to note that the legislature by section 10 (1) (*c*) of the Act makes contravention of or failure to comply with any of the provisions of section 6 of the Act an offence.

I, therefore, hold that the learned magistrate was wrong in law in holding "that the discretionary power conferred under section 6 (2) of the Act on the licensing officer only relates to the granting of the licence and not to restrict the rights of navigation." This appeal is allowed. The order of acquittal and discharge of the respondent is hereby set aside. I order that the respondent be rearrested and brought before another magistrate to stand his trial on the charge preferred.

Freetown
Jan. 12,
1963.

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

[COURT OF APPEAL]

JAMES THOMAS REFFELL . . . . . *Appellant*

v.

REGINA . . . . . *Respondent*

[Criminal Appeal 27/62]

Criminal Law—Perjury—Declaration by candidate for nomination in Form C of Electoral Provisions Act (No. 14 of 1962)—Necessity for prima facie proof of falsity of declaration—Perjury Act, 1911 (Vol. I, Laws of Sierra Leone, 1960, p. 195), ss. 5, 13.

Evidence—Submission of no case—Duty of judge when no evidence in support of charge.

Nationality—Passport—Different effect of passport in international and municipal law—Probative value of passport in municipal law.

By the Perjury Act, 1911, s. 5: "If any person knowingly and wilfully makes (otherwise than on oath) a statement false in a material particular, and the statement is made . . . (*b*) in a . . . declaration . . . which he is . . . required to make . . . by any public general Act of Parliament for the time being in force: . . . he shall be guilty of a misdemeanour." By section 13: "A person shall not be liable to be convicted of any offence against this Act . . . upon the evidence of one witness as to the falsity of any statement alleged to be made."

To support a conviction against the Perjury Act, 1911, the declaration alleged to have been made must be proved to be prima facie false. In the absence of such essential proof there is no question of the requisite proof of a guilty mind.

The appellant, James Thomas Reffell, was convicted by Dobbs J. in the Supreme Court of Sierra Leone under section 5 (*b*) of the Perjury Act, 1911. At the trial the prosecution produced a declaration made by the appellant when seeking nomination at the local municipal elections held in Freetown. The declaration was made by the appellant pursuant to statutory requirements. In addition the prosecution produced and relied on three other documents which were alleged to be inconsistent with the declaration. No further evidence concerning the declaration was tendered. At the close of the case for the prosecution counsel for the defence submitted there was no case to answer. The learned trial judge ruled that there was, saying that there was prima facie evidence that the appellant was an alien. The defence called no evidence and the appellant was convicted and sentenced.

Held, allowing the appeal, that the prosecution must prove that the document or statement alleged to constitute perjury is false. In the absence of such proof it is impossible to satisfy section 13 of the Perjury Act, 1911, and the conviction must be quashed.

Cases referred to: *Stoeck* v. *Public Trustee* [1921] 2 Ch. 67; *Rex* v. *Threlfall* (1914) 10 Cr.App.R. 112; *Reg.* v. *Walter Hook* (1858) 169 E.R. 1138; Dears. & B. 606.

Berthan Macaulay for the appellant.
John H. Smythe (Ag. Attorney-General) for the respondent.

AMES AG.P. This is an appeal against a conviction under section 5 (*b*) of the Perjury Act, 1911.

The appellant was nominated a candidate for one of the wards at the Freetown municipal election held in November 1962. A nominated person must consent and declare that he is not disqualified for membership of the city council. There is a form for doing all this, Form C of the Electoral Provisions Act, No. 14 of 1962. When everybody has signed it, the form is given to the Returning Officer. The declaration, which the nominated candidate has to sign, is, in our opinion, within the term " declaration " used in section 5 of the Perjury Act, 1911.

The form concerned in this appeal is Exhibit " A " and in it the appellant declared as follows:

" I, J. T. Reffell, of 52, John Street, Freetown, hereby consent to stand for election for the West Ward in the Western Area at the election to be held on November 1, 1962, and in so doing I hereby declare that I am qualified and not disqualified on any lawful ground for membership of the Freetown City Council.

