C. A. 1962

IN THE MATTER OF THE COMPANIES ACT.

attorney to pay to the applicant all rates, etc," cannot be decided and until this has been done the judgment as it is is interlocutory.

[COURT OF APPEAL]

REGINA . . . . . *Appellant*

v.

AMADU CHIRM . . . . . *Respondent*

[Criminal Appeal 26/62]

Freetown *Nov.* 14, 1963

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

Criminal Procedure—Information—Whether fact that information consists of counts other than those on which defendant committed for trial renders information defective—Criminal Procedure Act (*Cap.* 39, *Laws of Sierra Leone*, 1960), *s.* 119—*Vexatious Indictments Act*, 1859 (22 & 23 *Vict. c.* 17)—*Administration of Justice* (*Miscellaneous Provisions*) *Act*, 1933 (23 & 24 *Geo.* 5, *c.* 36)—*Courts Act* (*Cap.* 7, *Laws of Sierra Leone*, 1960), *s.* 37.

Respondent was the accused in a preliminary inquiry before a magistrate, in which there were four charges against him, as follows:

1. A charge of an offence contrary to section 5 (*b*) of the Perjury Act, 1911.

2. A charge of obtaining £125 by a false pretence contrary to section 32 (2) (*b*) of the Larceny Act, 1916.

3. A charge of obtaining £100 by a false pretence contrary to section 32 (2) (*b*) of the Larceny Act, 1916.

4. A charge of obtaining £48 5s. 4d. by a false pretence contrary to section 32 (1) of the Larceny Act, 1916.

At the end of the preliminary inquiry, the magistrate discharged the respondent on charges 2, 3 and 4 and committed him for trial on charge 1. The Crown then filed in the Supreme Court an information against the respondent charging him with the following three offences:

1st count: Obtaining £48 5s. 4d. by a false pretence, and laid under section 32 (1) of the Larceny Act, 1916.

2nd count: Obtaining £125 by a false pretence, and laid under section 32 (1) of the Larceny Act, 1916.

3rd count: Fraudulently obtaining a signature on a document in order that it might afterwards be used as a valuable security, and laid under section 32 (2) (*b*) of the Larceny Act, 1916.

When the case came on for trial in the Supreme Court, the judge (S. B. Jones Ag.C.J.) made a provisional ruling that the information was bad subject to the opinion of the Court of Appeal, which he requested in a case stated.

Section 119 of the Criminal Procedure Act provides:

> "No information shall be signed or filed in respect of any criminal offence unless the same shall have been previously investigated, and the accused shall have been committed for trial. . . .
>
> "Provided that an information may be filed in respect of any offence founded in the opinion of the presiding judge on the facts disclosed in the depositions, although the defendant has not been committed for trial in respect of any such offence."

In the case stated, the judge asked two questions: "(1) Whether the fact that the . . . Attorney-General failed to incorporate the only count on which the defendant was committed . . . in his information, but rather charged him on three counts, two of which [were] . . . counts on which the defendant was never committed and another charge not before the learned magistrate, rendered the information fatal," and "(2) Also whether 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 Indictments Act, 1859, which would render the information bad in law."

Held, answering each question in the negative, (1) that, assuming that the Vexatious Indictments Act, 1859, had been in force in Sierra Leone, it was impliedly repealed when the provisions of the Criminal Procedure Act about committals for trial and the filing of informations for trials in the Supreme Court were enacted; and

(2) That the information was not bad under section 119 of the Criminal Procedure Act.

John H. Smythe (Acting Attorney-General) for the appellant.
Edward J. McCormack for the respondent.

AMES AG.P. In this case stated we announced our decision at the end of the argument and said that we would give our reasons later.

The respondent was the accused person in a preliminary inquiry held by a magistrate, in which there were four charges against him. They were, as far as is material:

1. A charge of an offence contrary to section 5 (*b*) of the Perjury Act, 1911.
2. A charge of obtaining £125 by a false pretence contrary to section 32 (2) (*b*) of the Larceny Act, 1916.
3. A charge of obtaining £100 by a false pretence contrary to section 32 (2) (*b*) of the Larceny Act, 1916.
4. A charge of obtaining £48 5s. 4d. by a false pretence contrary to section 32 (1) of the Larceny Act, 1916.

At the end of the preliminary inquiry the magistrate discharged the respondent on charges 2, 3 and 4 and committed him for trial on charge 1.

The Crown then filed in the Supreme Court an information against the respondent, charging him with three offences, namely, as far as is material:

First count: Obtaining £48 5s. 4d. by a false pretence, and laid under section 32 (1) of the Larceny Act, 1916.

Second count: Obtaining £125 by a false pretence, and laid under section 32 (1) of the Larceny Act, 1916.

Third count: Fraudulently obtaining a signature on a document in order that it might afterwards be used as a valuable security, and laid under section 32 (2) (*b*) of the Larceny Act, 1916.

