". . . There can be no conviction on the evidence of one witness alone; there must be one witness and something else in addition. . . ."

In the case of *Reg.* v. *Walter Hook* (1858) 169 E.R. 1138, a police constable had sworn to an information which led to the prosecution of a publican for an offence against the licensing laws. When the case came to court his sworn evidence was otherwise and in favour of the publican. He was prosecuted for perjury. His sworn information was used against him, and a witness gave evidence that he also made statements to the similar effect to two persons. That would not have led to a conviction by itself: there was other evidence indicative of the truth of these two statements, evidence which proved what Pollock C.B. called " strong confirmatory circumstances."

The evidence in the instant case in the court below established a prima facie case that the declaration was made and that the part complained of was a material particular, and no more. There was no prima facie proof that the declaration was false, an essential ingredient of the offence, and so no question now arises as to requisite proof of a guilty mind.

With all respect to the learned judge, we think that he should have upheld the submission of counsel for defence that there was no case to answer. The first ground of appeal succeeds. Consequently it becomes unnecessary to consider the others.

The order is that the appeal is allowed and the conviction is set aside and in its stead an entry of not guilty is to be made. The fine which was imposed, if paid, is to be refunded to the appellant.

London
Jan. 17,
1963.

Lord Jenkins
Lord Guest
Sir Charles
Harman

[PRIVY COUNCIL]

IBRAHIM MOMORDU ALLIE (Administrator of the Estate of Alhaji Antumani Allie, deceased) . . . . . *Appellant*

v.

HAJAH FATMATTA KATAH . . . . . *Respondent*

[Privy Council Appeal No. 37 of 1961]

Real Property—Bequest of property to wife for life, remainder to minor son—Conveyance of property by Official Administrator to wife in fee simple relying on " deed of family arrangement "—Whether sufficient evidence that " deed of family arrangement " approved by court.

Bequest of property to wife for life, remainder to minor son—Purchase price not fully paid at time of testator's death—Unpaid purchase price charge on property unless contrary intention in will—Whether there was contrary intention—Whether proper for Official Administrator, after paying unpaid purchase price, to convey property to wife—Real Estate Charges Acts, 1854–77 *(Locke King's Acts).*

Momordu Allie (the testator) died on January 22, 1948. By his will he bequeathed certain properties to his wife, Hajah Fatmatta Katah (respondent), for life, with remainder to his son, Alhaji Antumani Allie. The executors appointed in the will having renounced probate, the Official Administrator of Estates was appointed administrator of testator's estate. In July, 1948, the

Official Administrator conveyed all the properties to respondent. At that time, Alhaji Antumani Allie was 18 years of age. Alhaji Antumani died on May 4, 1959, and on August 6, 1960, the administrator of his estate (appellant) issued a writ against respondent claiming a declaration that all the conveyances should be set aside as having been obtained from Alhaji Antumani against his interest and by undue influence. Respondent sought to justify the conveyances on the basis of an alleged "deed of family arrangement" which she claimed had been approved by an order of court. At the trial before the Supreme Court, the order of court could not be found and secondary evidence was introduced. Bankole Jones J. held that this evidence was insufficient, and set aside the conveyances.

Regarding the property at No. 2, Kissy Road, which was not included in the "deed of family arrangement," it appeared that only part of the purchase price had been paid when testator died. The Official Administrator paid the unpaid portion of the purchase price out of testator's estate and then conveyed the property to respondent. The Supreme Court set aside this conveyance. Respondent appealed to the Court of Appeal.

The Court of Appeal allowed the appeal, holding that there was sufficient evidence that the "deed of family arrangement" had been approved by the court. The court also, proceeding on the assumption that respondent had paid the remainder of the purchase price for the property at No. 2, Kissy Road, held that it had been rightly conveyed to her.

Held, allowing the appeal, (1) that there was not sufficient evidence to establish that the "deed of family arrangement" was approved by a judge's order;

(2) That the Court of Appeal erred in its finding that the unpaid purchase price for the property at No. 2, Kissy Road had been paid by respondent; and

(3) That clause 30 of testator's will set up a special fund which operated as the expression of an intention that the unpaid purchase price should not be a charge on the property at No. 2, Kissy Road.