" Dated this 15th day of October, 1962.

(Sgd.) J. T. Reffell,
Signature of Candidate."

This led to the prosecution of the appellant. He was committed for trial to the Supreme Court. The information filed against him was as follows:

" Statement of offence: Perjury, contrary to section 5 (*b*) of the Perjury Act, 1911.

" Particulars of offence: James Thomas Reffell on or about October 15, 1962, at Freetown, in the Western Area of Sierra Leone, wilfully and knowingly made a nomination paper under section 12 (2) of the Electoral Provisions Act, 1962 (No. 14 of 1962), which was false in the following material particular, namely, that you were qualified and not disqualified on any lawful grounds for membership of the city council of Freetown."

It may be doubted whether it was proper to call an offence against section 5 " perjury." Perjury is what comes within the ambit of section 1 of the Act. We think that it would have been better to have called the offence either " making false statement without oath," following the marginal note, or simply " an offence against section 5, etc."

The section, so far as material, is:

" 5. If any person knowingly and wilfully makes (otherwise than on oath) a statement false in a material particular, and the statement is made—

(*a*) . . .

(*b*) in a . . . declaration . . . which he is . . . required to make . . . by any public general Act of Parliament for the time being in force:

(*c*) . . .

he shall be guilty of a misdemeanour. . . ."

It is necessary to set out the material part of section 15 of the Freetown Municipality Act (Cap. 65) because it states who is qualified, and who is disqualified, for election as a councillor.

It is:

" Qualifications of elected councillors

15. (1) Subject to the provisions of subsection (2) of this section, a person shall be qualified for election as a councillor for any one ward if he—

(*a*) is literate in the English language and

(*b*) is entitled to be registered as an elector under the Election and Franchise Registration Act, 1961, and his name is in the Register of Electors for any ward in the city.

" Disqualification for membership of council

(2) Notwithstanding the provisions of subsection (1) of this section a person shall be disqualified for election as a councillor and if a councillor his seat shall become vacant—

(*a*) if he is an alien, or "

(there are other disqualifications which are not material).

The Act defines what it means by " alien "; but the definition is out of date. It is: " ' Alien ' means a person who is not a British subject, nor a British protected person nor a citizen of the Republic of Ireland." Various amendments were made to this Act by the Franchise and Electoral Registration Act, 1961, and set out in the Third Schedule, but surprisingly this definition was not amended or deleted.

This Act of 1961 itself defines " alien " thus: " ' Alien ' means a person who is neither a Sierra Leone citizen nor a British subject nor a British protected person." This definition is incorporated, so to speak, in section 15 (1) (*b*) of the Freetown Municipality Act, because that section necessitates reference to the Act of 1961 to see who is entitled to be registered as an elector, and there one sees, in its section 8, that " no person shall be registered as an elector . . . who (*a*) is an alien. . . ." Consequently, in our opinion, the same definition of this Act of 1961 must apply to " alien " in section 15 (2) (*a*) of the Freetown Municipality Act.

The prosecution of the appellant was instituted because the prosecuting authority believed that he was a national of Liberia and an alien, and consequently not entitled to be registered as an elector and so not qualified for election as a councillor owing to section 15 (1) (*b*) of the Freetown Municipality Act and also disqualified owing to section 15 (2) (*a*) thereof.

It may be stated here that, whether the appellant is an alien or not, it transpired that he was in fact registered as an elector and his name is included and numbered in the Register of Electors. This fact (as Mr. Smythe for the Crown, with his usual candour, admitted it to be) was not elicited in the

court below. In this court, it was noticed that numbers had been written in the margin of the nomination form against the names of the appellant and each nominator. When we asked what these numbers were, we were told that they were the numbers in the Register of Electors of the appellant and his nominators. However, as already stated, this was not mentioned, or explained.

