not give evidence or call witnesses. All the oral sworn evidence indicated his guilt and that his statements were untrue.

In the case of *R.* v. *Williams* (2) there was a unanimous verdict convicting the appellant of a sexual offence against a girl of eight years of age—contrary to what was then s.6 of the Children's Ordinance (*cap.* 31). There was no record of the summing-up. The West African Court of Appeal quashed the conviction. It could find no corroborative evidence implicating the appellant and the absence of any record of the summing-up made any other decision out of the question in the circumstances.

We think that both those cases are to be distinguished from the present one, in which there was a unanimous verdict and in which no difficult questions arise and in which the evidence went to show clearly the applicant's guilt.

We must not be taken as departing from what was said by the West African Court of Appeal in *Wango's* case as to the need for a judge who has no stenographer to adjourn for a while "to prepare a sufficient note of what he intends to tell the jury."

We are however of opinion that in such a clear and one-sided case as this must have seemed to the jury there is no possibility that there has been a miscarriage of justice.

The application is refused.

Application refused.

KHAN *v.* GILBEY and GILBEY

COURT OF APPEAL (Ames, P., Bankole Jones, C.J. and Dove-Edwin, J.A.): March 15th, 1965
(Civil App. No. 26/63)

[1] Civil Procedure — appeals — matters of fact — trial by judge alone — appellate court's duty to draw its own inference from facts proved or admitted: On appeal from a judge sitting alone, it is the duty of the Court of Appeal to make up its own mind, not disregarding the judgment appealed from and giving special weight to that judgment in cases where the credibility of witnesses comes into question, but with full liberty to draw its own inference from the facts proved or admitted and to decide accordingly (page 228, lines 2–8).

[2] Courts—Court of Appeal—matters of fact—appeal court may draw its own inference from facts proved or admitted: See [1] above.

[3] **Documents — deeds — conveyances — habendum—omission does not necessarily make deed ineffective:** A conveyance of land which contains no *habendum* may possibly nevertheless have legal effect and even if it does not it may have some value in equity as an agreement (page 222, lines 36–40).

[4] **Equity—fraud—standard of proof—fraud must be proved to a degree of probability commensurate with the occasion:** A civil court considering an allegation of fraud does not require proof to so high a degree of probability as a criminal court would but it does require a degree of probability which is commensurate with the occasion and higher than it would require when asking if negligence is established (page 227, lines 28–34).

[5] **Evidence—burden of proof—standard of proof—civil cases—fraud—proof to a degree of probability commensurate with the occasion:** See [5] above.

[6] **Evidence—functions of court—appellate court—matters of fact—trial by judge alone—appellate court's duty to draw its own inference from facts proved or admitted:** See [1] above.

[7] **Land Law — conveyancing — deeds—habendum—omisson does not necessarily make deed ineffective:** See [3] above.

[8] **Legal Profession—transactions with client—advice of independent legal practitioner—practitioner's wife not an independent legal practitioner:** Where it is necessary or desirable for a legal practitioner not to draw a deed which is to convey land to himself, it is unsatisfactory to call on his wife, herself a legal practitioner, to do so instead (page 220, lines 12–17).

[9] **Tort—deceit—standard of proof—fraud must be proved to a degree of probability commensurate with the occasion:** See [5] above.

The respondents brought an action against the appellant in the Supreme Court to set aside conveyances of a piece of land which they alleged the appellant had purchased fraudulently, for a declaration that the land was their property and for an injunction.

The respondents bought a piece of land and after the vendor's death they employed the appellant, a legal practitioner, to negotiate the purchase of the rest of her property for them. Her personal representatives sold them another piece of land by a conveyance prepared by the appellant. The personal representatives and their sister then sold a third piece of land to a third party who five days later sold it to the appellant. The conveyance to the third party was prepared by the appellant and the conveyance to the appellant was prepared by the appellant's wife, herself a legal practitioner

practising at the same address as the appellant but not in partnership with him. These two conveyances were the conveyances which the respondents sought to set aside in the action.

The action was tried by a judge without a jury. The respondents alleged and the judge found that the appellant knew that they had negotiated to buy the land the subject-matter of the two conveyances sought to be set aside. These two conveyances and the first conveyance contained no *habendum* and a fourth conveyance, whereby the personal representatives and their sister made a fresh conveyance to the respondents of the land comprised in the first conveyance, was not signed by the respondents. The judge set aside all four conveyances on the ground that they were incapable of vesting the legal estate in the purchasers. This point however had not been argued before him and was not argued on appeal, and the sole issue was whether the appellant had fraudulently purchased land which he knew the respondents had been negotiating to buy.