Cases referred to: *Ex parte Anderson, In re Tollemache* (1885) 14 Q.B.D. 606; *In re Fegan* [1928] Ch. 45.

Ralph Millner and *Cyrus N. Rogers-Wright* for the appellant.

Miss J. R. Bisschop for the respondent.

LORD GUEST. Momordu Allie (the testator) died on January 22, 1948, leaving a will dated August 20, 1946. He was the owner of a great number of properties in Freetown and the principal provisions of the will relate to the disposal of these properties. Some of the properties he bequeathed to his wife, Hajah Fatmatta Katah, the respondent, and other properties to his son, Alhadi Antumani. The properties with which this case is concerned were bequeathed by clauses 4 and 13 of the will, giving a life interest to his wife, with remainder to his son, Antumani and were as follows: 23, East Street, 2, Kissy Road, 6, Magazine Cut, 46 and 50, East Street, all in Freetown. The property 48, East Street, Freetown, was bequeathed by clause 25 to his son, Antumani, his heirs and assigns. The testator appointed the respondent and her two sons, Alhadi Baba and Alhadi Antumani, his executors. The executors renounced probate and on March 10, 1948, the then Official Administrator of Estates for the Colony of Sierra Leone, Ahmed Alhadi, was appointed administrator of the estate of the testator.

By conveyance dated July 15, 1948, Ahmed Alhadi, as Official Administrator, conveyed all the above properties except 2, Kissy Road to the

respondent. The conveyance of 2, Kissy Road by Ahmed to the respondent was dated July 12, 1948. Antumani, the testator's son, was born, according to the finding of the trial judge, in 1930, the precise month being unknown. He was thus 18 years of age at the date of the above conveyances. He died on May 4, 1959, at the age of 29. The appellant is the administrator of his estate. On August 6, 1960, he issued a writ against the respondent claiming a declaration that all the conveyances above referred to should be set aside as having been obtained from the infant Antumani against his interest and by undue influence. In the Supreme Court of Sierra Leone Jones J. set aside the conveyances as null and void. An appeal in the Sierra Leone and Gambia Court of Appeal was allowed and the judgment of the trial judge was set aside.

Under the testator's will Antumani was entitled upon the death of his mother to the reversion of five of the properties with which this action is concerned and to the absolute interest in the remaining property, 48, East Street. By the conveyances to which the infant was not and could not be a party all these properties were conveyed to the respondent in fee simple. Special considerations affect 2, Kissy Road to which reference will be made later in this judgment. But so far as the remaining five properties are concerned, unless there are special circumstances justifying the action of the Official Administrator in flagrantly disregarding the terms of the testator's will, the conveyances could not stand. There are findings of the trial judge which further reinforce this conclusion. His findings are to the effect that Ahmed was for many years on very friendly terms with the respondent and that they lived together as man and wife. He has further found that Ahmed in his dealings with the trusts affecting Antumani acted male fide and in collusion with the respondent. It is also found as a fact that at the time when the conveyances were executed Antumani was under the influence and dominion of the respondent. Finally, the trial judge found the respondent a most unsatisfactory witness upon whose evidence he could place little reliance.

The respondent, however, has sought to find justification for the conveyances in an alleged deed of family arrangement (Exh. "H") said to have been approved by an order of the court. This is the crucial issue for determination by the Board. The deed of family arrangement is dated July 14 between the respondent, Antumani, "a minor," and Ahmed, the Official Administrator. The deed is, however, only executed by the respondent and Ahmed. After a recital, inter alia, of the terms of the testator's will, the recitals continue to the effect that the respondent and Antumani were desirous of entering into a family arrangement to provide him with ready cash to secure his advancement in life and to enable repairs to be made to a property which was in a dilapidated condition, and that the respondent had agreed with Antumani to vary the trusts of the will. Under this document it was agreed that the administrator should, presumably in trust for Antumani, obtain possession of certain properties which had been bequeathed to the widow and that the widow should provide £1,500 towards Antumani's advancement in life and £1,000 for the repair of the dilapidated property. On the other hand, the widow was to stand seised of the unencumbered freehold estate of the properties at 23, 46, 48 and 50, East Street and 6, Magazine Cut. These latter properties had been bequeathed by the will with a life interest to the widow and the fee simple to Antumani. Evidence as to the values of the above properties was called before the trial judge, who found as a fact that the respondent stood to benefit to the extent of £20,000, whereas Antumani was only to benefit in the sum of £1,470, exclusive

of moneys actually paid to him totalling £2,500. It is obvious that even allowing for the fact that what Antumani lost was, except in the case of 48, East Street, only a reversionary interest, the terms of the deed of family arrangement were greatly to his detriment. However, if this deed was approved by the court, this would provide ample justification for the conveyances sought to be set aside.

