had, in his possession a statement of the witness, which was materially different. Counsel did not ask to treat the witness as hostile and he did not show the statement to counsel for the defence. By chance the existence of this previous statement came to the notice of the trial judge, who called for it and questioned the witness about it. This may well have affected the result of the case because, of course, this witness to that extent was discredited. But, be it noted, any effect which this had was in favour of the prosecution and not of the defence.

Even supposing that the magistrate should have called for this statement, we do not think that it would have had any effect whatever in favour of the defence. We find no substance in this ground of appeal and the appeal against conviction is dismissed.

Freetown
April 4,
1961

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

[COURT OF APPEAL]

LANSANA KPAYENGE . . . . . *Appellant*

v.

REGINA . . . . . *Respondent*

[Cr. App. 49/60]

Criminal Law—Trial—Time and place of trial—Case not tried at time specified by magistrate in warrant—Criminal Procedure Ordinance (Cap. 52, Laws of Sierra Leone, 1946) ss. 104, 157—*Criminal Procedure (Amendment) Ordinance, 1960—Form 26 of Second Schedule to Criminal Procedure Ordinance.*

Appellant was charged with murder. A magistrate held a preliminary investigation at Kailahun and, on May 23, 1960, committed appellant for trial. The magistrate issued a warrant of committal addressed to the Keeper of the Prisons at Kailahun in the form prescribed by Form 26 of the Second Schedule to the Criminal Procedure Ordinance. The warrant, inter alia, commanded the Keeper "safely to keep (appellant) until the sittings of the Supreme Court . . . to be holden at Kenema on the first day of August 1960 . . . and to produce him before the said court then and there to be tried." The Supreme Court sat at Kenema, starting on August 2, but appellant was not tried at that sitting. An information dated August 3 was filed on September 6 at Bo, where appellant was arraigned on September 22. The trial was then adjourned to the Kenema sessions, where appellant was convicted on November 8. He appealed on the ground that the trial was a nullity since it did not take place in accordance with the directions in the warrant issued by the magistrate.

Held, dismissing the appeal, that the general jurisdiction of the Supreme Court, referred to in section 104 of the Criminal Procedure Ordinance, was not limited by the wording of Form 26 of the Second Schedule to said Ordinance.

Case referred to: *Regina* v. *Oliver* [1958] 1 Q.B. 250.

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

AMES P. The appellant was convicted in the Supreme Court, sitting at Kenema on November 8 last year, of the murder of one Janeh Comba, a

woman, on February 17, 1960, " in the bush near Njala village in the Mandu Chiefdom in the Kailahun District."

The only ground of appeal raises a question of law and is as follows:

" That the learned magistrate, who conducted the preliminary investigation of the charge, having committed the appellant to the Supreme Court, for trial therein on the 1st day of August 1960 at Kenema, and having named the said day on the warrant issued by him, pursuant to section 104 (1) of the Criminal Procedure Ordinance, Cap. 52; the trial of the accused was a nullity in that no trial of the accused was begun at any sitting of the Supreme Court held on the day or place named in the warrant, nor was the time stated thereon extended by endorsement by any judge or magistrate, pursuant to section 104 (2) of Cap. 52 (as set out in Ordinance No. 11 of 1960)."

It is necessary to set out what happened. The magistrate held a preliminary investigation at Kailahun and on May 23 last year committed the appellant for trial. The order read: " I order that the accused be committed for trial upon information before the Supreme Court at Kenema on August 1, 1960, and I further order that the accused be committed to prison."

The Supreme Court sat at Kenema, starting on August 2. The appellant's case was not tried at those sittings nor was it included in the list of cases for trial there published in the " Gazette."

Information was not filed before those sittings started. Information, dated August 3, was filed at Bo on Tuesday, September 6, and notice of trial accordingly, dated August 18, was served upon the appellant.

He was arraigned at Bo on September 22, and the trial was then adjourned to the Kenema sessions, apparently because it was a Kailahun case and the witnesses were not at Bo, and the trial was continued at Kenema, starting on November 1.

When the magistrate committed the appellant for trial he issued a warrant of committal in Form 26 of the Second Schedule to the Criminal Procedure Ordinance, which form is important because it is the basis of Mr. Berthan Macaulay's argument for the appellant. It should be set out in full and is as follows:

No. 2946.

" In the Police Magistrate's Court at Freetown

To: The Keeper of the Prisons at Kailahun

Whereas at a preliminary investigation held by me into a charge of

Murder

Preferred against Lansana Kpayenge I committed the said Lansana Kpayenge for trial by the Supreme Court or Circuit Court upon the said charge and did not admit him to bail: Now these are to command you to receive the said Lansana Kpayenge into custody, and safely to keep him until the sittings of the Supreme Court or Circuit Court to be holden at Kenema on the first day of August 1960 for the trial of accused persons, and to produce him before the said court then and there to be tried.

Dated this 23rd day of May, 1960.

(Sgd.) C. A. Harding

Police Magistrate."

The important words for the argument are " then and there to be tried " because, as shown, the appellant was not " then and there " tried and the period of the warrant was not extended.

