court No. 4, where it was tried summarily by two J.P.s. Section 18 refers not to a magistrates' court but to the magistrate. Consequently, if a case goes before more than one magistrate, it is the magistrate who tries the case who has to comply with section 18, if he is to acquire jurisdiction to try the charge summarily. As already said, we cannot hold that it was complied with.

We think that the appeal was rightly allowed in the court below, although we think so for different reasons, and we dismiss this appeal against the decision of that court.

C. A.
1963
ATT.-GEN. v. BAIMBA LIMBA
Ames Ag.P.

[COURT OF APPEAL]

Freetown
Aug. 12, 1963.
Ames Ag.P., Dove-Edwin J.A., E. F. Luke Ag.P.J.

REGINA . . . . . *Appellant*

v.

AMADU BUNDUKA CHIRM . . . . . *Respondent*

[Criminal Appeal 18/63]

Criminal Procedure—Information—Accused committed for trial at September sessions—Information quashed—Decision reversed on appeal—Accused brought to trial at November sessions on new information—Whether this could be done without first obtaining order of judge—Criminal Procedure Act (*Cap.* 39, *Laws of Sierra Leone*, 1960), *s.* 125.

Respondent was charged with an offence under the Perjury Act and three offences under the Larceny Act. After the preliminary inquiry, the magistrate discharged him on the charges under the Larceny Act and committed him for trial at the September sessions, 1962, on the charge under the Perjury Act. The Crown then filed an information against respondent in the Supreme Court charging him with three offences under the Larceny Act but abandoning the charge under the Perjury Act on which he had been committed. At the trial before a judge of the Supreme Court, an objection was taken by respondent to the information, and the judge held that the information was bad but stated a case on his ruling to the Court of Appeal.

The Court of Appeal held that the quashing of the information was wrong. After this decision, the Acting Attorney-General in November filed a new information in exactly the same terms against respondent. When he appeared before another judge of the Supreme Court, he raised a preliminary objection to the new information on the ground that, since he had been committed for trial at the September sessions, he could not be tried at the November sessions in the absence of an order by the court pursuant to section 125 of the Criminal Procedure Act. The court (Marke P.J.) agreed with this objection and held that respondent was not properly before him. He then stated a case for the Court of Appeal.

Held, that, in the circumstances of this case, respondent could be brought to trial in the November sessions without obtaining an order by the court pursuant to section 125 of the Criminal Procedure Act.

Nicholas E. Browne-Marke for the appellant.
Edward J. McCormack for the respondent.

DOVE-EDWIN J.A. This is a case stated by Marke P.J. who asked this court to answer the following three questions:

"1. Was I right in holding that it was not the intention of the legislature that a person committed for trial should not on the day of his committal be informed by the committing magistrate of the particular sessions of the Supreme Court at which his case was to be tried? or, alternatively, Was the committing magistrate wrong in committing the accused to stand his trial upon information before the Supreme Court at Freetown in September, 1962?

"2. Where an accused has been committed for trial at a particular session of the Supreme Court and has been admitted to stand his trial at those sessions, could his bail bond be extended to the next or subsequent sessions of the court without an order of a judge?

"3. Where an accused person has been committed to stand his trial at a particular session of the Supreme Court, is it lawful for the Attorney-General to file an information against the accused at a session different from that to which the accused had been committed to take his trial?"

Before attempting to answer these questions, the facts leading up to them must be set out.

Amadu Chirm, who was the appellant before the learned judge, had been charged with one offence under the Perjury Act and three under the Larceny Act. After the preliminary inquiry the learned magistrate discharged him on the charges under the Larceny Act and committed him for trial on the charge under the Perjury Act.

The Crown then filed an information against the accused, Chirm, in the Supreme Court, charging him with three offences under the Larceny Act and abandoning the charge under the Perjury Act on which he had been committed.

At the trial before a judge of the Supreme Court an objection was taken by the accused's counsel to the information and the learned judge held that the information as filed was "bad and incurably so" but he stated a case on his ruling to this court for its consideration. The two questions submitted by the learned judge were as follows:

"(1) Whether the fact that the learned Attorney-General failed to incorporate the only count on which the defendant was committed, to wit, that of making a false statement contrary to section 5 (*b*) of the Perjury Act, 1911, in his information, but rather charged him on three counts, two of which at least related to obtaining moneys by false pretences contrary to the Larceny Act, 1916, counts on which the defendant was never committed and another charge not before the learned magistrate, rendered the information fatal, and

"(2) Also whether the substitution of other counts, and especially counts on which the learned magistrate had discharged the defendant, does not run contrary to the provisions of the Vexatious Indictment Act, 1859, which would render the information bad in law."

Counsel who had raised the objection appeared before this court on November 14, 1962.

We held then that the questions were to be answered in the negative, a finding which clearly meant that the quashing of the information was wrong; so that the position was as it was when the accused appellant was first before the Supreme Court.

After this decision the learned Acting Attorney-General, on November 26, 1962, filed a new information in exactly the same terms against the appellant, Chirm, and on his appearing before another judge of the Supreme Court, his counsel, the same as had appeared for him all through, raised a preliminary objection to the new information as follows:

" Information bad in law in that

(1) accused not been committed to take his trial at November sessions, 1962, nor any order directing his trial at these sessions;

(2) accused committed by magistrate to take his trial in September, 1962, and the information filed against him was at that session quashed and he was unconditionally discharged by trial judge;

(3) Sierra Leone Appeal Court in a case stated said that trial judge was wrong in quashing information."

