

of the English Rules of the Supreme Court or any books on sheriff law or law on execution, and the formalities to be observed in connection with such writ are also different. The process which the judgment creditor has issued will not avail him, and not having at that date when he filed his *praecipe* issued the proper writ to the Sheriff, whatever priority he may have against other processes or judgments in connection with this property is lost. Without entering into the other aspects or issues of the case, I rule that Exhibit A1 will not avail the defendant to levy execution on this property and secure the fruits of his judgment. There will be judgment for the plaintiff with costs. 5 10

Judgment for the plaintiff.

WILLIAMS v. REGINAM 15

SUPREME COURT (Luke, Ag.J.): July 29th, 1953
(Cr. App. No. 15/53)

- [1] Criminal Procedure—institution of proceedings—title of summons—title should name party by or on whose behalf information laid: A summons is not properly worded if its title names as prosecutor a party by or on whose behalf the information was not laid: where the information is laid on behalf of the King or the Government, the title “Rex” should be used in the summons; where it is laid by or on behalf of the head of a Government department, the title should relate to that particular head of department; and where the summons is taken on the information of a private individual, the name in the title should be that of the complainant (page 323, lines 7-11; page 323, line 38—page 324, line 8). 20 25
- [2] Criminal Procedure—police—police as prosecutors—police officer should not conduct prosecution of offence not committed in his presence: A police officer should not be allowed to act as advocate in a court to conduct the prosecution of an offence not committed in his presence (page 323, lines 23-33). 30
- [3] Criminal Procedure—summonses—title—title should name party by or on whose behalf information laid: See [1] above. 35

The appellant was charged in the Magistrate’s Court, Port Loko, with threatening behaviour occasioning a breach of the peace, contrary to s.21(1) of the Summary Conviction Offences Ordinance (*cap.* 225). 40

The offence with which the appellant was charged was committed in a private dwelling-house and was not witnessed by a police officer. When the complainant lodged his complaint with the District Commissioner, the summons was issued in the name of the King and not in that of the complainant. At the trial the prosecution was conducted by a police officer, and the appellant was convicted.

On appeal, the Supreme Court considered whether the proceedings against the appellant had been correctly instituted and properly conducted.

Cases referred to:

(1) *R. v. Mansour*, Supreme Court, Cr. App. No. 15/1949, unreported, *dicta* of Beoku-Betts, Ag.C.J. applied.

(2) *Webb v. Catchlove* (1886), 3 T.L.R. 159; 50 J.P. 795, *dictum* of Denman, J. applied.

Legislation construed:

Appeals from Magistrates Ordinance (Laws of Sierra Leone, 1946, *cap.* 14), s.34:

The relevant terms of this section are set out at page 324, lines 19-23.

C.B. Rogers-Wright for the appellant;
M.C. Marke, Crown Counsel, for the Crown.

LUKE, Ag.J.:

This is an appeal by the appellant from a decision of His Worship D.J.T. Macarthy, Protectorate Magistrate sitting at Port Loko, on a summons in which he convicted the appellant and fined him £3 or 21 days' imprisonment for using threatening behaviour to P.C. Bai Kobolo at Lunsar on December 30th, 1952, thereby occasioning a breach of the peace contrary to s.21(1) of the Summary Conviction Offences Ordinance (*cap.* 225).

Learned counsel for the appellant submitted five grounds of appeal. The appeal was argued in the inverse order, starting with ground five, which reads: "The trial was unfairly conducted in that it was made to appear and conducted as a case between the state and the defendant instead of one between subject and subject." In support of his argument learned counsel stressed that the summons, being worded as it appeared instead of in the name of the complainant against the appellant, left the impression of an action between the state and an individual, thereby debarring his client

from bringing a cross-action against the complainant, who was P.C. Bai Kobolo, and also not allowing him the opportunity of bringing before the court all the facts which could have come out in his favour. He also made reference to the fact that the case was conducted by one Mosa, a police officer. To enforce his point he referred to *Stone's Justices' Manual*, 85th ed., at 231 (1953), dealing with proceedings before hearing under the heading "By whom made." It is quite clear from this authority that in England such proceedings, especially one such as this from the circumstances in which it arose, would have been brought in the name of the complainant. As a matter of fact that is the procedure in Freetown. From the record it is quite clear that P.C. Bai Kobolo was the complainant, and when the complaint was made to the District Commissioner at Port Loko the summons should have been issued in his name.

Counsel for the appellant raised several preliminary objections at the trial, all of which were overruled by the trial magistrate. In arguing this appeal he referred to them. There is only one to which I would give consideration when dealing with this ground, viz: "That a summons brought under s.21(1) of the Summary Conviction Offences Ordinance (*cap.* 225) cannot be prosecuted by a police officer unless a breach was actually committed and the person committing it was actually arrested at the time."

From the notes of evidence it is quite clear that this offence was not committed in the presence of a police officer. All the evidence showed it was committed in a private dwelling-house. Such being the case, Assistant Superintendent Mosa should not have conducted the prosecution. In support of my remarks I shall quote the words of Denman, J. in the case of *Webb v. Catchlove* (2) (3 T.L.R. at 160; 50 J.P. at 795):

"He (his Lordship) thought it a most unfortunate practice for police officers to be allowed to act the part of advocates in courts of justice. When witnesses they should be mere witnesses, and not be allowed to take up the position of advocates."

Reverting to the question whether the summons in this case was properly worded, I say categorically no. There was a decision on this point by our Supreme Court in the case of *R. v. Mansour* (1), a magistrate's appeal before Beoku-Betts, Ag.C.J., in which he said: "While on this matter it seems relevant to refer to when the titles of cases of a criminal or quasi-criminal nature are entered as 'Rex.' Where the charge relates to a department, the title is usually put as the head of a department against the defendant."

5 The title 'Rex' against a party should only be used when the information is on behalf of the King or Government, and the title of the head of a department should only be used when the information is by or on behalf of the particular head of the department. Where a criminal summons is taken on the information of a private individual, or the prosecution is at the instance of a private person, the title should be in the name of the individual against the defendant."

10 As I stated in the earlier portion of my judgment, this complaint is at the instance of P.C. Bai Kobolo and the summons should have been so worded.

15 Learned Crown Counsel submitted that under s.156 of the Criminal Procedure Ordinance (*cap.* 52) the court can make an amendment. As I was listening to the full arguments of this appeal, I wondered whether I could, under s.34 of the Appeals from Magistrates Ordinance (*cap.* 14), exercise any discretion as regards amendments of these flaws which have arisen during these proceedings, but I found myself confronted with the proviso which reads:

20 "Provided that in determining whether any error, omission or irregularity has occasioned a failure of justice the Court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings."

25 In this appeal not only were these grounds raised at the trial but they were overruled by the trial magistrate as appeared in the records. For these reasons the appeal is allowed, the conviction quashed, and the fine of £3, if already paid, should be refunded.

Appeal allowed.

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