The warrant was issued under the provisions of section 104 of the Ordinance, and on May 23 when the warrant was issued that section contained no provision for its extension. Later on, the Criminal Procedure (Amendment) Ordinance 1960, No. 11 of 1960, which commenced on August 18, 1960, added a provision to the section making it lawful for any judge or magistrate to extend by endorsement on the warrant the time stated thereon. The warrant which the magistrate issued expired on August 1, and so until the 18th there was no express statutory provision for its extension. Whether this expired warrant could have been given new life from the 18th has not been argued and does not matter because it was not attempted.

The appellant's argument is that a form prescribed in the Schedule makes provision for the entry by the magistrate of the place and date of trial when he is " then and there to be tried," and that, because he was not " then and there " tried, but later on and elsewhere, the court had no jurisdiction to try him and the trial was a nullity.

Mr. Macaulay suggested that the failure to extend the warrant and the consequent lack (according to his argument) of jurisdiction could, perhaps, have been cured by an order of the Supreme Court obtained by the Attorney-General under section 3 (2) of the Ordinance; but this was not done and so the point does not arise. Also there is no need to consider what should have been the result, had habeas corpus proceedings been instituted after the expiration of the warrant.

Mr. Macaulay submits that the Schedule of Forms is part of the Ordinance and must be read and construed with it. This Schedule is the subject-matter of section 157 of the Ordinance, which reads:

> " 157. The forms set out in the second Schedule may be used in all proceedings to which they are applicable with such variations as circumstances require, and shall be valid and effectual for all purposes. In proceedings to which no such forms are applicable the Master of the Supreme Court may, with the approval of the Chief Justice, from time to time frame the forms required and such forms shall be published in the ' Gazette.' "

Mr. Macaulay referred at some length to the case of *Regina* v. *Oliver* [1958] 1 Q.B. 250. We do not think that this case is any guide to the question raised in this appeal. It is concerned with statutory provisions in England as to the court in which criminal trials can be had, after committal by magistrates and after arraignment upon indictment and after a transfer by the direction of the trial judge. In England there is the appropriate Court of Assize or Quarter Sessions to which any particular magistrate's court has power to commit a person for trial, and no other court has any jurisdiction to try such person, apart from statute. Section 14 (2) of the Criminal Justice Act, 1925, provided that, where a trial in such appropriate court was not able to be proceeded with or to be concluded, such court should have power in certain circumstances " to direct that the trial or re-trial of the accused shall take place before a Court of Assize, or (if the offence is within the jurisdiction of a Court of Quarter Sessions) before a Court of Quarter Sessions, or some other place.' Oliver's case shows that this is to be interpreted as a power to direct that the trial or re-trial shall take place at the then next forthcoming Court of Assize or Quarter

Sessions for the other place and not at any subsequent Court of Assize or Quarter Sessions. Consequently no subsequent Court of Assize or Quarter Sessions could have any jurisdiction to hold the trial, because the provisions as to what is the ordinarily appropriate court of trial cannot be departed from unless there is express statutory power to do so.

Here the question of what is the appropriate court of trial for a case committed for trial by a magistrate at Kailahun is answered (as it is also for any magistrate sitting anywhere in the Protectorate) by section 104 of the Criminal Procedure Ordinance. It is the Supreme Court, and the Supreme Court has jurisdiction in every place, although for the general public convenience, it sits in the Protectorate only at certain places, and these places and the times of sittings thereat are appointed by the Chief Justice under the provisions of section 7 of the Courts Ordinance and published before the beginning of each (calendar) year.

In Freetown the Supreme Court (Criminal Sessions) Rules, 1947, show that criminal causes are to be heard at the different criminal sessions in Freetown. There is no corresponding provisions for sessions held in the Protectorate.

Mr. Collier, for the respondent, submits that questions of jurisdiction to hold a trial are different from questions of the keeping of the accused in lawful custody.

We think it would be surprising if what appears, in section 104 of the Criminal Procedure Ordinance, to be a reference to a general jurisdiction of the Supreme Court should turn out to be, really, only jurisdiction at a particular place on a particular date, to be decided upon by the committing magistrate, because of the wording of a form in a Schedule to the Ordinance.

In our opinion the provision in section 104 (as it was, at the time of committal: it is now (section 104 (1)) requiring the magistrate's court, after committal, " either to admit him to bail or to send him to prison for safe keeping " is intended to ensure that the keeper of a prison shall have the power and be warranted lawfully to keep in custody any person who has been committed for trial but not admitted to bail. The last sentence of the section makes this clear, and likewise also does the amendment made by Ordinance No. 11 of 1960, to which we have already referred.

For these reasons we order that this appeal be dismissed.

[COURT OF APPEAL]

Freetown
April 14, 1961

ATTORNEY-GENERAL . . . . . *Appellant*

v.

J. C. LUCAN . . . . . *Respondent*

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

[Criminal Appeal 5/61]

Criminal law—Dispersing newspaper without name and place of abode of printer on it—Newspapers Ordinance (Cap. 151, Laws of Sierra Leone, 1960) s. 9—Meaning of word " disperse "—Attempt.

Respondent was charged in the magistrate's court with dispersing a newspaper without the name and place of abode of the printer on it contrary to section 9 of the Newspapers Ordinance. He was also charged with assisting to disperse