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THOMPSON v. COMMISSIONER OF POLICE

Supreme Court (Tew, C.J.): April 3rd, 1930

[1] **Courts — Supreme Court — appeals from magistrates' courts — meaning of "decision" — for purposes of Appeals from Magistrates Ordinance (cap. 8), ss.2 and 21 "decision" includes finding of guilty or not guilty plus sentence:** For the purposes of ss.2 and 21 of the Appeals from Magistrates Ordinance (*cap.* 8) "decision" must include both the finding of guilty or not guilty and the sentence (page 188, lines 18—34).

[2] **Courts — Supreme Court — appeals from magistrates' courts — power to "vary" decision under Appeals from Magistrates Ordinance (cap. 8), s.21 does not include power to substitute legal for illegal sentence — power must be given in specific terms:** The power of the Supreme Court, under the Appeals from Magistrates Ordinance (*cap.* 8), s.21, to "vary" a decision does not include the power to substitute a legal sentence for an illegal one, since the power to correct an illegal sentence must be given in specific terms (page 188, line 38—page 189, line 1; page 189, lines 6—11).

[3] **Courts — Supreme Court — appeals from magistrates' courts — power to "vary" decision under Appeals from Magistrates Ordinance (cap. 8), s.21 includes power to set aside:** The power of the Supreme Court, under the Appeals from Magistrates Ordinance (*cap.* 8), s.21, to vary a decision includes the power to set it aside altogether (page 187, line 38—page 188, line 9).

[4] **Criminal Procedure — appeals — appeals against conviction — illegality of sentence — conviction bad in part is bad in toto — must be amended or quashed:** A conviction, when defined as being an entire judgment, must be good throughout, so that where a part of the sentence is contrary to the law, the whole conviction becomes invalid and must either be amended if the appeal court has the power to do so, or quashed (page 187, lines 15—28).

[5] **Criminal Procedure — appeals — appeals against conviction — meaning of "decision" — for purposes of Appeals from Magistrates Ordinance (cap. 8), ss.2 and 21 "decision" includes finding of guilty or not guilty plus sentence:** See [1] above.

[6] **Criminal Procedure — appeals — appeals against conviction — power to vary decision — Supreme Court's power under Appeals from Magistrates Ordinance (cap. 8), s.21 to vary decision includes power to set aside:** See [3] above.

[7] **Criminal Procedure — appeals — appeals against conviction — power to vary sentence — Supreme Court has no power under Appeals from Magistrates Ordinance (cap. 8), s.21 to substitute legal sentence for illegal one:** See [2] above.

The appellant was charged in the Police Magistrate's Court, Freetown, with permitting his car to be driven without being licensed.

He was convicted and sentenced to pay a fine or, alternatively, to one month's imprisonment with hard labour. On appeal to the Supreme Court the appellant contended that as the Ordinance under which he had been charged did not confer the right to impose imprisonment with hard labour, such an alternative sentence invalidated the whole conviction. He further contended that in s.21 of the Appeals from Magistrates Ordinance (*cap.* 8), which stated the powers of the court in an appeal, the term "vary a decision" merely gave the court power to allow an appeal, since the term "decision" was limited to a finding of guilty or not guilty and did not include the sentence.

The appeal was allowed.

Legislation construed:

Appeals from Magistrates Ordinance (Laws of Sierra Leone, 1925, *cap.* 8), s.2:
The relevant terms of this section are set out at page 188, lines 25—27.

s.21: The relevant terms of this section are set out at page 187, lines 35—37.

Magistrates' Courts Ordinance (Laws of Sierra Leone, 1925, *cap.* 118), s.35:
The relevant terms of this section are set out at page 187, lines 4—6.

Summary Review Ordinance (Laws of Sierra Leone, 1925, *cap.* 203), s.4:
The relevant terms of this section are set out at page 189, lines 7—11.

Summary Jurisdiction Act, 1879 (42 & 43 Vict., c. 49), s.31(5):
The relevant terms of this sub-section are set out at page 188, lines 29—32.

Beoku-Betts for the appellant;
Nelson-Williams for the repondent.

TEW, C.J.:

This is an appeal against a decision of the Police Magistrate imposing upon the appellant a fine of £3 with an alternative sentence of one month's imprisonment with hard labour for a breach of the provisions of s.4 of the Motor Traffic Ordinance (*cap.* 130). Section 14 of the same Ordinance fixes the penalty for a first offence, as in this case, at a fine not exceeding £20. The third ground of appeal was the only one on which the respondent was required to argue. This ground had clearly been mis-stated and was allowed to be amended so as to read: "That the conviction was invalid in that imprisonment with hard labour is not authorized by the Ordinance under which the appellant was convicted."

Section 35 of the Magistrates' Courts Ordinance (*cap.* 118) lays down the scale to be followed in awarding an alternative sentence of imprisonment in default of payment of a fine, and further provides that — "such imprisonment shall not be with hard labour, unless the Ordinance or Statute, on which the conviction is founded, authorises imprisonment with hard labour. . . ." Section 14 of the Motor Traffic Ordinance (*cap.* 130) does not authorise imprisonment with hard labour and therefore the alternative sentence imposed in this case was contrary to law.

Two question then have to be considered:

(*a*) Is the conviction invalidated by the error in the sentence?

