PARKER v THE STATE

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COURT OF APPEAL FOR SIERRA LEONE, Criminal Appeal 24 of 1975, Hon Justice Tejan JSC, Hon Justice Awunor-Renner JA, Hon Justice Cole JA, 26 October 1976

[1] Criminal Law and Procedure – Larceny – Whether s 17(1) of the Lareceny Act 1916 applied to clerks or servants of the State – Larceny Act 1916 s 17

[2] Criminal Law and Procedure – Evidence – Similar fact evidence – General principles – Similar fact evidence admissible only where connected in some relevant way with the accused and participation in the crime

[3] Constitutional Law – Sierra Leone – Whether State of Sierra Leone an entity for the purposes of larceny – The Constitution (Consequential Provisions) Act No 9 of 1971 s 16

The appellant, a clerk at the Ministry of Education, was attached as a financial clerk to the Technical Institute and was convicted of 3 counts on falsification of accounts contrary to s 1 of Falsification of Accounts Act 1875 and 3 counts of larceny contrary to s 17(1)(a) of the Larceny Act 1916. The appellant was responsible for preparing vouchers and cheque order forms and other duties. During the trial, evidence was adduced to show that the appellant had been aware and was part of these dishonest transactions at the Institute which allowed for surplus monies to be got from payment vouchers for personal gain. The transactions which where the subject of the 6 counts showed that in the months of October to December 1974 the vouchers were inflated by the sum of Le2000.00 for each month and that the amounts were paid out to the appellant. Evidence was further adduced to show that the appellant was a clerk or servant of the Government of Sierra Leone during which these transactions occurred. The appellant was convicted on all counts. His appeal against conviction for falsification of accounts was quashed by the Court of Appeal and this judgment concerned his appeal against conviction on the 3 counts of larceny.

Held, per Tejan PJ, dismissing the appeal against conviction for larceny:

1. Section 17(1) of the Larceny Act 1916 is a section of general application to clerks or servants or persons employed as clerks or servants whether in governmental employment or not. Aclerk or servant employed by the State can be indicted either under s 17(1) or s 17(2). *R v Parsons* (1886–1890) 16 Cox 498 applied.
2. The general law relating to similar fact evidence is that facts which are relevant merely from their general similarity to the main fact of transaction, and not from some specific connection therewith are not admissible to show its existence or occurrence. Evidence may not be given, to prove an act done by a person, of similar acts done either by himself with the object of showing a general disposition, habit or propensity to commit and a consequent probability of his having committed the act in question, or by others, though similarly circumstanced to himself, to show that he would be likely to act as they. Facts may, however, be relevant to show whether the act alleged was designed or accidental or to show the identity of the person or to rebut a defence which might otherwise be open to him, in which case they are admissible notwithstanding that they also may tend to show a general propensity
3. The principle of similar fact evidence is that it is inadmissible in an allegation against an accused unless the similar facts are connected in some relevant way with the accused and

his participation in the crime. In this case the evidence was rightly received as it was right for the prosecution to give in evidence other instances of the accused having committed offences similar to the one for which he was now being tried. *Makin v AG for New South Wales* (1894) AC 57, *R v Sims* (1946) KB 531 and *Harris v DPP* (1952) AC 694 applied.

4. Evidence that monies found in the possession of the appellant was relevant and admissible to the charge of larceny of money. The appellant himself confessed to having taken the money and money was found in his possession.

5. The State of Sierra Leone is an entity for the purpose of larceny as it can acquire rights, liabilities and obligations and the appellant as a clerk of the State can and did commit the offence of larceny against it. *Venn v The State (*Cr App No 23/75, unreported), (affirmed by the Supreme Court, see *Venn v The State* [1974-82] 1 SLBALR *). followed.