It is, therefore, vital for the respondent to establish that this deed of family arrangement was approved by the court. Their Lordships reject without hesitation the initial argument for the respondent that the appellant has to establish that the deed was not approved. The burden of establishing the justification for the conveyances rests fairly and squarely on the respondent and she must establish upon a balance of probabilities that this deed received the approval of the court. The trial judge came to the conclusion that it was not proved that the deed of family arrangement was approved by the judge's order. The Court of Appeal decided that the terms of the deed had been approved.

The deed of family arrangement was produced by a clerk in the Registrar General's office, which office has custody of all deeds registered in Sierra Leone, and there is no doubt that a deed in the terms of Exhibit "H" was so registered. This, however, does not carry the respondent very far. The file containing the documents relating to the application to the court in connection with the deed of family arrangement has been lost and Mr. Young, the acting master and registrar of the Supreme Court, produced a cause book which has not been transmitted to this country. But the terms of the cause book are set out in the judgment of the trial judge. They are as follows:

"*In the Matter of the Estate of Momordu Allie, deceased*
In the Matter of Trusts affecting Alhadi Antumani, an Infant

Solicitor	No.	Documents	Date
E. A. C. John ...	1.	Affidavit in support	18.6.48
E. A. C. John ...	2.	Summons to approve of deed of family arrangement	18.6.48
E. A. C. John ...	3.	Judge's order approving of deed of family arrangement	21.6.48
C. O. E. Cole ...	4.	Affidavit in support	29.6.48
C. O. E. Cole ...	5.	Summons	29.6.48
C. O. E. Cole ...	6.	Summons	13.7.48
C. O. E. Cole ...	7.	Affidavit	14.7.48
C. O. E. Cole ...	8.	Judge's order approving deed of family arrangement	14.7.48"

On the opposite page, which also dealt with this same matter, is recorded one item, namely:

"Solicitor	No.	Documents	Date
C. B. Rogers-Wright	1.	Affidavit in opposition to application, etc.	2.7.48"

In the absence of the file the cause book may be taken to be good evidence of the facts contained therein (*Ex parte Anderson, In re Tollemache* (1885) 14 Q.B.D. 606). But it is not by itself evidence of the terms of the deed of family arrangement there purported to be approved. Their Lordships, however, are in entire agreement with the trial judge's criticism of the cause book and

with his conclusion that it is not established that the deed Exhibit "H" was approved by the judge's order. They only desire to add these comments. It is apparent from the sequence of events as inserted in the cause book that there must have been two deeds of family arrangement and to one of these opposition was made by Mr. Rogers-Wright, presumably on behalf of the infant. Indeed, Miss Bisschop, in her persuasive address for the respondent, was constrained to admit the existence of two deeds, one of which she says must have been a draft. In this state of the facts it is impossible to arrive at the certain conclusion that the deed of family arrangement which was approved was Exhibit "H." It is equally consistent with another deed of family arrangement not produced having been approved. There is, moreover, no explanation why none of the solicitors whose names appear on the cause book was called. They were all alive and available as witnesses. They might have been able, if called, to produce office copies of some of the documents referred to which would have established the connecting link. What is absent in their Lordships' view is the identification of Exhibit "H" with the deed of family arrangement approved by the judge's order on July 14, 1948. The Court of Appeal were able to find this connecting link in certain recitals in deeds executed after Antumani attained majority. In Exhibit "K," a conveyance of 17A, Martin Street by Antumani to Boie Kamara, dated September 18, 1954, there is a recital of the judge's order dated July 14, 1948, approving the deed of family arrangement, and in Exhibit "L," a conveyance of No. 8, Magazine Street by Percy R. Davies, Official Administrator of Estates, to Antumani, dated September 14, 1954, there is a similar recital. So far as Exhibit "K" is concerned there is a finding by the trial judge that at the time when these deeds were executed Antumani was still under the influence and dominion of the respondent. Little reliance can, therefore, be placed on this recital. This is also a sufficient answer to the respondent's contention that Antumani ratified the deed of family arrangement by this deed and Exhibit "L." So far as Exhibits "K" and "L" are concerned the Court of Appeal lay stress on the significant fact that these contain a recital of the deed of family arrangement and the order when these two documents were not prepared by the solicitor who drafted the deed of family arrangement. There are, however, various sources from which the solicitor could have obtained this information, notably from the conveyances challenged. But in any event in the absence of Mr. Davies, who was still alive and available as a witness, the recitals are not evidence of the facts stated therein. Apart from one of the properties, 46, East Street, their Lordships agree with the conclusion of the trial judge. No. 46, East Street has been sold by the respondent and as third parties have acquired rights, this conveyance must stand.