On appeal, the question before the court was whether there was sufficient proof that the appellant know the respondents had negotiated to buy the land and that he had acted fraudulently.

Cases referred to:

(1) *Bater* v. *Bater*, [1951] P. 35; [1950] 2 All E.R. 458, *dictum* of Denning, L.J. applied.

(2) *Mersey Docks & Harbour Bd.* v. *Procter*, [1923] A.C. 253; [1923] All E.R. Rep. 134, *dictum* of Cave, L.C. applied.

Barlatt for the appellant;
C. N. Rogers-Wright for the respondents.

AMES, P.:

The road from Lumley to Goderich in the neighbourhood of the land which this appeal is concerned with is very near the sea shore. I shall call it "the road."

By a deed dated July 10th, 1953, one Metcalfe Theophilus Niger conveyed to Lucretia Macauley two parcels of land therein numbered 1 and 2. This deed is Exhibit H and I shall call the land parcel H No. 1 and parcel H No. 2 respectively. Parcel H No. 1 adjoins the road on its inland side and contains 2.8 acres. Parcel H No. 2 adjoins the road on its sea side and contains .88 of an acre, the sea being the boundary on one of its sides. A copy of the deed was

put in evidence as Exhibit B, to which the learned judge refers; but as we have the deed itself, I shall refer to that.

Lucretia Macauley died on October 8th, 1959 intestate. On July 18th, 1960, Johnstone Besurdur Macauley and Williams Samuel Macauley, whom I shall call the two Macauleys, obtained letters of administration of her estate.

By a deed dated October 28th, 1960, the two Macauleys conveyed, as personal representatives, to the respondents (who are husband and wife) a parcel of land containing 8.107 acres on the inland side of the road but not adjoining it. A certified copy of this deed is Exhibit A3 and I shall call the land parcel A3. (There are other parcels to be mentioned and I shall call them by the numbers given to the certified copies of the deeds when exhibited in evidence.) This deed does not contain a *habendum* clause but recites an agreement for the sale of an estate in fee simple. The parcel is said to be "the remaining portion of that piece or parcel of land" which is parcel H No. 2. Of course it cannot be any part of that; it is on the other side of the road. Parcel H No. 1 extended 680 ft. from the road inland. The nearest point of this parcel A3 to the road is about 450 ft. from it. It is not apparent from anything, documentary or oral, whether it includes a little of the most inland part of parcel H No. 1 and in my opinion it does not matter. This deed was executed by the two Macauleys and both respondents as well. The consideration was £500.

By a deed dated February 9th, 1961, the two Macauleys and one Priscilla Edmund, who is said to be their sister, conveyed "by virtue of the said letters of administration being the persons entitled to and now possessed of" a parcel of land containing 8.774 acres to one John Michael Klitz. A certified copy of this deed is Exhibit A4. This parcel adjoins parcel A3 on the latter's inland side and beacons G3 to G8 of the latter's inland, and furthest-from-the-road, sides are also beacons of the former's nearest-to-the-road side. This deed also contains no *habendum* but it is clear that an estate in fee simple was intended. It also granted a right of way 25 ft. wide "along the western boundary of the remaining portion of land belonging to the vendors and situate on the southern side of the lands herein conveyed." The southern side is inland and further from the road. Where this right of way would lead to does not appear. The consideration in this deed was £100. The parcel is also said to be a portion of parcel H No. 2, which also is impossible. Nor could it

include any part of parcel H No. 1. It is too far inland from the road.

By a deed dated February 14th, 1961, John Michael Klitz conveyed this same parcel A4 of 8.774 acres to the appellant for a consideration of £250. Again there is no *habendum* clause, but an estate in fee simple was intended. Again the parcel is said to be a portion of parcel H No. 2. A certified copy of this deed is Exhibit A5 and it and the last mentioned one are the important ones, and this parcel, which I will now call parcel A4 A5, the important one.