Cases referred to
Boardman v DPP (1974) 3 All E R 887.
Harris v DPP (1952) AC 694
Makin v AG for New South Wales (1894) AC 57
Noor Mohamed v The King (1949) AC 182
Patrick Cole v The State [1974-82] 1 SLBALR 87
R v Armstrong (1922) 2 KB 555
R v Bayswater (1922) 17 Cr App R 66
R v Boardman (1974) 3 WLR 673
R v Carrick and Three Others (1968) ALR (SL) 25
R v Dossett Carrington and Kirwans Reports 306
R v Garrick and Others (1967-1968) ALR (SL) 25
R v Geering 18 LJ 215
R v George Sims 31 Cr App R 158
R v Graham (1875) 13 Cox 57
R v Gray 4 Forster and Finlasous Reports 110
R.v Martin (1961) 45 Cr App R 199
R v Parsons (1886–1890) 16 Cox 498
R. v Seymour (1954) 1 All ER 1006
R v Shaibu Yakubu 10 WACA 267 06
R v Sims (1946) KB 531
R v Smith (1915) 84 LJR 215
R v Thompson (1922) 17 Cr App 71
R v Whitaker (1914) 3 KB 1283
Thompson v The King (1918) AC 232
*Venn v The State (*Cr App No 23/75, unreported) (affirmed by the Supreme Court, see *Venn v The State* [1974-82] 1 SLBALR *.

Legislation referred to
Criminal Procedure Act 1965 Sch 1 s 9
Falsification of Accounts Act 1975 s 1
Larcency Act 1916 s 17(1)(a), (2)(a)
The Constitution (Consequential Provisions) Act No 9 of 1971 s 16

Other sources referred to
Archbolds' CriminalLaw and Pleadings (36th Edition) para 2073
Halsbury's Laws of England, (3rd Edition) Vol 10 p 784
Phipson on Evidence (11th Edition) p 191 para 451

Appeal

The appellant was convicted and sentenced in the High Court in Freetown before Warne J on 6 counts relating to offences for falsification of accounts and larceny. The Court of Appeal allowed an appeal in respect of the conviction relating to falsification of accounts on the basis that the particulars of the offence omitted the essential ingredients to constitute the offence, and the appellant's convictions on these counts were quashed. This judgment concerned the appellant's appeal against conviction for larceny. The facts appear in the judgment of the Court below.

Dr A O Conteh and Mr T M Terry for the appellant.
Mr Bankole-Thompson and Mr D P Carew for the State.

TEJAN JSC: Ibrahim Parker, the appellant in this case was tried in the High Court at Freetown, and on the 21st August, 1975, was convicted and sentenced by Warne J (as he then was) on each of six counts of charges, three for the offences of Falsification of Accounts contrary to s 1 of the Falsification of Accounts Act 1875, and the other three for offences of larceny contrary to s 17(1)(a) of the Larceny Act 1916.

By this appeal, the appellant now seeks to set aside the conviction on various grounds.

The background of the case can be shortly summarised as follows:

In the months of October, November and December 1974, the appellant who was employed as a clerk at the Technical Institute, a branch of the Ministry of Education, performed the duties of a finance clerk which involved the preparation of vouchers, cheque order forms and the encashment of cheques and payment of salaries of the staff of the Institute. In order to carry out his duties with regard to payment of salaries, five copies of the vouchers had to be prepared. Four of these were sent to the Ministry of Education where they were checked and passed. Entries of the particulars of the vouchers were then made in the vote service ledger of the Ministry of Education, which was then signed by either the Senior Accountant or the Senior Assistant Secretary of the Finance division. These vouchers were returned to the Institute where cheque order forms were prepared and signed by the Principal of the Institute or by any Senior Officer so permitted. They were sent to the Treasury where cheques for the amount on the vouchers were made out. The cheques were endorsed by the principal, and after the endorsement, the appellant encashed the cheques and paid out salaries.

On the 29th April 1975, Detective Inspector Amedofo who at the time was carrying out certain investigations into the accounts of the Institute invited the appellant to the CID Headquarters. Amedofo told the appellant about the investigation and his discovery that each voucher for the months of October, November and December 1974 had been inflated by the sum of Le2000.00 while the appellant was the accounts clerk. The appellant then volunteered a statement which was written down by Amedofo. After the appellant had read the statement and agreed that it was correct he signed it. Extracts of this statement are recorded thus:

> "In February 1975, when I prepared vouchers, I had a grand total to which I added the figure two thousand leones. What I normally do is to type out the voucher and insert the correct total which the Principal Mr Davies signs. After his signature, I erase the true figures and then type out another figure by inflation of Le2000.00. In March 1975 I again added two thousand leones to the grand sum total after the Principal had signed. I did the same thing but I did not receive the amount for April, 1975. I take the cheques to the Bank of Sierra Leone, where I cash the cheques. On my way to school, I pass my house and deduct the amount which I added. On 29.4.75, I was invited to CID Office. I was then taken to my house where I was searched. CID men found Le4,800.00 in my trunk and Le130.00 in my bag. The two inflations I made for February and March 1975

amounted to Le4000.00 which I kept in my trunk. The Le600.00 was the profit of my rice business. The Le130.00 found in my bag was school money ...."

