another must be that the tribunal cannot find him guilty of something absolutely different from, and inconsistent with, the charge as was done in this case. The Committee appear to have found him guilty of having done what is Mr. Smythe's interpretation of the charge.

The learned judges of the Supreme Court said in their judgment: ". . . It seems to us that whatever construction is placed on the meaning of the charge . . ."; but I presume that they approved of the construction put upon it by Mr. Smythe and the Committee, because they upheld the findings of the Committee and found the charge proved.

With all respect to the learned judges and to the Committee I cannot see how the charge can be read to mean this absolutely different thing.

I would allow the appeal on this ground. This really disposes of the appeal. Nevertheless I ought perhaps to refer briefly to one other aspect of the matter which was raised by other grounds of appeal. It arises out of the Committee's finding, which the learned judges accepted, that the complainant never retained the appellant in connection with his case. I myself do not accept the finding as the consequence of the proceedings before the Committee, because it was necessary to apply a high standard of proof and I would not assume, as in proper cases one should assume (*Bhandari* v. *Advocates Committee* [1956] 3 All E.R. 742) that the Committee had applied that standard, because in so far as there are any indications as to whether they did or not, the indications are that they did not.

But assuming that the charge had been that, although not retained by the complainant, the appellant had retained improperly part of the money which came into his hands for the complainant, and that it had been proved by the proper standard, that the appellant had not been retained by the complainant, it was still necessary to consider whether or not the appellant honestly thought that he was entitled to retain it. This was not considered at all, either by the Committee or in the Supreme Court. Had it been considered, who knows what the result might have been? There is much in the evidence tending to show that he would have been justified in so thinking.

As I have said, I would allow the appeal and set aside the order suspending the appellant for one year and substitute an order dismissing the charge against him.

Freetown
Mar. 30,
1961

Ames P.
Benka-Coker
Ag. C.J.
Marke J.

[COURT OF APPEAL]

REGINA . . . . . *Respondent*

v.

VANDY KOROMA . . . . . *Appellant*

[Cr. App. 51/60]

Criminal law—Homicide—Murder—Manslaughter—Judge's failure to submit defence of self-defence to assessors.

Appellant was charged with murder before the Supreme Court of Sierra Leone sitting at Bo, was tried by that court with the aid of assessors and was convicted

of manslaughter and sentenced to five years' imprisonment with hard labour. Although there was some evidence that appellant had acted in self-defence, the trial judge failed to submit this issue to the assessors.

Held, quashing the conviction, that, since there was some evidence that appellant had acted in self-defence, the trial judge was bound to submit this issue to the assessors.

Case referred to: *Bharat, Son of Dorsamy* v. *Regina* [1959] 3 All E.R. 292.

Berthan Macaulay for the appellant.
Gershon B. Collier for the respondent.

AMES P. This is an appeal against a conviction at Bo on December 15 in a trial in the Supreme Court by that court with aid of assessors. The appellant was charged with murder but was convicted of manslaughter and sentenced to five years' imprisonment with hard labour.

The only ground of appeal is this:

> "That the learned trial judge, having held at the close of the prosecution case that there was evidence tending to suggest a defence of self-defence, which counsel for the appellant had put in cross-examination of the prosecution witnesses, erred in withdrawing the question, whether or not the appellant might have been acting in self-defence, from the assessors, and came to the conclusion of fact that the appellant was not so acting, without having obtained the opinions of the assessors on this question, which opinions he was bound, in law, to take into account in coming to a decision."

A disputed question of fact was whether or not the appellant had been struck on the head (as he alleged) by the deceased with a stick during the disturbance of the peace and incidents which ended with the appellant's wounding the deceased on the abdomen with a penknife, and causing his death in hospital three days later. The case for the prosecution denied that the appellant had been so hit. As to this the learned judge said:

> "I am not convinced that the deceased struck the accused over the head with a stick but no medical evidence has been made available and the matter cannot be said to be free of doubt."

The benefit of that doubt had to be given to the appellant and so the case had to be decided on the basis that he had been so struck.

Cross-examination of the prosecution witnesses had showed that the defence to the charge was that the appellant had acted in reasonable self-defence. At the close of the case for the prosecution, counsel for the appellant submitted that the defence had been established and that the appellant should be discharged. Counsel for the prosecution opposed the submission. The learned judge ruled as follows:

> "There may be evidence tending to the view that the accused acted in self-defence but on the evidence as it stands if no more were to be said I should be satisfied that accused was not acting in self-defence subject perhaps to the views of the assessors. The submission fails."

The trial proceeded, and at the end the judge summed up to the assessors, who gave their opinions, both being that the appellant was guilty of murder.

The trial was adjourned until the next day when the judge gave judgment and found the appellant guilty of manslaughter.

In his summing-up to the assessors, of which we have before us only his notes and not the full summing up, there is this note, and it is the only note about self-defence: " No evidence of self-defence, not for consideration."

As the matter of self-defence was thus withdrawn from the assessors, the summing-up contained nothing as to what can amount to self-defence, or as to where lies the onus of its disproof or proof or as to how that onus can be discharged.

In his judgment the judge said:

> " I was of the opinion that there was no evidence on which the assessors could form the opinion that the accused might have acted in self-defence and I withdrew the matter from them. I put the case to the assessors as one in which, assuming they were satisfied that accused by his act caused the death of deceased, the only question was whether the prosecution had or had not established that the accused had acted with malice aforethought."

The judge may have thought the evidence as to self-defence of insufficient weight to merit consideration. But there was such evidence. That elicited under cross-examination to which the judge referred in his ruling at the close of the case for the prosecution, and that given by the appellant himself. Moreover, his having been struck over the head with a stick was relevant not only to the question of whether the appellant acted under provocation but also as to whether he acted in self-defence. Consequently there was a lack of direction of the assessors on a vital point, and the learned judge thereby (to use the words of Lord Denning in *Bharat, Son of Dorsamy* v. *Regina* [1959] 3 All E.R. 292 at 294) " disabled the assessors from giving him the aid which they should have given; and thus, in turn, disabled himself from taking their opinions into account as he should have done."

The last point is whether the assessors would necessarily have come to the same opinion if the question of self-defence had not been withdrawn from them and they had been directed as to it. We think that although this case may be near the borderline, it cannot be certain that they would have. We therefore quash the conviction of the appellant and set aside the sentence, and order that a finding of not guilty be entered on the record.

Freetown
April 4,
1961

Ames P.
Marke J.
Bankole
Jones J.

[COURT OF APPEAL]

ABDUL BAI KAMARA . . . . . *Appellant*

v.

REGINA . . . . . *Respondent*

[Cr. App. 45/60]

Criminal Law—Appeal—Appeal from magistrate's court to Supreme Court—Appeal against conviction but not against sentence—Whether Supreme Court can increase sentence—Appeals from Magistrates Ordinance (Cap. 14, Laws of Sierra Leone, 1946) ss. 3, 4, 5, 9, 18)*—Magistrate's failure to call for statement of prosecution witness.*