course he has pursued; he has either been unfortunately advised, or, having received good advice, has not thought fit to follow it. Instead of doing what any reasonable man would have done, and any legal adviser would have counselled, and by an affidavit expressing regret and propitiating the justice of the Court, he has vindicated the truth of part of the statements, and instructed counsel to argue that there was no contempt, and that he had the right to publish the article, but if the Court thought there was a contempt, then he would express his regret which was, of course no expression of regret at all."

In this case the defendant got three men to swear to affidavits and give oral evidence perjuring themselves in an endeavour to get the defendant out of the difficulty in which he found himself. He himself did the same thing and introduced irrelevant and prejudicial matter in his affidavit. In this case, although the defendant has been found guilty of contempt and the court has looked with the greatest disfavour on his conduct, yet by reason of the contempt the position of the plaintiff has not been made worse. That being the case, I will not commit the defendant to prison as he has expressed his regret openly in court. I think the case will be met if he is made to pay the costs of these proceedings. It is therefore ordered that the defendant pay to the plaintiff the taxed costs of and incidental to this application as between solicitor and client.

Order accordingly.

CONTEH and FIVE OTHERS *v.* REGINAM

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL (Lord Oaksey, Lord Tucker and Lord Somervell of Harrow): January 11th, 1956
(P.C. App. No. 32 of 1955)

[1] **Criminal Law—degrees of complicity—conspiracy—conspiracy to accuse of crime—accusation must be false to knowledge of conspirators:** The gist of the offence of conspiracy to accuse another of a crime is that the accusation should be false to the knowledge of those conspiring, and it is therefore no offence for people who believe that a crime has been committed to agree to take steps with a view to a prosecution (page 430, lines 16–19).

[2] **Criminal Procedure—assessors—objection to assessor—either party may object on ground of partiality—partiality includes interest in or connection with subject-matter of proceedings or parties—ruling on objection in discretion of court:** Either party to criminal proceedings

is entitled to raise an objection to an assessor on the ground that he is so interested in, or connected with, the subject-matter of the proceedings, or those concerned in the proceedings, that it is undesirable for him to sit as an assessor, and it is for the judge to rule on the objection in his discretion (page 431, lines 26–33).

The appellants were charged in the Supreme Court with conspiracy to accuse another of a crime.

On the sworn information of two of the appellants, four persons were charged with murder, allegedly on the direction of a certain Paramount Chief. At the trial one of the accused said he had been bribed to give false testimony by the first appellant in order to remove the chief. The other appellants supported the prosecution but the accused were acquitted. The appellants were then charged with conspiring to accuse the chief of having committed a crime. At the outset of the trial the appellants objected to one of the assessors, who was related to the complainant, but the trial judge ruled that the objection was misconceived on the ground that the Courts Ordinance (*cap.* 50) was silent on the matter. In his summing-up to the assessors, the trial judge did not refer to the necessity of proving that the appellants knew the accusation against the complainant was false for the offence of conspiracy to have been committed. The appellants were convicted, and applied to the West African Court of Appeal for leave to appeal out of time. Leave was refused but special leave was granted to appeal against that refusal to the Privy Council.

Having decided to hear the appeal, the Privy Council considered whether in view of the elements of the offence charged, the trial judge's summing-up was adequate, and whether the objection to the assessor ought to have been sustained.

Foot, Q.C., and *Mandoo* (both of the English bar) for the appellants; *Le Quesne* (of the English bar) for the Crown.

LORD SOMERVELL OF HARROW, delivering the judgment of the Board:

This is an appeal by special leave against a decision of the Supreme Court of Sierra Leone finding the appellants guilty of a conspiracy to accuse Paramount Chief Alfred Bockari Samba and others of having committed a crime, namely, murder.

The conviction was on December 30th, 1953. On January 14th, the appellants applied for extension of time to file notices of appeal, time having expired on the 10th. Leave was refused and special

leave was given to appeal against that refusal. Their lordships, having decided to hear the appeal from the conviction, found it unnecessary to consider the refusal to extend the time or make any order thereon.

The present proceedings were a sequel to an unsuccessful prosecution for murder. On May 9th, 1953, the dead body of a man called Fogundia was found within the chiefdom of Samba. On the sworn information of two of the present appellants four persons were charged with the murder. It was said that Samba was a cannibal and had directed the four to murder Fogundia. It is not clear why Samba, who was arrested, was not charged. This story was supported by one of the then accused until the trial. He then retracted and said that he had been bribed to give false testimony by the first appellant who wanted Samba's removal. The present appellants supported the prosecution, but the accused were acquitted. These proceedings followed, Samba being the principal complainant.

The gist of the offence charged is that the accusation should be false to the knowledge of those conspiring. It is, of course, no offence for people who believe that a crime has been committed to agree to take steps with a view to a prosecution.