The Attorney-General has filed a new information for trial in these sessions, Vol. VI, p. 267. Accused not been committed for trial to this session. The information filed in September was revived by decision of Appeal Court. Nothing has been done to that information and the provisions of section 125 of Cap. 39 not been complied with.

The learned judge agreed with counsel's submission and held that the appellant was not properly before him, his main point being that the appellant had been committed for trial to September sessions, 1962, and not the November sessions, 1962, and this could not be done without first obtaining an order of the judge and he then submitted the questions referred to to this court.

Learned counsel for accused, Chirm, submitted that section 125 of Cap. 39 was not followed and so the committal to the September sessions was the only one that was effective. If the trial was adjourned for any reason section 125 should have been followed as set out in the section. He also quoted Forms 25, 26 and 27 to support his argument. These forms seem to have impressed the learned judge in considering counsel's submission.

In our view, the submissions of counsel in view of the facts have no substance. Clearly the appellant could not have been tried in the September sessions because at those sessions a preliminary objection was taken to the information, which objection was only finally decided by this court on November 14, 1962.

The learned Attorney-General could very easily have relied upon the original information in view of the decision of this court; but we do not think that by filing a new information the appellant was not properly before the court.

Trials in the Supreme Court are governed by sections 118–120, Part 14, of Cap. 39. There had been a preliminary investigation and a committal, the two most important ingredients before an information could be filed.

Counsel for the accused, Chirm, has pointed out to this court that on December 4, 1962, when the learned judge decided to state a case he bound over the accused on his own recognisance in the sum of £50 to attend the January or May sessions of the Supreme Court if required. The six months, he submitted, ran out in June and suggested that this was an end of the matter. The law is not as silly as that. This idea is obviously wrong. The case stated was not signed till May 18, 1963; why this delay is not clear and is not important, for the accused could now be ordered by the ordinary processes of the court to appear and stand his trial on a date and time to be indicated

and so can the witnesses. If he fails to appear he would then be liable to be apprehended. This court sees no difficulty in this.

We think the information was properly before the judge and we answer his questions as: (1) Does not arise. (2) Does not arise in the particular instance of the case. (3) Again does not arise with particular reference to the facts of this case.

Freetown
Nov. 13,
1963.

Ames Ag.P.,
Cole Ag.C.J.,
Dove-Edwin
J.A.

[COURT OF APPEAL]

FODAY JIBAO . . . . . *Appellant*

v.

REGINA . . . . . *Respondent*

[Criminal Appeal 24/63]

Criminal Law—Homicide—Manslaughter—Causing death by dangerous driving—Road Traffic Act (*Cap.* 132, *Laws of Sierra Leone*, 1960), *ss.* 40 (1), 42—*Judge's direction to assessors—Objective test.*

While driving a land rover in Bo appellant knocked down and killed a boy of 12 years of age. He was charged with manslaughter, tried at Bo by a judge with the aid of assessors and found guilty of causing death by dangerous driving contrary to section 40 (1) of the Road Traffic Act. He appealed on the ground that "The appellant having been indicted for manslaughter in connection with the driving of a motor vehicle by him, it was the learned trial judge's duty to direct himself and the assessors in the terms laid down . . . in *Andrews* v. *D.P.P.* [1937] A.C. 576. . . . In failing to do so fully, the learned trial judge deprived the appellant of a chance of acquittal which was fairly open to him."

The passage referred to in the *Andrews* case was as follows: "It therefore would appear that in directing the jury in a case of manslaughter the judge should in the first instance charge them substantially in accordance with the general law, that is, requiring the high degree of negligence indicated in *Bateman* . . . and then explain that that degree of negligence is not necessarily the same as that which is required for the offence of dangerous driving, and then indicate to them the conditions under which they might acquit of manslaughter and convict of dangerous driving."

In his summing-up, the judge directed the assessors in accordance with the "objective test" as laid down in *Reg.* v. *MacBride* [1961] 3 All E.R. 6 and *Reg.* v. *Evans* [1962] 3 All E.R. 1086.

Held, dismissing the appeal, (1) that the judge's summing-up, taken as a whole, was not at variance with what was said in the *Andrews* case; and

(2) that appellant was not deprived of any opportunity of acquittal which was fairly open to him.

Cases referred to: *Andrews* v. *Director of Public Prosecutions* [1937] A.C. 576; 26 Cr.App.R. 34; [1937] 2 All E.R. 552; *Rex* v. *Bateman* (1925) 19 Cr.App.R. 8; *Reg.* v. *MacBride* [1962] 2 Q.B. 167; [1961] 3 All E.R. 6; *Reg.* v. *Evans* [1963] 1 Q.B. 412; [1962] 3 All E.R. 1086; *Hill* v. *Baxter* [1958] 1 Q.B. 277; [1958] 1 All E.R. 193; *Reg.* v. *Spurge* [1961] 2 Q.B. 205; [1961] 2 All E.R. 688.

Berthan Macaulay Q.C. for the appellant.
Kanju A. Daramy for the respondent.