On the 29th April 1975, Amedofo and a team of detectives searched the premises of the appellant. In the appellant's room in a trunk, the sum of Le1000.00 in Le2 notes was discovered. The sum of Le130.00 was found in a black bag. When appellant was questioned about the Le4000.00, he said:

"He got them through his accounting trick at the Technical Institute."

The sum of Le130.00 according to the appellant's explanation was a left over after payment of salaries. Amedofo took possession of the monies and went to the Principal Mr Davies. Davies handed some vouchers to Amedofo after the safe had been sealed. Amedofo requested from the Accountant-General the Technical Institute Emolument vouchers. Among the vouchers obtained from the Accountant–General were PEVS *T1/34/10/74, T1/16/11/74* and *T1/22/12/74* together with the respective cheque order forms and the Bank of Sierra Leone cheques. Amedofo collected other financial documents. On examination, he observed there were erasures on the vouchers, and in some cases the total did not agree with the total on the copy vouchers. Amedofo informed the Auditor–General who sent a Mr Harleston to assist in the inquiry. Amedofo also collected two letters signed "D" which the appellant said in the presence of Bambay Kamara were written by one Miss Venn as a result of the sum of Le2000.00 which he inflated in the salaries of the staff, and which he took without giving Miss Venn her share. At this stage, the appellant volunteered to make another statement which Amedofo wrote down and the appellant signed as correct. The following are extracts of this statement:

> "On 29.4.75 when CID men searched my house, they found two hand written letters signed "D" with the instruction that they should be destroyed. CID men asked me to know who was the writer of the letters. I told them that it was one Miss Daisy Venn. This letter was in connection with the sum of Le2000.00 which I seized from Miss Daisy Venn and Mrs Rendall ... sometime later in 1974, Miss Venn was sick again and the Principal took me to the Treasury. I signed the cheque order form and received the cheque. I took it to the Bank of Sierra Leone where I cashed it ... I noticed that there was a surplus of Le2000.00 again. I took this amount home and kept it ... later, she was transferred from the Institute. Before she left she told me that each time I prepare the vouchers and they passed and signed, I should then add the figure two to the thousand column and later take the money to her and she will give me mine and take the rest to the pre-punch section. She told me if I fail to do it she will report the matter because the cheque order forms only bear my name and through that I will suffer. I became afraid and complied with her instructions even though she left the Institute since September of 1974. At one time when she was at Geological Department she went to me in the night with Mrs Randall. She told me that she had heard that I was adding more figures to the salary than what we had arranged ... in March 1975, I had the same surplus. I sent Le1000.00 to her."

Amedofo collected specimen handwritings from a number of people connected with the Institute, and these together with the documents already in his possession, he handed over to Bambay Kamara for examination. The prosecution then called Harleston, Principal Auditor attached to the Auditor-General Department, who confirmed the discovery of Amedofo from his examination of various financial documents that in the months of October, November and December 1974, the vouchers were inflated by the sum of Le2000.00 for each month and that the amounts were paid out to the appellant. Evidence was next adduced to show that the appellant was a clerk or servant of the Government of Sierra Leone during the period of enquiry.

The Principal Mr Davies was called to give evidence on behalf of the prosecution. After explaining the procedure adopted for the preparation of financial documents in respect of payment of salaries, he then identified cheque order forms for the months of October, November and December 1974 on which was the name of the appellant. The witness then said that the payment emolument vouchers for these months belonged to the State of Sierra Leone.

On examination of various documents, Bambay Kamara found that the letter signed 'P' which was in the handwriting of the appellant, the signatures on the cheque order forms and on Exhibits A B and C were of common authorship, that is to say, that they were signatures of the appellant.

The wife of the appellant was the last witness to give evidence after she had been tendered by the prosecution. On examination by the appellant, Isatu Parker spoke about an evening when one Miss Venn and Mr Randall went to complain to her about a pre-punch man who was bothering her about money.

