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

imposed by the trial magistrate was two months' imprisonment. The respondent appealed against conviction and sentence. The trial judge dismissed the appeal against conviction, and allowed the appeal against sentence to the extent of varying the sentence of two months' imprisonment to a fine of £20 or two months' imprisonment. The Attorney-General appealed against the variation.

Held, allowing the appeal, that an appellate court should disturb the sentence of a trial court which had all the circumstances surrounding the offence and the offender before it only where it is clear that the trial court exercised its discretion on some wrong principle.

John H. Smythe (Acting Attorney-General) for the appellant.
Aaron Cole for the respondent.

AMES AG.P. On the 12th we allowed this appeal and said that we would give our reasons later, which we now do.

The respondent was convicted in the magistrates' court, Freetown, of obstructing a police officer whilst in the due execution of her duty, contrary to section 45 of the Police Act, Cap. 150.

The maximum penalty provided by that section is "a fine of £20 or six months' imprisonment"—a maximum which seems to us to be very inadequate.

The penalty imposed by the learned magistrate was a sentence of two months' imprisonment.

The respondent appealed to the Supreme Court against his conviction and also against the sentence. The former appeal was unsuccessful. The latter was successful, and the sentence was varied to a fine of £20 or two months' imprisonment with hard labour. This appeal is against that variation.

The learned judge's reasons for the variation were stated towards the end of his judgment thus:

> "In these circumstances, I find myself inclined to take a lenient view, as indeed I think the learned magistrate would have done had these circumstances been brought to his notice."

What were "the circumstances"? They are stated earlier in the same paragraph, thus:

> "Whilst I agree that this court ought not lightly to disturb sentences imposed by magistrates, yet I do not find anything on the record which shows that the accused had no previous conviction of any kind whatever and that he is a young man of 23 years of age as his counsel's affidavit disclosed."

These circumstances were, of course, relevant. As to the former, the learned magistrate was well aware that it was a first offence. Had there been any previous conviction, there would have been a note of it on the record. As to the latter the respondent was there in the dock, and could be seen by the magistrate to be a young man.

Obstruction of a police officer is an offence which is capable of endless degrees of variation, from the very trivial to the very serious. The learned magistrate had heard all the evidence, and the facts of the offence were also circumstances which he had to consider. And what were they? They are set out in his judgment. The police officer was a woman corporal on duty outside a bar. A European came out "staggering and appeared to be under the influence of drink." He got into a car and was going to drive it away.

The police officer was attempting to prevent his doing so. The respondent (a friend of the European) told her to let him go. She told him to mind his own business, and to go away. He insisted that she should let the European go and pushed her away from the car and said to the European "Go," which he was then able to do, and did do, because the respondent had pushed her away. The respondent then refused to go to the police station, and a struggle ensued and another police officer had to go to the aid of the policewoman.

The principles on which an appeal court (which the Supreme Court was) will alter a sentence imposed by a lower court in the exercise of its discretion are well settled. We see nothing to suggest that the learned magistrate exercised his discretion on some wrong principle, and we think that the learned judge should have dismissed the appeal against the sentence.

[COURT OF APPEAL]

Freetown
Feb. 19,
1963.

MICHAEL ABOUD & SONS . . . . . *Appellants*

v.

AKTIEBOLAGET JONKOPING-VULCAN . . . . *Respondents*

Ames Ag.P.
Benka-Coker,
C.J.,
Dove-Edwin
J.

[Civil Appeal 30/62]

Trade Marks—Application for registration—Burden of proof on applicant—Likelihood of resemblance deceiving ultimate purchaser—Trade Marks Act (*Cap.* 244, *Laws of Sierra Leone*, 1960), *ss.* 15, 21.

Appellants were importers of "The Three Palms" matches. They applied to the Registrar of Trade Marks for registration of the mark under which the matches were sold. The registration was opposed by respondents, who were the proprietors of the registered trade mark of "The Palm Tree" matches. The ground of their opposition was that "The alleged trade mark to which the above-mentioned application relates has such a resemblance to the opponents' trade mark No. 686 . . . as to be calculated to deceive." The matter came before the Supreme Court (Bankole Jones Ag.C.J.), which found in favour of the respondents.

Appellants appealed on the ground, inter alia, "That trade mark No. 5702 does not resemble trade mark No. 686 . . . so nearly . . . as to be calculated to deceive." (See Trade Marks Act, s. 21.)

Held, dismissing the appeal, that the trial judge was correct in his conclusion that appellants' mark was "calculated to deceive" within the meaning of the Trade Marks Act.

Edward J. McCormack for the appellants.
Freddie A. Short for the respondents.

AMES AG.P. The appellants are merchants and importers of "The Three Palms" matches, which are specially made for them and have been on sale for about a year. They applied to the Registrar of Trade Marks, as proprietors of the mark under which the matches are sold, for its registration under the Trade Marks Act, Cap. 244.