

by the administrator to the defendant gave the latter a valid and unimpeachable title and this action should be dismissed with costs. I may add that I have been asked to state a case as to the effect of s.24 of the Intestate Estates Ordinance (*cap.* 104) but I see absolutely no reason for doing so. The plaintiff has a right of appeal and should she avail herself of it the Court of Appeal will no doubt go into the whole matter at issue, whereas to state a case on this single point would be conclusive of nothing and would only lead to fresh litigation.

*Suit dismissed.*

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DAVIES (J.L.) v. REGEM

Supreme Court (Butler-Lloyd, Ag. C.J.): October 25th, 1928

- [1] Courts — magistrates' courts — appeals — procedure — general grounds of appeal to be submitted strictly in accordance with Appeals from Magistrates Ordinance (*cap.* 8), s.3, as amended, or appeal dismissed — fact that record forwarded to Supreme Court not conclusive evidence that conditions of appeal fulfilled: The provisions of the Appeals from Magistrates Ordinance (*cap.* 8), s.3, as amended, requiring general grounds of appeal to be given orally in the magistrates' court, or in writing within eight days afterwards, must be strictly complied with; even if the lower court gives both conditional and final leave to appeal and forwards the record to the appeal court, this does not show conclusively that the conditions of appeal have been fulfilled and the appeal may be dismissed on the grounds that they were not (page 156, lines 7—34).
- [2] Courts — Supreme Court — appeals from magistrates' courts — procedure — general grounds of appeal to be submitted strictly in accordance with Appeals from Magistrates Ordinance (*cap.* 8), s.3, as amended, or appeal dismissed — fact that record forwarded to Supreme Court not conclusive evidence that conditions of appeal fulfilled: See [1] above.
- [3] Criminal Procedure — appeals — procedure — general grounds of appeal to be submitted strictly in accordance with Appeals from Magistrates Ordinance (*cap.* 8), s.3, as amended, or appeal dismissed — fact that record forwarded to Supreme Court not conclusive evidence that conditions of appeal fulfilled: See [1] above.

The appellant was charged in the police magistrate's court with possessing stolen goods contrary to s.12 of the Summary Conviction Offences Ordinance (*cap.* 201).

The appellant was convicted and sentenced by the police magistrate and gave notice of his intention to appeal. He did not

state his general grounds of appeal orally at the conclusion of the hearing, nor did he submit them later in writing, but the record was nonetheless forwarded to the appeal court.

The respondent raised the preliminary objection that the appeal should be treated as abandoned since general grounds of appeal were not given as required by the Appeals from Magistrates Ordinance (*cap.* 8), s.3, as amended.

In reply the appellant alleged that the grounds of appeal had been tacitly understood by the police magistrate and contended that the fact that the record was forwarded to the appeal court was conclusive evidence that the conditions of appeal had been complied with.

The appeal was dismissed.

#### Cases referred to:

(1) *Genet v. Schumacher & Straumann*, 1920—36 ALR S.L. 76; (1912—24) L.R.S.L. 113.

(2) *Hagan v. Hagan*, Supreme Court, unreported.

#### Legislation construed:

Appeals from Magistrates Ordinance (Laws of Sierra Leone, 1925, *cap.* 8), s.3, as substituted by the Appeals from Magistrates (Amendment) Ordinance, 1926 (No. 38 of 1926), s.2:

“Such person may, immediately upon the decision being pronounced verbally in Court, give notice to the Magistrate of his intention to appeal and shall state the general grounds of appeal: or he may at any time within eight days after, give such notice and statement in writing.”

*C.E. Wright and Hyde* for the appellant;  
*Cromie, Crown Counsel*, for the Crown.

#### BUTLER-LLOYD, Ag. C.J.:

This is an appeal from a conviction by the police magistrate under s.12 of the Summary Conviction Offences Ordinance (*cap.* 201). The record contains no entry of any notice of appeal, but it is obvious that such notice must have been given since an application for bail was allowed. More than three weeks after the conviction the appellant's counsel forwarded written grounds of appeal. Mr. Cromie has argued that the appeal must be treated as abandoned since general grounds of appeal were not given orally in court or within eight days afterwards as required by s.3 of the Appeals from Magistrates Ordinance (*cap.* 8), as amended by the Appeals from Magistrates (Amendment) Ordinance, 1926. It is

not quite clear what actually did occur at the conclusion of the hearing, but from the record and from what the police magistrate has himself told us it is clear no statement of the grounds of appeal however general was conveyed to him at the time and he  
 5 fully expected that written grounds would be submitted in due course.

I cannot for the moment entertain the suggestion that, as the case had just been argued before him, the grounds of appeal were understood between him and defending counsel. To do so  
 10 would be to make the provision requiring grounds to be given perfectly meaningless. I have no difficulty in concluding that the conditions of s.3 were not complied with.

The further point has been raised that the fact that the record has been duly forwarded to this court is conclusive to show that  
 15 the conditions of appeal have been complied with and that the court cannot now go into that question.

It certainly appears doubtful whether the magistrate was right in forwarding the records at all, but it has undoubtedly been the practice to do so in the past once notice of appeal has been given.

This practice no doubt originated under the old Ordinance when a mere notice was sufficient to operate as an appeal to the court, but ever since the present conditions as to furnishing grounds of appeal were introduced I find that in the case of  
 20 *Hagan v. Hagan* (2) Prior, Ag. C.J. dismissed an appeal on grounds exactly the same as those on which Mr. Cromie now relies.  
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Lastly, I find that in the case of *Genet v. Schumacher & Straumann* (1) the Full Court did not consider itself precluded by the fact that both conditional and final leave to appeal had been given by the lower court from considering the question of whether  
 30 the application for conditional leave was in time and in fact dismissed the appeal on the ground that it was not. I hold therefore that the court is not debarred from enquiring as to whether an appeal is in order or not and that Mr. Cromie's objection is fatal and this appeal will be dismissed with costs.

35 *Appeal dismissed.*