At the close of the prosecution, the appellant was put on his election, and it is clear from his unsworn statement that the appellant knew about the dishonest transaction that was being carried out at the Technical Institute since May 1974. According to the unsworn statement, the responsibility of preparing vouchers for payment of salaries fell on him when Miss Venn was transferred in September 1974. Extracts of the statement are recorded thus:

> "I was running the Institute. Miss Venn was frequent in the office. After she left she came back and said we work for pension. I said I have no choice. I am a man. She said she wanted to see me. She said if I went to the Bank to get salaries, I will find some surplus cash. I asked how much, she said Le2000.00. I asked what type of surplus, she never explained but said I will get that money … she said I was a coward. She said when I got it I should give her. She said if I did not give her I would have myself to blame … almost about the end of September, 1974 Miss Venn came to the office, she explained to me that this is between her and Mrs Randall and some members of the pre-punch. Miss Venn is my boss even though she had left, I did as I was told … she said they are five in the business. The surplus for that month was Le2000.00 and Miss Venn collected it because she left between September and October, 1974 ... before end of October, Miss Venn came to me and said the people are afraid because I was a new man. She said I will not have equal share as I am new perhaps Le100.00 … she said the people said as a new man we now treat it as "thrift fund" I ask who collects the first time. They said since I was the last I would receive last. I received the Le2000.00 and gave Miss Venn either in office or at the Bank. This went on till March 1975 … On 29th April 1975 I went to work. On my return to the office I was arrested by the CID. I was asked if I have money and documents at home. I said yes. I had no official documents. We went to my house and they found money in my bag. I told the CID men about it. Money was found in my trunk and I explained to them about it. I said the money in my bag was rent collected part for premises I live and part for my late uncle's premises … I said the money in my trunk came from many sources. They were profit from my wife's business, jamant money from my landlord to complete his building in order to hire a contractor, for the landlord rent collected for the half year, and money my sister who gave me to buy lot for her, money from my late uncle premises and my own small saving."

Moinia Sheriff, a messenger at the City Council was the first witness for the defence. In order to understand part of the defence clearly, I think it is essential to state exactly what this witness said:

> "I am Moinia Sheriff. I live at 4 Seventh Street, Freetown. I am a messenger at City Council. I know the accused. I live at his uncle's place. He collects the rents for the house. It is an adjoining house. There are seven apartments. I am occupying a room and a

parlour. I pay Le6.00 per month. I pay monthly. The accused collects the rents. There are 8 apartments which are paid for and three are rent free. There are two apartments which are Le3.00 monthly and the other paid for including mine Le6.00 per month."

The next witness for the defence is Sabata George. In her testimony she said as follows:

"I am Sabata George. I live at Bumpe, Bumpe Chiefdom, I am a businesswoman. I know the accused, he is my brother. I have business with the accused. I do his business. I buy palm oil and rice and sell it in Freetown. I give my brother profit I receive from sales for safekeeping. Last year I told him we must check the money I gave him for safekeeping. We checked the money; it was Le900.00 I told him since I am married and I have no children, so he should buy a lot for me. I went away. On my return I asked if he had got the lot. He said that is Le1100.00. I told him to secure the money. I was up country, when I received information that the accused was ill and admitted in hospital. I could not come then. I was collecting the palm oil I had paid for. When I came I learned that he had been arrested by the CID."

In answer to Mr Adophy she said:

"I have been giving my brother my profits for keeping for 8 years. It took me eight years to get Le900.00. I told him to buy lot for me when I came to town to do business. When we checked the money they were in Le2 notes. They were money I gave my brother. When we were checking the money it was tied. I do not remember the way or the material it was tied in. I was there when it was tied. He tied it in bundle; a single bundle. It was the same used money I gave my brother being my profit that he had for safe keeping."

So much for the facts of the case, and I shall now proceed to deal with the various grounds appeal.

This Court has already dealt with ground 8 of the appeal in respect of counts one, three and five for the offence of Falsification of Accounts. We have already ruled that the particulars of offence omitted the essential ingredients to constitute the offence, and the appellant's convictions on these counts have been quashed, the appellant being acquitted. Our decision was based on *Halsbury Laws of England* (3rd Edition) para 703, *Archbolds' CriminalLaw and Pleadings* (36th Edition) para 2073, *R.v Martin* (1961) 45 Cr App Rep 199, *R v Shaibu Yakubu* 10 WACA 267, Criminal Procedure Act 1965 Sch 1 s 9 and the case of *Patrick Cole v The State* [1974-82] 1 SLBALR 87.

I shall now proceed to examine the rest of the grounds of appeal in respect of counts two, four and six for the offence of larceny.