There are three grounds of appeal, and the first is: "That the learned trial judge was wrong in overruling the submission of 'No case' on behalf of the appellant made at the close of the prosecution case."

Section 13 of the Perjury Act provides, as far as is material:

> "13. A person shall not be liable to be convicted of any offence against this Act . . . upon the evidence of one witness as to the falsity of any statement alleged to be false."

Subject to this section, the ordinary rules as to evidence, onus of proof and standard of proof, which apply to any other criminal trial, applied to this one.

Let us examine the evidence led by the Crown to prove that the declaration was made, that it was false in a material particular, that it was so made knowingly and wilfully.

The first witness was the Returning Officer. He produced the nomination form (it was Exhibit "A") on which the appellant made the declaration. He said that the appellant gave it to him.

The second witness was a police constable (presumably: he did not actually say so) working with the Ministry of External Affairs. He was on duty on January 2, 1960, at Queen Elizabeth II Quay. On that day the appellant embarked on a ship going to Monrovia. The witness produced the embarkation card (it was Exhibit "B") which the appellant had filled in and signed. In it the appellant stated that he was born at "Lower B. Gr. Bassa," on June 3, 1910; that his nationality at birth was "Liberian"; that his nationality on that January 2, 1960, was "Bassa"; and that his occupation was "Teacher (Tribal Ruler)." The document has against the item "No. and Nationality of Passport (or other document)" the words "Liberia L.P.71/59, issued at Freetown, date 28/11/59." This appears to have been added afterwards and not written by the appellant; but whether that was so, and who added it, and why, was not explained by this witness, who said: "I do not know what happened to the laissez passer," or by any other witness.

During the cross-examination of this witness a passport was put in evidence. It was issued by the Secretary of State, Liberia, to the appellant, was dated January 14, 1960, and expired on January 14, 1962. It nowhere states the nationality of the appellant either on the date of its issue or at birth. It does, however, state that he was born at Buchanan in 1910, that his place of residence was (no doubt meaning on January 14, 1960) Monrovia. It has a British Embassy visa for a journey to Sierra Leone, dated January 18, 1960.

The third witness was a police constable employed on immigration duties. He was on duty on January 21, 1960, when the ship *Salaga* arrived. He put in evidence a disembarkation card (it is Exhibit "D") which the appellant had filled in and signed on arrival. In it the appellant stated that he was born in 1920 at Grand Bassa; that his nationality was Bassa; that his nationality at birth was "Liberian"; that he held the passport referred to above; that his proposed address and his "permanent" address were 34, Westmoreland Street; that his proposed length of stay was 21 days; that the purpose of the visit was "special invitation by Government Delegate"; that his proposed occupation

here was "Tribal Ruler"; and that his proposed employer was the "Sierra Leone Government."

The fourth witness was an assistant secretary of the Ministry of Internal Affairs, and he said that the appellant was appointed acting Bassa Tribal Headman in March 1956, and confirmed in September 1957.

The fifth and last witness was a police constable who charged and cautioned the appellant and took down his statement (which is not material).

The applicant's statement before the committing magistrate (which also is not material) was then put in evidence and the prosecution closed.

On this state of the evidence counsel for the defence submitted that there was no case for the appellant to answer. The learned judge ruled that there was, saying that there was prima facie evidence that the appellant was an alien (meaning a Liberian). The defence called no evidence and in the result the appellant was convicted, as has been said.

The case for the prosecution is seen to have been built on three documents, the embarkation card, the disembarkation card and the passport. It was their case that these proved the appellant to be a Liberian national and an alien and that consequently the declaration was proved to be false and that the declaration was proved to have been so made knowingly and wilfully (because the appellant had signed it, well knowing what he had signed previously in the cards).

The learned Acting Attorney-General set much store on the passport. He submitted that a passport is prima facie evidence of nationality. He adopted statements in Nationality and Statelessness in International Law, by Weis (published under the auspices of the London Institute of World Affairs, 1956).

This book is concerned with disputes between states before international tribunals, and before them nationality is a question of law and not of fact (at p. 217). In the Supreme Court of this country it was a question of fact which the prosecution had to prove.