The appellant was a legal practitioner in this country. He came here from Trinidad. He has since left. He prepared the deeds A3 and A4 and others to be mentioned later. His wife was also a legal practitioner. She practised at the same address as the appellant but they were not in partnership. She drew this deed A5. It may be desirable or necessary for a legal practitioner not to draw a deed which is to convey land to himself, but to call on his wife to do so instead scarcely meets the needs of the circumstances. I might here mention also that it was the wife of the appellant who obtained for the two Macauleys the letters of administration to Lucretia Macauley's estate.

The appellant and the respondents were formerly good friends and the appellant lived in a house belonging to the husband respondent. They quarrelled in or about January 1961. According to the respondents the cause was the appellant's having acquired parcel A4 A5, which they said should have been conveyed to them by the conveyance A3. According to the appellant the cause was a social matter of which he stated the details. The learned judge was "unable to accept the evidence of the [appellant] where it conflicts with that of the [respondents]." The husband respondent changed his solicitor and gave the appellant notice to quit. The appellant did so in May.

After the quarrel and change of solicitor, by a deed dated April 6th, 1961, the two Macauleys and Priscilla Edmund conveyed to the respondents a parcel of land stated on the plan to contain 11.048 acres. This parcel adjoins parcel A3 at the latter's beacons G8, G9, G10, G11 and G12—and is in general west of it. The consideration was £150. A certified copy of this deed is Exhibit A2. It contains no reference to its being subject to any right of way for the owners of parcel A4 and A5, the north-west corner of which is at beacon G8. This deed was drawn by the new solicitor.

By a deed dated April 15th, 1961, the two Macauleys and Priscilla

Edmund conveyed to the respondents a parcel of land of unstated area which adjoins the respondents' parcel A2 on part of A2's southern side and the appellant's parcel A4 A5 on the latter's western and southern sides. Thus the appellant's parcel A4 A5 is now surrounded by land of the respondents except on its eastern side. A certified copy of this deed is Exhibit B2. The consideration was £250. It makes no mention of the right of way which was granted to the appellant's predecessor in title in Exhibit A4. This deed also was drawn by the new solicitor.

A little later there is a deed dated August 10th, 1961 which was drawn by the appellant. Its certified copy is Exhibit A1. The parties are the two Macauleys and Priscilla Edmund, the vendors and the respondents, the purchasers. This is a second conveyance of parcel A3, which I shall now call A3 A1. The appellant said that he was of opinion that Exhibit A3 was faulty in that Priscilla Edmund should have been a vendor. The deed is signed by the vendors but not by the respondents. It purports to cancel the deed Exhibit A3. It omits the statement that the parcel was the remaining portion of H No. 2 which was stated in A3.

The appellant built a house on his parcel A4 A5 which was finished in November 1961 and cost (so he said; no accounts produced) a little over £8,500. When saying so in the court below in July 1963, he also said that since November he had had to re-roof it at a cost of £1,750 and had spent £700 on the grounds and £1,500 on a road to it; but all or some of this may have been after this action was started.

This action was started in January 1962 and the respondents' claim was, to put it briefly—

(a) the setting aside of the conveyance Exhibit A4;

(b) and also of the conveyance Exhibit A5;

(c) a declaration that the 8.774 acres of parcel A4 A5 "belongs to and is the property of" the respondents;

(d) an injunction to restrain the appellant from entering the land;

(e) costs;

(f) further relief as may seem just.

The pleadings show the main points of their case to be, to put them briefly:

(a) they had bought some land from Lucretia Macauley before her death;

(b) upon her death they employed the appellant to negotiate and

purchase from whoever were the proper persons to sell "the rest of the lands of Mrs. Macauley";

(c) this resulted in the conveyance of Exhibit A3 of the 8.107 acres;

(d) later on they discovered that the Macauleys' letters of administration had been obtained for them by the appellant's wife, and also learnt about the transactions of Exhibits A4 and A5 concerning the 8.774 acres;

(e) later too they learnt about the conveyance Exhibit A1 which omitted the reference to parcel H No. 2;

(f) the foregoing was a "transparent device" (para. 17 of the statement of claim) whereby the appellant had perpetrated upon the respondents fraud (para. 18) and obtained for himself the 8.774 acres "the said remaining lands of Lucretia Macauley" which they had instructed the appellant to buy for them and which they thought, at the time, that they had bought, the appellant having assured them that they had.

So the basis of the claim was not incompetence, mistake or negligence, but fraud.

