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

been appointed to the office of Tribal Ruler and therefore had no authority to impose the penalty. The magistrate held that the onus was on the appellant to prove that he had been duly appointed and, in the absence of such proof, dismissed the summons.

On appeal to the Supreme Court the appellant contended that the fact that he had acted in the capacity of Tribal Ruler created a presumption that he had been duly appointed, so that the onus was on the respondent to disprove such appointment, and in the absence of such proof he should be compelled to pay the fine imposed upon him.

The appeal was allowed.

Cases referred to:

(1) *Faulkner v. Johnson* (1843), 11 M. & W. 581; 152 E.R. 937.

(2) *M'Gahey v. Alston* (1836), 2 M. & W. 206; 150 E.R. 731, *dicta* of Parke, B. applied.

TEW, C.J.:

The respondent was summoned to appear before the police magistrate on a charge of failing to pay a fine imposed upon him by the Acting Tribal Ruler of the Mandingo tribe in Freetown for breach of rules made under s.4(1) of the Tribal Administration (Colony) Ordinance (*cap.* 217). It may be noted incidentally that s.6 of the said Ordinance provides that a defaulter may be summoned "to show cause why he should not be compelled to pay any fine," and that consequently the summons was wrongly worded.

The only question raised by this appeal is whether it was incumbent on the appellant to prove that he had been properly appointed to act as Tribal Ruler, or whether the fact that he did so act created a presumption in favour of an appointment according to law, so that the onus was on the respondent to disprove such appointment.

Section 16A of *cap.* 217, inserted by the Tribal Administration (Colony) (Amendment) Ordinance, 1926, provides that in certain cases "the Governor may appoint one of the headmen or representatives of the sections of the tribe as acting tribal ruler," and it was proved that the appointment of the appellant as "Acting Tribal Ruler of the Mandingos in Freetown" was notified in the *Gazette* of November 16th, 1929.

The learned magistrate held that the onus was on the complainant to prove that he had actually been appointed by the

Governor and, in the absence of such proof, dismissed the summons.

In my opinion the magistrate's decision was wrong. In 13 *Halsbury's Laws of England*, 1st ed., at 443 (1910) it is stated that — "acting in a public office is evidence of due appointment" and the same principle is laid down in slightly different language in *Broom's Legal Maxims*, 8th ed., at 740 (1911).

In *M'Gahey* v. *Alston* the rule was stated by Parke, B. in the same clear terms (2 M. & W. at 211; 150 E.R. at 733):

> "[T]he rule is, that 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 shewn."

Again in *Faulkner* v. *Johnson* (1) it was held that, where a defendant had challenged the authority of a person who had acted as sheriff, it was incumbent upon him to prove the non-appointment of that person as sheriff.

The appeal must be allowed and the magistrate's decision set aside. The case is remitted to the magistrate for hearing on the merits. The appellant will have the costs of the appeal.

Order accordingly.