

incidental to their business the business of lightermen and bought in England a lighter which the sub-contractor was bringing out for them to Cape Verde when one of his men was incapacitated. It was held that the claim for compensation must succeed because the work which was being done by the sub-contractor when the accident happened was part of the work undertaken by the principals as lightermen. I can see no connection between this case and the present appeal. At the risk of repetition, the appellants are shipping agents who use their own barges, and there is no evidence that they are either shipbuilders or shipbreakers. 5 10

The appeal is allowed, the judgment in the court below set aside and judgment entered for the appellants. In view of the fact that apparently one of the appellants' witnesses gave his evidence in breach of some agreement or other, presumably between counsel, I make no order as to costs. 15

*Appeal allowed.*

---

KIRKE v. REGEM 20

SUPREME COURT (Beoku-Betts, Ag.C.J.): November 9th, 1950  
(Cr. App. No. 19/50)

- [1] **Criminal Procedure—inspection—locus in quo—inspection should not be relied on without evidence of it being called:** A trial magistrate who inspects the *locus in quo* of an alleged offence and proposes to rely on this inspection in reaching a decision should not do so without calling evidence as to what took place at the inspection (page 70, lines 27–31). 25
- [2] **Criminal Procedure — sentence — imprisonment — imprisonment with hard labour to be imposed only where specifically authorised for offence in question:** Imprisonment with hard labour should not be imposed unless by law there is a direct provision for it on conviction of the offence in question (page 70, lines 35–37). 30
- [3] **Evidence—inspection—locus in quo—inspection should not be relied on without evidence of it being called:** See [1] above. 35

The appellant was charged in a magistrate's court with careless driving contrary to s.14(1) of the Motor Traffic Ordinance (*cap.* 148).

At the trial the magistrate resolved a difficulty as to the facts of the case by inspecting the *locus in quo* and relying on her personal findings there. She did not call evidence as to what took place at 40

the inspection. The appellant was convicted and sentenced to a fine or, in default, three months' imprisonment with hard labour, and ordered to pay compensation to the complainant.

5 On appeal, the Supreme Court considered whether the trial magistrate properly exercised her power of inspection, and whether imprisonment with hard labour was a permissible sentence in this case.

10 *Miss Wright* for the appellant;  
*Benka-Coker, Ag. Sol.-Gen.*, for the Crown.

BEOKU-BETTS, Ag.C.J.:

15 The appellant was charged with the offence of careless driving contrary to s.14(1) of the Motor Traffic Ordinance (*cap.* 148). He was convicted and fined £15, or three months' imprisonment with hard labour, and ordered to pay 30/- as compensation to the complainant.

20 Against conviction and sentence the appellant has appealed on several grounds. On considering this case, a great deal depends on facts, and the magistrate's decision showed that she had some difficulty in coming to a conclusion on the facts. She however stated that she inspected the *locus in quo* and used her findings at the *locus in quo* to resolve the difficulty on the facts. Unfortunately, although the decision dealt with the *locus in quo* and the magistrate referred to the facts at the *locus in quo*, there is no evidence to show that there was any inspection in the notes of evidence. That is clearly wrong. If the magistrate inspects the *locus in quo* and proposes to rely on this inspection, evidence should be called as to the inspection. The magistrate cannot rely upon her own knowledge of what took place. The magistrate therefore erred in relying upon the result of the *locus in quo* inspection without calling evidence as to what took place at the inspection.

30 The conviction and sentence cannot be supported. I therefore quash the conviction and order the fine, if paid, to be returned to the appellant, and also the compensation awarded.

35 I have in several cases stated that a magistrate should not award imprisonment with hard labour, unless by law there is direct provision for it to be imposed. I do hope the magistrate will in future take care to find out in what cases this can be awarded before including it as part of the sentence of the court. In the result the conviction and sentence are quashed.

*Appeal allowed.*