No. 2, Kissy Road stands in a special position. Before his death the testator had contracted to purchase this property, but he had only paid £2,000 out of the purchase price of £3,500. This property was included in the testator's will, being bequeathed with a life interest to the respondent and the fee to Antumani. It was conveyed by conveyance, dated July 12, 1948, by Ahmed, the Official Administrator, to the respondent upon a recital that the Official Administrator had paid the vendor the balance of the purchase price out of the testator's estate, that the vendor had conveyed the property to the Official Administrator and that the property thus formed part of the residue of the testator's estate bequeathed to the respondent. This property did not come within the terms of the deed of family arrangement as the conveyance was executed two days before the deed. The trial judge has included this property with the remaining

five in his declaration that the conveyances should be set aside. Their Lordships consider that he was right in so doing. The Court of Appeal reached an opposite conclusion. Their view was that the unpaid purchase price became a charge on No. 2, Kissy Road and that unless there was a contrary intention in the will the provisions of the Real Estate Charges Acts, 1854–77 (Locke King's Acts), should apply. The Court of Appeal conclude that as the respondent, who was residuary legatee under the will, paid off the charge, the property was rightly conveyed to her. In their Lordships' opinion, the court fell into an error of fact and an error of law. The unpaid purchase price was not paid off by the respondent, but by the Official Administrator according to the recital in the deed. Moreover, there is a clearly expressed contrary intention in clause 30 of the will which provides for any mortgage or charge being paid by the executors from the rents of all the testator's properties. This was a special fund accordingly which operated as the expression of a contrary intention (see *In re Fegan* [1928] Ch. 45). In these circumstances their Lordships consider that the conveyance of No. 2, Kissy Road to the respondent was in breach of trust and must follow the fate of the other conveyances. What the financial effect of this decision will be as between parties it is no part of the Board's jurisdiction to determine. This will have to be litigated in the local courts.

Their Lordships will humbly advise Her Majesty that the appeal should be allowed, that the order of the Court of Appeal of Sierra Leone and Gambia be set aside and that the order of the Supreme Court of Sierra Leone be restored with the exception of that part of the order dealing with the property at No. 46, East Street.

The respondent must pay the costs of this appeal and in the Court of Appeal.

[COURT OF APPEAL]

Freetown
Feb. 12,
1963

Ames Ag.P.
Dove-Edwin
J.A.
Marke J.

ATTORNEY-GENERAL . . . . . *Appellant*

v.

BEJET JOJO . . . . . *Respondent*

[Criminal Appeal 6/63]

Criminal Law—Sentence—Variation of sentence by appellate court—Principles on which appellate court should act in varying a sentence—Exercise of Discretion.

The principles on which an appellate court will act in considering whether to vary the sentence of a trial court are well settled. The appellate court will only vary a sentence where it is based on some wrong principles. When it is clear that all the circumstances affecting the offence and the offender were before the trial court the appellate court will be loth to disturb the sentence of the trial court.

Appeal by the Attorney-General against variation of sentence by Bankole Jones J. sitting on appeal from a magistrate's court.

The respondent, Bejet Jojo, was convicted in a magistrate's court, Freetown, of obstructing a police officer in the execution of her duty, contrary to section 45 of the Police Act, Cap 150 of the Laws of Sierra Leone. The maximum penalty provided is a "fine of £20 or six months' imprisonment." The sentence