I find, therefore, that the answer to the question propounded to this court by the learned Chief Justice, *viz.* Whether he was right in holding that on a correct interpretation of s. 180 (1) of the Freetown Municipality Ordinance, 1927, the objection raised by the defendants was not a special defence of which it was necessary to give notice of his intention but that it was part of the plaintiff's case to prove that he had given notice of his intention to commence the action, is in the negative. The plaintiff is entitled to costs.

McROBERTS, Ag. C.J. (Sierra Leone) and SAWREY-COOKSON, J. (G.C.) concurred.

Case stated answered in the negative.

NEWLAND v. SAVAGE

Supreme Court (McRoberts, Ag. C.J.): October 19th, 1931

[1] **Evidence — character — previous convictions — evidence of accused as to previous conviction inadmissible except as provided in Criminal Evidence Ordinance (cap. 44), s. 4(f) — otherwise reception fatal even though court not influenced:** By reason of the Criminal Evidence Ordinance (*cap.* 44), s. 4(f) the evidence of an accused in cross-examination as to a previous conviction is inadmissible, except in the circumstances stated in the section, and its reception is fatal to the conviction even though it does not influence the court (page 278, lines 10—23).

The appellant was charged in the Police Court, Freetown, with assault.

It was alleged that the appellant assaulted the Imam in the Mosque. He was asked in cross-examination whether he had not been previously convicted of a similar offence and he answered that he had. He was convicted and appealed to the Supreme Court against his conviction on the ground that the evidence about his previous conviction had been wrongly admitted in the court below.

The court considered whether the evidence appealed against might not have influenced the magistrates and whether, in any event, the conviction should not be quashed having regard to the provisions of s. 4(f) of the Criminal Evidence Ordinance (*cap.* 44).

The appeal was allowed.

Case referred to:

(1) *Charnock v. Merchant*, [1900] 1 Q.B. 474; (1900), 82 L.T. 89, applied.

Legislation construed:

Criminal Evidence Ordinance (Laws of Sierra Leone, 1925, *cap.* 44), s. 4(f): The relevant terms of this section are set out at page 278, lines 11—14.

Hyde for the appellant;
Nelson-Williams for the respondent.

McROBERTS, Ag. C.J.:

In this case there is only one point of substance, namely, whether the evidence of the accused as to his previous conviction was rightly admitted. It is clear that under the Criminal Evidence Ordinance (*cap.* 44), s. 4(f) — "a person charged shall not be asked, and if asked shall not be required to answer" any question tending to show that he has been previously convicted of an offence except in certain circumstances.

In the case before me the accused was asked, and answered, that he had been previously convicted of an offence of exactly the same kind as the one with which he was then charged, namely, assaulting the Imam in the Mosque, and the case is without any of those features which would enable such evidence to be given. It is clear that this question should never have been asked or allowed to be answered, and it is equally clear, on the authority of *Charnock v. Merchant* (1), that the reception of such evidence is fatal.

Although it is quite unnecessary to show that the justices were influenced by the evidence, yet in this case I am by no means certain that they were not, for there is some justification for the suggestion that the appellant was turned out of the Mosque because he was a dancing man, and that he was not the first aggressor, and if the justices had any doubt as to which side to believe the evidence now appealed against might well have turned the scales. Be that as it may, however (and it is not a point which it is necessary now to decide), it is certain that this evidence was illegally admitted and is in consequence fatal to the conviction. I allow this appeal with costs.

Appeal allowed.