The action ended by the learned judge making an order setting aside not only the conveyances Exhibits A4 and A5 but also Exhibits A3 and A1 and directing that the file and the papers be sent to the Attorney-General for investigation by the Legal Practitioners' Discipinary Committee into the professional conduct of the appellant and of his wife also.

This pleased neither side. The appellant made this appeal against it and the respondents have applied for a variation of it as follows:

> "(a) A declaration that the said area of land described in the said conveyance belongs to and is the property of the plaintiffs.
>
> (b) An injunction restraining the appellant from . . . entering . . ."

The learned judge set aside the four deeds because he held that they were "worthless and incapable of vesting in the purchaser or purchasers mentioned therein the legal estate in the lands . . ." With all respect, there had been no argument as to whether or not the deeds had no effect; nor have we heard any. They were badly drawn, to say the least, but might possibly nevertheless have legal effect. Even if they did not, they might have some "worth" in equity as agreements. But this action was not concerned with that. It was about fraud and nothing else. Had the plaintiffs proved that

the appellant's acquisition of the 8.774 acres of parcel A4 A5 was a transparent device to defraud them, as the statement of claim had it, and "a plan to deceive and secure for himself a portion of a piece of land which he knew the [respondents] had negotiated to buy from the estate of Lucretia Macauley," as the learned judge found it to be? This seems to me to be the crux of the whole matter. Did the appellant know? Did the respondents prove that he knew?

First of all, how was the appellant supposed to know what land was to be conveyed to the respondents when he drew the conveyance Exhibit A3? The learned judge does not say. He does, however, say:

> "Before . . . Lucretia Macauley died in 1959, the [respondents] were negotiating with her for another piece of land . . . between 16 and 18 acres, but before negotiations were concluded . . . Lucretia Macauley had died."

I do not read the evidence like that. I read it as showing that the negotiations had fallen through on the question of price before she died and that they started again after her death. The learned judge went on: "The [husband respondent] said that he together with his wife had gone round this 16 and 18 acre piece of land with Lucretia Macauley before she died." And so they may have. The appellant did not go with them and no plan or notes were made. I have already noted that the learned judge was unable to accept the appellant's evidence where it conflicts with that of the respondents. So I will see what the respondents said on this point. The husband respondent said:

> "About the middle of 1960 we asked Mr. Khan to find out who were the personal representatives of the estate of Lucretia Macauley. . . . Mr. Khan arrived . . . with . . . Besurdur Macauley and . . . William Macauley. . . . Myself and my wife in the presence of the [appellant] entered into negotiations with the two gentlemen in 1960 and arranged to purchase all the land which Lucretia Macauley had shown us in 1957 for £500. I left the negotiations with my wife as I was busy up country. . . ."

What was "all the land?" Apparently the husband respondent did not point it out to the appellant, because he said later on in his evidence:

> "I do not know if Khan knew the land I wanted to buy; but I did tell him that there were an estimated 16 or 17 acres of land there. . . . I never went on the land with the Macauley brothers. . . . My wife told me that she had negotiated with

one Kit Thomas on Khan's instructions to survey the land. . . ." This witness had also said:

"I probably went on the land in May 1961. [The two Macauleys] showed me a piece of land which Khan now occupies which they said should have been included in the original survey of the parcel of land that I purchased."

This seems to me to be hearsay. The Macauleys were not witnesses. At that point the estate had other land besides the 8.774 acres of parcel A4 A5, namely parcel A2 and parcel B2, which the respondents bought later, after the change of solicitor. One was 11.048 acres; the area of the other was not stated but it was the more costly of the two.

The wife respondent said:

"The [appellant] asked me what I had done to survey the land. I told him my husband was not in and I had rheumatism. My feet were bad. He advised me to call a Mr. Kit Thomas who was surveying land opposite and he would do the surveying for me. . . . Next morning . . . I asked Thomas . . . and he said yes. I told him to see the [appellant] and the [appellant] would arrange for someone to show him the boundaries. . . . Before Lucretia Macauley died . . . she took us, my husband, Regina Macauley her grand-daughter and myself round the portion of land which she promised to sell us. We did not buy the land before she died. . . ."

And under cross-examination she said: "I do not know who showed Thomas the land."