In his argument, Dr Conteh contended that:

"Counts two, four and six were defective in that they deal with private employment whereas the particulars of those counts aver that the appellant was in the public service."

Counsel submitted that the counts were laid under s 17(1)(a) of the Larceny Act 1916, and that since the prosecution went to great length to establish that the appellant's employment was in the "public service" the section under which the counts were laid was wrong, and that where there was a provision for the commission of an offence by a person, that person must be charged only in relation to that section and not otherwise. Counsel then referred to *R v Graham* (1875) 13 Cox 57, *R. v Parsons* (1883) and *R v Whitaker* (1914) 3 KB 1283 to support his argument.

Mr Bankole Thompson, in answer to the appellant's contention, submitted that the distinction between s 17(1)(a) and s 17(2)(a) of the Larceny Act 1916 did not find support from

the authorities on which the appellant relied. He stressed that s 17(1)(a) was a more general section whereas s 17(2)(a) was a more particular section. Counsel urged that the purport of the statutory provision in s 17(1)(a) was that the stealing should have been committed by the servant while engaged in the duties of his service. Counsel's contention was that the cases referred to were clearly distinguishable and could not support the appellant's contention as the convictions in those cases were quashed on the grounds that the indictments had alleged that the appellants were employed in the public service of Her Majesty when the evidence disclosed that they were not so employed.

The particulars of each of the counts are the same with the exception of dates and numbers of the vouchers. The particulars on count two are as follows:

> "Ibrahim Parker on the 29th day of October 1974 at Freetown in the Western Area of Sierra Leone being a clerk or servant of the State of Sierra Leone stole from the said State the sum of Le2000.00."

I shall now refer to the authorities. The case of *R v Parsons* (1886–1890) 16 Cox 498 the High Bailiff of a county court appointed one Parsons, under the powers contained in the County Court Acts, a bailiff to assist him in his duties. Parsons acted under the orders of the high bailiff, his duties thus prescribed were to execute writs of fifa and to return the proceeds to the Registrar of the Company within twenty-four hours. *Held* that Parsons was not a person "employed in the public service of Her Majesty" within the meaning of 24 & 25 Vict C 96 S 70 but was the servant of the bailiff."

I have read the other authorities on the subject, and I have no hesitation in accepting State Counsel's submission that they are fundamentally distinguishable from the present case.

Section 17(1) enacts that every person who, being a clerk or servant or person employed in the capacity of a clerk or servant, whereas s 17(2) enacts that every person who being employed in the Public Service of His Majesty or in the Police of any place whatever.

I have to consider the evidence with regard to counsel's contention that counts 2, 4 and 5 deal with "private employment" whereas the evidence in respect of those counts averred that the appellant was in the Public Service. I believe this contention was put forward on the ground that the appellant was charged under s 17(1) and not under s 17(2). It seems to me that s 17(1) is a general section of general application to clerks or servants or persons employed as clerks or servants whether in governmental employment or not. My view is that a clerk or servant employed by the State can be indicted either under s 17(1) or s 17(2).

The submission of appellant's counsel that the prosecution went at great length to establish that the appellant's employment was in "public service" is untenable. The submission overlooks several considerations contained in the evidence. Apart from the single occasion when it is stated in Exhibit "Q1", the appellant's letter of acceptance that "I am aware that public officers are prohibited from being parties to accommodation bill", no other reference to "public office" has been made throughout the entire proceedings. Even the heading of Exhibit "Q1" reads "Acceptance of Appointment in the service of the Government of Sierra Leone." Moreover, there is the evidence of Mr Davies the Principal of the Institute, the statement of the appellant made on the 29th day of April 1975, and the unsworn statement of the appellant himself. These clearly show that the appellant was a clerk in the civil service. In addition, there is Exhibit "Q" the appellant's letter of appointment, the first paragraph of which reads:

> "I am directed to inform you that you have been selected for absorption into the permanent and pensionable establishment as Third Grade Clerk, Ministry of Education."

In the circumstances, I do not feel the smallest doubt that the indictment is good and that the appellant falls within the terms of the statute.

The next point taken by appellant's counsel was that "the learned trial judge misdirected himself when he stated at page 113 lines 13 to 18:

> "In proving this offence the prosecution ... This they may do by giving evidence of other instances of the accused having committed offences similar to that for which he is under trial."