The trial was one with assessors. The first submission on behalf of the appellants is that the learned judge failed to state clearly, or at all, the necessity of the prosecution establishing that the accused knew the accusation to be false. It is clear that some of the accused stated affirmatively that they believed in the accusation. Some may have merely denied that they were parties to any agreement.

Two passages from the summing-up should be quoted:

> "To conspire to accuse any person of murder is to conspire to do an unlawful thing. The law does not say that you should not bring to the notice of the police any offence which you know to have been committed. If you know that an offence has been committed, it is your duty and the duty of everyone to bring it to the notice of the police, and the police will then investigate the matter. There is no need for two or more to join together to make a bargain to accuse any person or persons of a crime. Such a conspiracy the law does not allow . . . .
>
> It is your duty to find out if there is evidence of any agreement by any of the accused with the other accused or with other persons not before you. To do something unlawful is to accuse the P.C. and three men of the murder of Siaffa Fogundia."

In nearly every summing-up in a case of any complexity it is

possible to find sentences which in the calmer and more leisurely atmosphere of an appellate court can be shown to be capable of improvement. But here the defect goes to the root of the offence. It is true that in the course of his summing-up the learned judge referred to evidence which, if believed, would support an agreement falsely to accuse. But nowhere is there a reference to the necessity of proving the falsity of the belief. The first of the two passages might well have been understood by the assessors as meaning that any agreement by two or more to make an accusation, whether believed or not, would be an offence.

The Crown did not file a case or seek to support the conviction.

Their lordships are of opinion that the appeal succeeds on this ground. There were other grounds put forward, to only one of which is it necessary to refer. At the beginning of the proceedings counsel for the six accused objected to one of the assessors, Musa Gendemeh, on the ground that he was married to a daughter of Samba, the object of the alleged conspiracy and the first witness for the prosecution. The Solicitor-General opposed the objection, and the learned judge ruled as follows:

> "I find that the objection is misconceived. There is nothing in the Courts Ordinance (*cap.* 50) which gives a right to object to an assessor's sitting on a case, and if there were such a right I am not satisfied that sufficient reason has been given to disqualifying P.C. Musa Gendemeh sitting in this trial as an assessor."

Notwithstanding the silence of the Ordinance, their lordships are clear that the objection was not misconceived. It might or might not have been proper to accede to it. Either party, the Crown or the accused, is entitled to raise an objection to an assessor on the ground that he is interested in or connected with the subject-matter of the proceedings or those concerned so that it is undesirable for him to sit as an assessor. It would be for the judge to rule on the objection in his discretion. In small communities it may be difficult of course to find assessors who are wholly unconnected with everyone concerned. It may be that in this case there would have been a difficulty in getting another assessor. Apart from any such difficulty it would seem unfortunate that one of the assessors should have been related in the degree stated to the complainant.

Their lordships have humbly advised Her Majesty that the convictions be quashed.

Counsel for the appellants contended that the appellants ought

to be allowed their costs, but their lordships do not think that the circumstances of the case justify a departure from the general rule, and there will therefore be no order as to costs.

Appeal allowed.

N'DANEMA *v.* RENNER and FIVE OTHERS

WEST AFRICAN COURT OF APPEAL (Coussey, P., Bourke, C.J. (Sierra Leone) and Korsah, C.J. (G.C.)): May 29th, 1956
(W.A.C.A. Civil App. No. 31/55)

[1] **Administrative Law—tribunals—procedure—no interference by court until all other rights of appeal exhausted:** A person ordained as a minister of a particular church is bound by the constitution of that church, including any provisions therein which relate to disciplinary tribunals; and therefore where such a minister is dismissed by the governing body of the church acting in a quasi-judicial capacity, the courts will not intervene on the ground that the proceedings have not been fairly and properly conducted until all rights of appeal to tribunals properly constituted for the purpose have been exhausted (page 435, line 40—page 436, line 22).

[2] **Ecclesiastical Law—ministers—dismissal—no interference by court until all other rights of appeal exhausted:** See [1] above.

[3] **Jurisprudence—justice—rules of natural justice—quasi-judicial bodies—no interference by court until all other rights of appeal exhausted:** See [1] above.

The appellant brought an action against the respondents in the Supreme Court for a declaration that his suspension by the respondents was irregular and unconstitutional, or in the alternative that it was *ultra vires.*

The appellant was an ordained minister of the Evangelical United Brethren Church of Sierra Leone. Under the constitution of the church, accepted by the appellant at the time of his ordination, all matters of discipline were to be heard by a judicial committee and then reviewed by another body. The constitution also provided for appeals to be heard by an appellate tribunal. The appellant was suspended by the respondents, sitting as the judicial committee, for immoral conduct, and his suspension was ratified by the review body which revoked his licence. The appellant alleged several irregularities in the procedures of the two tribunals, and instituted