(*b*) Has the court sitting as a Court of Appeal the power to amend the sentence so as to make it conformable to law, or must the conviction be quashed?

The answer to question (*a*) must, I think, be in the affirmative, for a conviction which is bad in part must be bad *in toto:* see *Paley on Summary Convictions*, 7th ed., at 181 and 221 (1892). The reason why a conviction awarding hard labour, where such a sentence is not authorised by law, must be quashed, if the sentence cannot be amended, is really obvious. Assuming that the penalty is not paid and that the person convicted is committed to prison, the sentence must be carried out according to the terms of the warrant of commitment, and the prisoner will then undergo a punishment which the law does not allow.

Consequently, unless the appeal court has special statutory powers by which the conviction can be amended so as to bring it into conformity with the law, the only way of correcting the injustice is to quash the conviction in its entirety. Has the court power to amend the conviction by deleting the reference to hard labour in such a case? To decide the point it is necessary to examine the terms of s.21 of the Appeals from Magistrates Ordinance (*cap.* 8) in which the powers of the court are laid down. So far as directly pertinent, the provisions of that section are as follows:

> ". . . [T]he Court of Appeal may. . . . determine the appeal, and either dismiss the appeal, or affirm the Magistrate's decision, or vary the same as he may think proper."

This section is really extraordinary in its terms, for it appears to give the court no power to allow an appeal by quashing a conviction, unless such power is included in the power to "vary a decision." It seems the words "dismiss an appeal" must surely be a

mistaken for "allow the appeal," but I am not entitled to assume that the legislature has made such a gross mistake, and I have to attempt to construe the section as it stands. On the other hand it is impossible to contemplate the idea that the legislature, while giving a convicted person the right to appeal from the decision of a magistrate, intended that the decision should only be affirmed or partly altered and should not be entirely reversed. I am forced therefore to the conclusion that the power given to the court to "vary" a decision includes the power to set it aside altogether.

The appellant contended that the words in question merely give the power to allow an appeal, and must not be taken in their ordinary meaning as well as in the meaning which I have been forced to put upon them. This contention is, in my opinion obviously wrong. It is unthinkable, for example, that a court should not, on appeal for a sentence of imprisonment, be able to reduce a sentence which is not in excess of that allowed by law but which the court considers to be unreasonable or unnecessarily severe.

It was further argued for the appellant that the term "decision" must be limited in meaning to a finding of guilty or not guilty, as the case may be, and does not include the sentence. With this argument I cannot agree. The term, which is nowhere defined in our law, is very wide in its popular meaning and must in my opinion include, in a criminal cause, not only the finding but the sentence. If it were not so, s.2 of the Appeals from Magistrates Ordinance (*cap.* 8), which provides that — "any person feeling aggrieved by the decision of any Magistrate may appeal to the Supreme Court as a Court of Appeal" would exclude any appeal against sentence.

The term "decision" is used in s.31(5) of the Summary Jurisdiction Act, 1879, which defines the power of a court of general or quarter sessions in dealing with appeals from magistrates and allows the court to "confirm, reverse or modify the decision." There it is clear that "decision" includes sentence, and that the court has the power which it is known frequently to exercise to alter a sentence by substituting a fine for a term of imprisonment.

"Modify" of course has not necessarily the same meaning as "vary" implying, as it does, a mitigation of the severity of the punishment by the court below. The natural meaning of the word "vary" is far wider, but I do not think that the power to "vary" a decision which is given to this court connotes the power to substitute a legal sentence for an illegal one, even where the result

would be the imposition of a less severe punishment. I do not believe, though I cannot find an authority on this point, and probably the question has never arisen, that a court of general or quarter sessions in England has ever interpreted in that sense its power to modify a decision.

Where the power to correct an illegal sentence is given it must be given in no uncertain terms, as in s.4 of the Summary Review Ordinance (*cap.* 203) which confers upon the Chief Justice or Circuit Judge, when dealing with the monthly list of criminal cases, the power "to reverse or amend any judgment which shall have been given contrary to law."

The conviction is quashed and the fine must be refunded to the appellant.

Appeal allowed.

TURAY v. GARBEE

Supreme Court (Tew, C.J.): April 7th, 1930

[1] **Administrative Law — public officers — appointment — acting in public office is evidence of due appointment:** All public officers who are proved to have acted as such are presumed to have been duly appointed to the office until the contrary is shown: a person who disputes the authority of one who acts as a tribal ruler must therefore prove that he was not properly appointed (page 191, lines 3–16).

[2] **Constitutional Law — chiefs — tribal ruler — appointment — acting in capacity of tribal ruler is evidence of due appointment — person disputing authority of tribal ruler must prove non-appointment:** See [1] above.

[3] **Evidence — presumptions — presumptions of law — omnia praesumuntur rite esse acta — acting in public office is evidence of due appointment — person disputing authority must prove non-appointment:** See [1] above.

The respondent was charged in the police magistrate's court with failing to pay a fine imposed upon him by the appellant in his capacity of Acting Tribal Ruler of the Mandingo tribe.

The appellant imposed a fine upon the respondent for breach of rules made under s.4(1) of the Tribal Administration (Colony) Ordinance, 1924. The respondent failed to pay the fine and was summoned to appear before the police magistrate "on a charge of failing to pay a fine. . . ." The respondent argued that he should not be compelled to pay the fine since the appellant had not properly