For convenience, I shall deal with this ground together with the submission of counsel that the learned trial judge erred in law when he stated at page 113 lines 22 to 24

> "The discovery of the monies in the house of the accused is absolutely relevant to the charge of larceny before the Court."

For this purpose, it is necessary to quote in full the passage complained of:

> "In proving this offence, the prosecution has the right to give evidence of design, system, criminal intention, guilty knowledge of the accused. This they may do by giving evidence of other instances of the accused having committed offences similar to that for which he is under trial. The accused himself gave more than enough evidence of this in his statement to the Court that he has been involved in stealing these amounts from the State of Sierra Leone under a period of time. This is in spite of the evidence of PW1. The discovery of the monies in the house of the accused is absolutely relevant to the charge of Larceny before the Court. The discovery came close to the end of April 1975."

Dr Conteh contends that the law of evidence does not permit evidence to be led to show previous offence simply to prove that the appellant is guilty of the offence with which he is charged. To buttress his argument he refers to *Makin v AG for New South Wales* (1894) AC 57; *R v Sims* (1946) KB 531and *Boardman v DPP* (1974) 3 All E R 887.

Dr Conteh points out that the trial judge was putting the burden of proof on the appellant and was also applying the law of recent possession to larceny. He then refers to *R v Garrick and Others* (1967-1968) ALR (SL) 25 to support his argument.

The general law relating to similar facts evidence is that facts which are relevant merely from their general similarity to the main fact of transaction, and not from some specific connection therewith are not admissible to show its existence or occurrence. Evidence may not be given, to prove an act done by a person, of similar acts done either by himself with the object of showing a general disposition, habit or propensity to commit and a consequent probability of his having committed the act in question, or by others, though similarly circumstanced to himself, to show that he would be likely to act as they.

Facts may, however, be relevant to show whether the act alleged was designed or accidental or to show the identity of the person or to rebut a defence which might otherwise be open to him, in which case they are admissible notwithstanding that they also may tend to show a general propensity: see *Phipson on Evidence* (11th Edition) at page 191 and para 451.

It is generally acknowledged that the law of evidence is tainted with many situations where an item may be admissible for one purpose but yet inadmissible for another purpose. The statement of principles governing admissibility in respect of similar facts evidence was dealt with in the case of *Makin v AG for New South Wales* (1894) AC 57.

In the judgement of the Board, Lord Herschell LC said at page 65:

> "It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the Indictment, for the purpose of leading to the conclusion that the accused is a person likely from criminal conduct or character to have committed the offence for which he is charged. On the other hand, the mere fact that the evidence adduced tends to show the

commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the Indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused."

This principle seems to appear to be consistent with current authority bearing on the point. There is a long line of authorities on the issue. In the case of *R v Geering* 18 LJ 215, where on the trial of a prisoner for the murder of her husband by administering arsenic, evidence was tendered, with the view of showing that two sons of the prisoner who had formed part of the same family, and for whom as well as for her husband the prisoner had cooked their food had died of poison, the symptoms of all these case being the same. The evidence was admitted by Pallock CB who tried the case; he said that it was admissible, in as much as its tendency was to prove that the death of the husband was occasioned by arsenic and was relevant to the question whether such taking was accidental or not. This authority was followed by Maule J in *R v Dossett* Carrington and Kirwans Reports 306 when he said:

"Although the evidence offered may be proof of another felony, the circumstance does not render it inadmissible, if the evidence be otherwise receivable. In many cases it is an important question whether a thing was done accidentally or wilfully."

In the case of *R v Gray* 4 Forster and Finlasous Reports, at page 1102, where on trial for arson with intent to defraud an insurance company, Willes J admitted evidence that the prisoner had made claims on two insurance companies, in respect of fires which had occurred in two other houses which he had occupied previously and in succession, for the purpose of showing that the fire which formed the subject matter of the trial was the result of design and not accident.

