

## SABRAH v. ATTORNEY-GENERAL

SUPREME COURT (Bairamian, C.J.): August 29th, 1957  
(Mag. App. No. 16/57)

[1] **Civil Procedure — appeals — vacation — Supreme Court may hear appeals during vacation without consent of parties—Courts Ordinance (cap. 50), s.7(2) applies only to cases at first instance:** Section 7(2) of the Courts Ordinance (*cap.* 50), which provides that no case shall be heard by the Supreme Court during the vacation unless the parties consent or the court so directs, applies only to cases at first instance; the vacation does not affect the hearing of appeals from magistrates' courts, whether civil or criminal (page 14, lines 25-33). 5

[2] **Courts—Supreme Court—appeals—vacation—court may hear appeals during vacation without consent of parties—Courts Ordinance (cap. 50), s.7(2) applies only to cases at first instance:** See [1] above. 10

[3] **Criminal Procedure—appeals—vacation—Supreme Court may hear appeals during vacation without consent of parties—Courts Ordinance (cap. 50), s.7(2) applies only to cases at first instance:** See [1] above. 15

The appellant was charged in the Magistrate's Court, Puhejun with unlawful dealing in diamonds. 20

He was convicted and ordered to forfeit the diamonds. The appellant appealed and the hearing of the appeal was fixed to take place during the court vacation. Counsel for the appellant submitted that it could not be heard during the vacation without the consent of the parties, which had not been given. The court considered the effect of s.7(2) of the Courts Ordinance (*cap.* 50). 25

**Legislation construed:**

Courts Ordinance (Laws of Sierra Leone, 1946, *cap.* 50), s.7(2):

The relevant terms of this sub-section are set out at page 14, lines 6-14. 30

s.17: The relevant terms of this section are set out at page 14, lines 21-24.

Supreme Court Rules, 1947 (P.N. No. 251 of 1947), O.I:

“‘Cause’ includes any action, suit or other original proceeding between plaintiff and defendant. 35

‘Matter’ includes every proceeding in court not in a cause.”

C.B. Rogers-Wright for the appellant;

M.C. Marke, Ag. Sol.-Gen., for the respondent.

BAIRAMIAN, C.J.:

In this appeal from a magistrate's decision that certain diamonds 40

should be forfeited, it is submitted for the appellant that as the court is in vacation and this being a civil appeal, it cannot be heard without counsel's consent, which has not been given in this case.

The relevant provision is in s.7(2) of the Courts Ordinance (*cap.* 50), which reads:

“The Supreme Court shall be open throughout the year for the transaction of general legal business therein, and any Judge may, at any time, hear and determine any civil cause or matter pending in the court upon such notice to the parties and otherwise as shall seem just and reasonable.

Provided that during the vacation no such cause or matter shall be heard or determined unless all the parties thereto consent or the Court, for good and sufficient reasons to be recorded in the minutes of the proceedings, shall so direct.”

The Courts Ordinance does not define “civil cause or matter.” These words are defined in O.I of the Supreme Court Rules, 1947, made under ss. 12 and 24 of the Ordinance, which deal with cases at first instance. There is, besides, clear indication in ss. 17, 18, and 19 of the Courts Ordinance that a “civil cause or matter” is a case begun in the Supreme Court. It will be enough if I quote a portion of s.17, which begins thus: “In any civil cause or matter before the Court, when the parties shall have joined issue on any question of fact, the trial of such issue or issues shall be before the Court constituted by a Judge. . . .”

There is nothing in O.XLIV of the rules of court to show that anything other than cases at first instance is affected by the court vacation: the applications there mentioned are merely applications in a case at first instance.

It follows from the provisions considered that the vacation does not affect the hearing of appeals, whether civil or criminal, from magistrates under the Appeals from Magistrates Ordinance (*cap.* 14), of which separate mention is made in s.23 of the Courts Ordinance with reference to the appellate jurisdiction of the Supreme Court. There is no need to decide whether the present appeal is civil or criminal; on the assumption that it is civil, it may be heard during the vacation without consent or other reason, and the submission made by counsel for the appellant is therefore not acceptable.

*Ruling accordingly.*