The learned author states (at p. 226):

> "In the normal intercourse of states, a foreign national passport is, as a rule, accepted as prima facie evidence of the holder's nationality. As such it can be rebutted by other evidence. . . ."

and (at p. 224):

> "The national passport indicates the holder's national status. As such it normally enables the holder to receive diplomatic protection. It is, therefore, as a general rule only issued to persons who can satisfy the issuing authority that they possess the nationality of the country concerned."

and (at p. 225):

> "A passport is considered in Great Britain and the United States of America to be prima facie evidence of national status of the holder but it is not conclusive evidence."

but in this last-quoted passage the context shows him to mean that each of these two countries regards its own passports as such evidence, and not necessarily those of other countries. It is a question of the probative value of a passport, and the learned author says this (at p. 210):

> "It follows that where indirect documentary evidence of nationality is admitted, the probative value of such evidence will depend on the laws and

regulations of the country concerned which define the nature and amount of evidence required for the issue of such documents, and as to whether those laws and regulations have been observed by the issuing authority in order to satisfy itself that the person described in the document was a national."

and his conclusion is summed up in this passage (at p. 228):

"Before an international tribunal, a passport is regarded as indirect evidence of nationality. Its probative value would be considered on the merits of the case, particularly in the light of proof required by the issuing authority as to the nationality of the applicant.

"While national passports issued by foreign authorities are, therefore, normally accepted by states as prima facie evidence of nationality, it is, in the absence of decisions of international tribunals, doubtful whether there exists a rule of international law to this effect."

In our view, this passport had no probative value in this case. It does not state the appellant to be a Liberian national. There was no evidence before the court of the law in Liberia concerning the issue of a passport, whether only issued to their own nationals, and what proof is required and so on. The passport states that the appellant was born at Buchanan, which was assumed to be in Liberia (there was no evidence that it was). So he may have been a Liberian national at birth. If his parents were not such, he may have had dual nationality at birth. But one cannot be helped by what may have been. Liberian law as to nationality had to be proved as a fact, and there was no evidence on the point. Russell J. said in *Stoeck* v. *Public Trustee* [1921] 2 Ch. 67, 82, which was cited by Mr. Macaulay for the respondent: "Whether a person is a national of a country must be determined by the municipal law of that country. Upon this, I think, all text-writers are agreed. . . ."

Consequently, the prosecution are left with the embarkation and disembarkation cards on which the appellant stated his nationality to be, at that date, "Bassa." The learned judge said: "I think it generally admitted that there is no such nationality as Bassa but that it is the name of a tribe in Liberia. . . ." There was evidence that the appellant has been Bassa Tribal Headman in this country since 1957, and so there are Bassas here, who could be citizens of Sierra Leone. But assuming for the moment that these cards are inconsistent with, or even diametrically opposed to (and we are not holding at the moment that they are either), the declaration, they would not for that reason prove the falsity of the declaration unless their own truth is proved. By themselves they are not prima facie evidence of the truth of their contents for the purposes of the Perjury Act. No one knows which of two inconsistent statements is the truth and which is false apart from evidence, even though one is repeated twice.

In *Rex* v. *Threlfall* (1914) 10 Cr.App.R. 112, 114, Avory J. said, in reference to section 13:

". . . The meaning is this. It used sometimes to be said that there must be two witnesses; this was a delusion; the evidence of one witness and a confession may be enough, and the section has been drafted so as to make this clear. One witness can prove that the person charged swore to certain statements; but more than the evidence of one witness is required to prove that the statements were false. . . ."

and Lord Reading C.J. said at p. 117:

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

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

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

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

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

London
Jan. 17,
1963.

Lord Jenkins
Lord Guest
Sir Charles
Harman

[PRIVY COUNCIL]

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

v.

HAJAH FATMATTA KATAH . . . . . *Respondent*

[Privy Council Appeal No. 37 of 1961]

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

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

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