In the case of *R v Sims* (1946) KB 531 Lord Goddard said:

"The question, therefore, is whether the evidence was admissible. There are observations of this Court each way and we have felt it necessary, therefore, to consider the matter afresh. Much depends on the proper approach. We start with the general principle that evidence is admissible if it is logically probative, that is, if it is logically relevant to the issue whether the prisoner has committed the act charged. To this principle there are exceptions. One of the most important exceptions is this: evidence that the accused has a bad reputation or has a bad disposition is not admissible unless he himself opens the door to it by giving evidence of good character or otherwise under the Criminal Evidence Act 1898. The reason for excluding evidence of the bad character was said by Willes J, to be policy and humanity. He thought that evidence of bad character was just as relevant as evidence of good character, but the unfair prejudice created by it was so great that more injustice would be done by admitting it than by excluding it .... we do not stay here to consider which view is correct. The exception is well settled. The question is what are its limits. In our opinion, it does not extend further than the interests of justice demand. Evidence is not to be excluded merely because it tends to show the accused to be of bad disposition but only if it shows nothing more."

In *Thompson v The King* (1918) AC 232, Lord Summer delivering the judgement of the Board said:

"No one doubts that it does not tend to prove a man guilty of a particular crime to show that he is the kind of man who would commit a crime; but sometimes for one reason sometimes for another, evidence is admissible, notwithstanding that its general character is to show that the accused had in him the makings of a criminal, for example, on proving guilty knowledge, or intent, or system, or in rebutting an appearance of innocence which unexplained the facts might wear .... The mere theory that a plea of not guilty puts everything material in issue is not enough for this purpose. The prosecution cannot credit

the accused with fancy defences in order to rebut them at the outset with some dawning piece of prejudice."

In *Noor Mohamed v The King* (1949) AC 182, Lord Uthwatt delivering the judgement of the Privy Council said at page 191:

"Their Lordships respectfully agree with what they conceive to be the spirit and intention of Lord Summer's words, and wish to say nothing to detract from their value. On principle however, and with due regard to subsequent authority, their Lordships think that one qualification of the rule laid down by Lord Summer must be admitted. An accused person need not up no defence other than a general denial of the crime alleged. The plea of not guilty may be equivalent to saying "Let the prosecution prove its case, if it can," and having said so much the accused may take refuge in silence. In such a case it may appear (for instance) that the facts and circumstances of the particular offence charged are consistent with innocent intention, whereas further evidence, which incidentally shows that the accused has committed one or more other offences, may tend to prove that they are consistent only with a guilty intent. The prosecution could not be said, in their Lordship's opinion, to be crediting the accused with a fancy defence if they sought to adduce such evidence."

In *Harris v DPP* (1952) AC 694, Viscount Simon said at page 705

"The principle as laid down by the then Lord Chancellor is as follows. (Referring to *Makin's* case) It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than these covered by the Indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried. On the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the Indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused."

The judgement continues:

"When Lord Herschell speaks of evidence of other occasions in which the accused was concerned as being admissible to "rebut" a defence which would otherwise be open to the accused, he is not using the vocabulary of civil pleadings and requiring a specific line of defence to be set up before evidence is tendered which would overthrow it."

The principle which emanates from the authorities is that evidence of similar facts cannot be admissible in an allegation against an accused unless the similar facts are connected in some relevant way with the accused and with his participation in the crime. "Similar facts" evidence which merely tends to deepen suspicion, according to the authorities, does not go to prove guilt. Several reported cases dealing with the admissibility of "similar facts" have been decided since *Makin's* case. Some of these are R. *v Sims* (1946) KB 531; *R v Smith* (1915) 84 LJR 215; *R. v Armstrong* (1922) 2 KB 555; *R. v Thompson* (1922) 17 Cr App R 71; *R. v Bayswater* (1922) 17 Cr App R 66 and *R. v Boardman* (1974) 3 WLR 673.

The authorities make it clear that where design, system, criminal intent or guilty knowledge on the part of an accused is to be proved or the defence of accident or like is to be met, the prosecution may give in evidence other instances of the accused having committed offences similar to that for which he is under trial, such evidence may be given by the prosecution without waiting for the accused to set up a specific defence calling for rebuttal. I hold strongly to the view that evidence of similar facts in this particular case was rightly received.

The next attack made on the judgement by the appellant's counsel was that the learned trial judge erred in law when he stated that "the discovery of monies in the house of the accused is absolutely relevant to the charge of larceny before the court." In this connection, counsel argued that the trial judge was applying the law of recent possession to the charge of larceny whereas the law of recent possession is only applicable to the charge of receiving. Counsel then cited the case of *R. v Carrick* and *3 Ors* (1968) ALR (SL) 25.