This shows that the information—

(a) abandoned charge 1 about section 5 (*b*) of the Perjury Act, 1916;
(b) included (as first count) the £48 5s. 4d. false pretence charge 4, on which the respondent had been discharged;
(c) included (as second count) the £125 false pretence charge 2, on which also the respondent had been discharged, but laid it under a different section of the Larceny Act, namely, 32 (1), instead of 32 (2) (*b*); and
(d) included (as third count) a matter, laid under section 32 (2) (*b*) of that Act, which had not been charged at the preliminary inquiry.

When this case came on for trial in the court below, objection was taken to the information, and after hearing argument the learned acting Chief Justice was of opinion that the information was " bad and incurably so " and made a provisional ruling to that effect subject to the opinion of this court, which was asked for in a case stated by him.

The questions for our determination were:

" (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 Indictments Act, 1859, which would render the information bad in law."

The law as to what may be included in an information is in section 119 of the Criminal Procedure Act, Cap. 39, which reads, so far as is material:

" No information shall be signed or filed in respect of any criminal offence unless the same shall have been previously investigated, and the accused shall have been committed for trial. . . .

" Provided that an information may be filed in respect of any offence founded in the opinion of the presiding judge on the facts disclosed in the depositions, although the defendant has not been committed for trial in respect of any such offence."

Mr. McCormack's argument, for the respondent, was based on the (English) Vexatious Indictments Act, 1859, and the (English) Administration of Justice (Miscellaneous Provisions) Act, 1933. The former, so he argued, was a statute of general application, and so applied here because of section 37 of the Courts Act, Cap. 7. It was repealed in England by the Act of 1933; it has not been repealed here and, therefore, should have been complied with (which it was not) as to the inclusion in the information counts concerning charges for which the magistrate " had refused " to commit the respondent for trial.

As to this, supposing that it was such a statute and was at some time of application here, in our opinion it was impliedly repealed when the provisions of the Criminal Procedure Act, Cap. 39, about committals for trial and the filing of informations for trials in the Supreme Court were enacted.

When the English Act of 1933 repealed the Act of 1859 in England its section 2 provided, so far as is material, as follows:

" (2) Subject as hereinafter provided no bill of indictment charging any person with an indictable offence shall be preferred unless either—

(*a*) the person charged has been committed for trial for the offence; or

(*b*) . . .:

Provided that—

(i) where the person charged has been committed for trial, the bill of indictment against him may include, either in substitution for or in addition to counts charging the offence for which he was

committed, any counts founded on facts or evidence disclosed in any examination or deposition taken before a justice in his presence, being counts which may lawfully be joined in the same indictment."

Mr. McCormack's argument relies on the words " in substitution for or in addition to " which appear there, but not in the proviso to our section 119, and is that consequently there cannot be counts in an information filed here unless the original charge, on which the accused was committed for trial, is also included in it. With all respect, that 1933 English proviso has nothing to do with the proviso to our section 119.

Our section and our proviso are self-contained, and quite clear, and in no way dependent on an English Act for the elucidation of their meaning. Here an information cannot be filed for an offence unless there has been a preliminary inquiry thereinto and the accused has been committed for trial. But if that has been done, then under the proviso an information " can be filed for any offence founded," etc., as set out above. " Any offence " is clear enough and means any offence. There is no reason to read it as if it were " any offence in addition to but not any offence in substitution for that on which he was committed for trial," which the argument would have us do.

For these reasons we answered each question in the negative.

[COURT OF APPEAL]

JONATHAN O. SOURIE . . . . . *Petitioner/appellant*

v.

SAHR W. G. CAPIO . . . . . *Respondent/respondent*

PAUL L. DUNBAR . . . . . *Petitioner/respondent*

v.

GEORGE W. MANI . . . . . *Respondent/appellant*

[Civil Appeals 23/62 and 24/62]

Election Petition—Application for striking out of petition for failure to comply with Rules 15 *and* 19 *of House of Representatives Election Petition Rules* (*Laws of Sierra Leone*, 1960, *Vol. VI, p.* 407)*—Whether rule* 16 *of House of Representatives Election Petition Rules alternative to rule* 15*—Meaning of "Notice" . . . of the nature of the proposed security . . ." in rule* 15*—Whether petitioner complied with rule* 19*—Electoral Provisions Act* (*No.* 14 *of* 1962), *ss.* 60, 62.

These were two appeals from decisions of different judges in election petitions in the Supreme Court. In each case, respondent applied for an order that the petition be struck out for failure to comply with rules 15 and 19 of the House of Representatives Election Petition Rules. In *Sourie* v. *Capio*, the court (J. B. Marcus-Jones J.) granted the application, while in *Dunbar* v. *Mani*, the court (Bankole Jones Ag.C.J.) dismissed it. Since the facts were the same in both cases, only *Sourie* v. *Capio* was argued on appeal.