Mr. Thomas was a witness called by the appellant. He gave his account as to how he came to know what land he was to survey for the plan in Exhibit A3. It was put to the husband respondent when under cross-examination but denied. This is what he said:

"I called on Mrs. Gilbey at her request. . . . She said Mr. Gilbey was not at home. . . . Next morning I met Mr. Gilbey and we made an appointment to go to the site when a Mr. Macauley would be present to point out the land. . . . I met the [husband respondent] . . . with one of the Macauley brothers . . . and we walked on the land. The [husband respondent] and Macauley pointed out the land to be surveyed. I pegged the land. . . . Regina—she came and joined us. There was disagreement between Regina and Mr. Gilbey where the pegs should be. At last we decided on a demarcation. . . . I surveyed the land then demarcated. . . . The [appellant]

took no part in this surveying business. . . . I am sure I did not hand the plan to Khan. I handed the plan at Mrs. Gilbey's house to either of the Gilbeys. . . . On the third occasion I went on the land Mr. Gilbey was there. I removed the pegs I had placed on the land and we all, including Regina, agreed on a final demarcation of the land. The land now finally demarcated was smaller than what I had previously pegged. What I finally surveyed was 8.107. The difference between what I surveyed and what I pegged was about 1½ acres."

The learned judge made no comment as to the credibility of Mr. Thomas. He did however say this:

"A few days after October 18th, 1960, the [appellant] was given by Mr. Thomas a plan of the land for which he was to prepare a conveyance for the plaintiffs. He must have seen in Mr. Thomas' plan there was no reference to the Atlantic Ocean. If the appellant was then under a misapprehension of the location of the land he was to convey . . . one would have expected him . . . to have called Mr. Thomas to explain why there was no mention of the Atlantic Ocean on his plan. He did not do that but proceeded to prepare a conveyance of the land Mr. Thomas had drawn."

This seems to be a finding of fact that Mr. Thomas made the plan of the 8.107 acres, but also to infer a finding that the appellant knew that it was not correct and did not show correctly the land which was to be conveyed.

The learned judge was very much impressed by the statement in the conveyance Exhibit A3 that the parcel A3 was "the remaining portion" of parcel H No. 2, and by its omission from conveyance A1. He took this to be an indication of fraud. Well, as I have said, the statement was wrong, and it was therefore proper to omit it from what was intended to be a better conveyance. Was it inserted in A3 to deceive? Clearly the learned judge thought so, taken in conjunction with the evidence as to the respondents going to the appellant about the extent of the area and as to the re-assurances of the appellant. But the learned judge did not mention that in the conveyance Exhibit A4 of parcel A4 to Klitz, the appellant described that parcel also as a portion of parcel H No. 2, which it was not. It has not been suggested that he intended to deceive Klitz. This mis-statement is repeated in Exhibit A5, the conveyance of the parcel to himself which his wife drew.

Another thing which impressed the learned judge as indicative

of fraud was the making of the second conveyance A1, with Priscilla Edmund as an added vendor. He said as to this (*inter alia*): ". . . Exhibit A1 contains no recital to enable anyone to know how Priscilla Edmund came to be one of the vendors. . . . no conclusive evidence that Priscilla Edmund is the lawful child of her parents. . . ." But to draw a sinister inference from this was to overlook two facts, namely: (a) after the respondents changed their solicitor and bought the 11.048 acres of parcel A2 and the other parcel B2, their new solicitor in the conveyances Exhibits A2 and B2 included Priscilla Edmund as a vendor with a recital saying that the two Macauleys and she were "her lawful grandchildren, the persons beneficially entitled to her estate," and (b) there is a conveyance dated October 18th, 1960, drawn by the appellant, of a parcel of land on the seaward side of the road by the two Macauleys and Klitz. The certified copy of the deed was Exhibit E1. The purchase price was £210. This deed was replaced by one on August 10th, 1961, of which a certified copy is Exhibit E3, in which Priscilla Edmund was added as a vendor and which was stated to cancel the conveyance Exhibit E1. This cannot have been done with any sinister purpose.

The learned judge referred to Exhibit J, which was prepared by the defendant and in which, in the judge's words, "Regina and Mrs. Ogoo are branded as illegitimate. . . . The [appellant] was willing to say that she was illegitimate. . . ." I cannot see what relevance this has nor in what way it goes to show that the conveyances Exhibits A4 and A5 were fraudulent or what benefit could have accrued to the appellant by preparing this document, if he did not at that date honestly believe it to state the truth.