In order to appreciate the argument, it will be well to consider whether the evidence that money was found in the house of the appellant was irrelevant and inadmissible. The appellant was charged with the offence of larceny. When the matter was being investigated the appellant's house was searched and various sums of money including the sum of Le4, 800.00 in a trunk were found. When questioned about the money, the appellant said he got the sum of Le4000.00 through his accounting manipulation at the Technical Institute. He gave certain explanations to account for the other monies found in his house. Extracts from his first statement to police (Exhibit "E") are as follows:

> "What I normally do is to type out the vouchers and insert the correct total which the Principal Mr Davies signs. After his signature, I erase the true figures and then type out another figure by the inflation of Le2000.00 .... on 29.4.75 I was invited to the CID Office. I was then taken to my house where I was searched. CID men found the sum of Le4800.00 in my trunk and Le130.00 in my bag. The two inflations I made for February and March 1975 amounted to Le4000.00 which I kept in my trunk. The Le800.00 was the profit in my rice business. The Le130.00 found in the bag was school money which I withdrew from the safe to pay some students."

In his second statement to police the appellant said:

> "On 29.4.75 when CID men searched my house they found two handwritten letters signed "D" with the instruction that they should be destroyed. CID men asked to know who was the writer of the letters. I told them it was one Miss Daisy Venn. This letter was in connection with the sum of Le2000.00 which I seized from Miss Daisy Venn and Mrs Randall ... sometime later in 1974, Miss Venn was sick again and the Principal took me to the Treasury. I signed the cheque order form and received the cheque. I took it to the Bank of Sierra Leone where I cashed it. I examined the vouchers and checked the cash. I notice that there was a surplus of Le2000.00 again. I took this amount home and kept it. When Miss Venn resumed she asked me for the surplus. I told her that there was no surplus."

It is apparent from the evidence that the discovery of the money is relevant to the charge of larceny of money, and as Lord Goddard CJ puts it in the case of *R. v Seymour* (1954) 1 All ER at page 1006:

> "but there are a great many cases where I do not think anybody who applies his mind to the case can have any doubt that the person found in possession of stolen property is the thief."

I think that the question whether the appellant's offence amounted to larceny must depend upon the circumstances under which he came to possession of the money. I do not think any useful help can be derived from the case of *Carrick* (supra) and cited by appellant's counsel. In that case, (a High Court decision) Brown-Marke J (as he then was) said at page 33:

> "Taking the evidence as a whole, the evidence is based on charge of larceny or no larceny. On the doctrine of recent possession, the prosecution must first prove larceny and the property must be identified."

In the present case, the appellant himself confessed both orally and in writing that he stole the money. The money was found in the appellant's possession, and therefore evidence that the money was so found was relevant and admissible in a charge of larceny of money. According to *Halsbury's Laws of England*, 3rd Edition (Vol 10) at page 784, "evidence that the defendant was seen to take the goods in question is not essential, it is sufficient if he was found in possession of stolen property shortly after the theft, in such a case the jury are generally warranted in concluding that he stole the goods and he came by them dishonestly unless he gave a satisfactory explanation how he came by the goods."

The evidence of Amedofo allied with the statements of the appellant makes the discovery of the money in the appellant's premises not only relevant but also material in the charge.

The next submission of appellant's counsel is that the trial judge misdirected himself when he found that the appellant was clerk or servant of the State of Sierra Leone. Counsel contends that the offence of larceny can only be committed against individuals or entities, and that the expression "the State of Sierra Leone" is not an entity known to the laws of Sierra Leone for the purposes of the offence of larceny; that the expression is not recognised at law as legal personality in the sense of bearing rights and duties.

This submission of Counsel was dealt with at considerable length by this court in the case of *Venn v The State* (Cr App No 23/75, unreported). In that case, this court meticulously examined the various provisions in the Constitution relating to the State of Sierra Leone, and this Court came to a definite conclusion that the State of Sierra Leone could acquire rights, liabilities and obligations.

It seems to me that s 16 of The Constitution (Consequential Provisions) Act, No 9 of 1971 finally disposes of the question.

I now come to the contention that the verdict was unreasonable and cannot be supported by the evidence. I have dealt with the various grounds of appeal at some length in deference to the ingenious arguments to which this court has had the advantage of listening. My conclusion is that without further review of the evidence, the entire evidence in the case fully supported the verdict of the trial judge, and it follows that as a result that this appeal must fail and must be dismissed. The convictions of the appellant on counts 2, 4 and 6 are affirmed.

Reported by Victoria Jamina