The learned judge said this as to prices:

> "Though the parcel in Exhibit E1 is less than one acre we find [Klitz] paying £210 for that piece of land, while four months later we find the same purchaser paying the vendors £100 on February 9th, 1961 for 8.774 acres and the [appellant] four days later paying Klitz £250 for the same land."

It was five days not four. With all respect to the learned judge, I do not think the first part of this justified. The parcel E1 was on the sea shore on the right of the road. Less than an acre there may well be very expensive and cannot be compared with the 8.774 acres which were inland even further than the respondents' parcel A3 A1. The second part is justified and rouses suspicion. The appellant was cross-examined about it. He said that "around the

end of 1960" Klitz was charged with obtaining goods by false pretences. He acted for Klitz in the case. The £100 conveyance Exhibit A4 which was made on February 9th, 1961 was before the case was ended. The case ended on February 13th, and the next day Klitz executed the £250 conveyance to the appellant. The appellant said "I did not think that from an estate point of view this was unsafe." The learned judge made no comment as to this explanation. This is the "transparent device" of the statement of claim. What has not been explained is how the Macauleys came to agree to sell this parcel to Klitz for £100 if it was worth more.

The learned judge does not say anything about the standard of proof which was to be applied. In *Bater* v. *Bater* (1) Denning, L.J., as he then was, said ([1951] P. at 36; [1950] 2 All E.R. at 459):

> "The difference of opinion which has been evoked about the standard of proof in recent cases may well turn out to be more a matter of words than anything else. It is of course true that by our law a higher standard of proof is required in criminal cases than in civil cases. But this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard.
>
> As Best, C.J., and many other great judges have said, 'in proportion as the crime is enormous, so ought the proof to be clear.' So also in civil cases, the case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require for itself a higher degree of probability than that which it would require when asking if negligence is established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature; but still it does require a degree of probability which is commensurate with the occasion."

The key words are, I think, "commensurate with the occasion."

The learned trial judge sat without a jury. This appeal has been by way of rehearing, in accordance with the rules. The duty of a court of appeal in such a case is well settled, and is as was stated by Viscount Cave, L.C. in *Mersey Docks & Harbour Bd.* v. *Procter* (2) ([1923] A.C. at 258; [1923] All E.R. Rep. at 137):

> "The procedure on an appeal from a judge sitting without a

jury is not governed by the rules applicable to a motion for a new trial after a verdict of a jury. In such a case it is the duty of the Court of Appeal to make up its own mind, not disregarding the judgment appealed from and giving special weight to that judgment in cases where the credibility of witnesses comes into question, but with full liberty to draw its own inference from the facts proved or admitted, and to decide accordingly."

This case turned partly on credibility and partly on inferences. The learned judge accepted the evidence of the respondents: in my opinion their evidence does not provide a standard of proof commensurate with the allegation of fraud. Moreover it included a passage of hearsay adverse to the appellant, which it should not have included. As to the inferences, in my opinion the learned judge drew from some facts inferences adverse to the appellant without taking into consideration other facts which were relevant and either not necessarily adverse to him or favourable to him and in one instance irrelevant.

I would allow the appeal, and reverse the judgment by entering judgment dismissing the respondents' claim.

BANKOLE JONES, C.J. and DOVE-EDWIN, J.A. concurred.

Appeal allowed.

THOMAS *v.* THOMAS

COURT OF APPEAL (Ames, P., Bankole Jones, C.J. and Dove-Edwin, J.A.): March 18th, 1965
(Civil App. No. 15/64)

[1] **Courts—magistrates' courts—procedure—summons—criminal summons issued in civil proceedings—not fatal if defendant not misled:** It is not a fatal defect in a magistrate's court summons that it is headed and numbered as a criminal summons though issued in proceedings which are not criminal, if at the hearing the defendant raises no objection and knows he is not charged with an offence (page 231, lines 27–36; page 232, lines 6–7).

[2] **Courts—magistrates' courts—procedure—summons—material particular not stated—defect cured when defendant has actual notice of particulars:** The omission of a material particular from a magistrate's court summons will be cured if it is stated in the application for the summons so that the defendant knows what the allegation against him is (page 231, lines 37–41; page 232, lines 5–7).