years has bought up to three-quarters of the quantity of rice imported by the Government and this buying has been done at a special discount to the detriment of Sierra Leone Revenue." Further it says, "What local rice has been produced and bought by Government for the benefit of the People has been allowed to rot away in stores at Kissy, Mambolo, and elsewhere and later destroyed so that individuals and companies may benefit from the importation of rice."

Rice being the most important factor in the assessment of the cost of living, it could easily be seen that the public has some justification in worrying about such an important part of their material welfare being left to be played about with by individuals for their own enrichments. In my opinion, any evidence which tends to show that there is strong likelihood of bias or direct interest of jury or assessors in the trial is most relevant and admissible in deciding whether a trial should be by judge alone or by judge with jury or judge with assessors in an application under Ordinance No. 1 of 1961.

Rice being the staple food of the public and the complainants being public officers, any alleged corrupt dealing by its public officers to such magnitude as is alleged in the document, must be of great concern and of direct vital interest to the public or community such as is in Freetown. As I said in *Regina* v. *Taqui*, fair and impartial trial also implies that the tribunal must be free from bias or sympathy one way or the other; otherwise the administration of justice becomes a mere farce. After reading the summons, the affidavit of Koroma, the document Exh. A.K.1 and after hearing counsel on both sides, I can see or envisage no clearer or more fitting case in which such an application as made here can be justified than this. I am satisfied that there is good reason to believe that a fair and impartial trial cannot be had either with a judge and jury or with a judge and assessors—I therefore order that the accused (respondents) be tried in this matter by judge alone instead of by judge and jury or judge with assessors.

[SUPREME COURT]

Freetown
July 8,
1961
Cole J.

MORAY KABBA . . . . . *Plaintiff*

v.

HASSAN D. FAWAZ . . . . . *Defendant*

[C. C. 51/61]

Tort—Malicious prosecution—Whether reasonable cause for prosecution.

Defendant entrusted the sum of £7,750 to plaintiff for safe-keeping. Plaintiff gave him a receipt. When defendant later asked plaintiff for the money, plaintiff gave him £1,000 but failed to pay the balance. The matter was reported to a magistrate, who issued a warrant of arrest. An information was filed charging plaintiff with the offence of fraudulent conversion of £6,750. After a trial before the Supreme Court, plaintiff was acquitted and discharged. Plaintiff thereupon brought suit against defendant claiming damages for malicious prosecution and false imprisonment. The claim for false imprisonment was not pursued.

Held, for the defendant. Defendant honestly believed that the charge preferred against plaintiff was true and had reasonable cause for prosecuting.

Cases referred to: *Leibo* v. *Buckman Limited* [1952] 2 All E.R. 1057; *Turner* v. *Ambler* (1847) 16 L.J.Q.B. 158; 116 E.R. 98.

Cyrus Rogers-Wright for the plaintiff.
Zineool L. Khan for the defendant.

COLE J. In this action the plaintiff, by his writ of summons and statement of claim, claims damages for malicious prosecution and false imprisonment. The claim for damages for false imprisonment has not been pursued and therefore it is not material for the purpose of this case.

According to law a person who has been acquitted of a criminal charge can bring an action for damages for malicious prosecution if he can show that the prosecution was instituted maliciously and without reasonable and probable cause. The experience of judges lasting over some centuries has shown that in an action of this nature it should be clearly determined whether or not there was reasonable and probable cause for the prosecution. An action for malicious prosecution is not one where the plaintiff gives evidence which goes to show that he is innocent and therefore it was not right for him to have been prosecuted and that the defendant in the end should pay for it, but one in which it should be clearly shown that the defendant in bringing the prosecution did not honestly believe that the charge preferred against the plaintiff was true and did not believe plaintiff was guilty. The proper approach to the question of absence or presence of reasonable and probable cause has been well put by Lord Justice Denning, as he then was, in the case of *Leibo* v. *Buckman Limited* [1952] 2 All E.R. 1057 at 1064 where His Lordship said, inter alia:

> "When does the subjective element enter in? If the facts, viewed objectively, do afford reasonable cause the subjective element may sometimes come in to destroy it. It must be rarely that it does so, for if the proved and admitted facts viewed objectively, are such that a reasonable man would have reasonable cause for prosecuting it will require exceptional evidence to prove that the prosecutor himself, viewed subjectively, had no such cause. Proof of malice or bad motive will not do."

Positive proof will be required that the prosecutor had no belief in the plaintiff's guilt or in other words that he believed him to be innocent. That was clearly laid down by the Court of Queen's Bench in *Turner* v. *Ambler* (1847) 16 L.J.Q.B. 158; 116 E.R. 98, where the court wrote down that there must be proof of the absence of belief and underlined it. This means that the subjective element—the question of honest belief—should only be put to the jury when a charge, apparently well-founded, is shown to have been groundless, in short, when there is evidence that the prosecutor knowingly put forward a false case. This is the basis of all the cases on the point. With those principles in mind let me now examine the facts that have come out in evidence in this case.

The plaintiff, who holds a diamond dealer's licence, was on August 25, 1960, at Tankoro Police Station arrested on a warrant signed by the police magistrate on a charge of fraudulent conversion. The warrant was supported by a sworn information and complaint. The plaintiff was then charged and brought before the police magistrate at Sefadu on the following charge:

"Statement of offence—Fraudulent Conversion. Contrary to section 20 (1) (4) (A) of the Larceny Act, 1916.

"*Particulars of offence*—That he on the 9th day of July, 1960, at Peyima Village, in the Kamara Chiefdom in the Kono District in the Protectorate of Sierra Leone, fraudulently converted to his own use and benefit certain property, that is to say the sum of £7,750 entrusted to him by Hassan Darwish Fawaz in order that he, the said Moray Kabba, might retain the same in safe custody."

The conduct of the preliminary investigation was started by the police but subsequently taken over by Mr. Khan, now solicitor for the defendant, with the consent of the Attorney-General. The magistrate at the close of the prosecution's case held there was sufficient evidence to put the plaintiff on trial before the Supreme Court and committed the plaintiff for trial before that court. The evidence for the prosecution before the magistrate in the main was that the defendant took with him the sum of £7,750 at night from Koidu to Peyima in a car and whilst at Peyima he got news that he was to be robbed and so became afraid. His car was giving trouble and so he thought it dangerous to return to Koidu that night with the money. He took the money to the plaintiff and handed it to him for safe keeping. He (plaintiff) gave him a receipt for the money which was produced. Defendant then returned to Koidu. When defendant later asked plaintiff for the money he failed to produce it. He later paid £1,000 and did not pay balance and so the matter was reported to a magistrate who issued a warrant of arrest. In accordance with section 118 of the Criminal Procedure Ordinance the then Acting Solicitor-General on February 2, 1961, filed an Information which charged the plaintiff with the offence of fraudulent conversion of £6,750. The trial came up before Marcus-Jones Ag. J., before the Supreme Court at Sefadu on February 14 and 15, 1961, and the plaintiff was acquitted and discharged. The plaintiff now complains inter alia that the defendant had no reasonable cause for such proceedings; that in instituting the criminal proceedings defendant acted maliciously and the plaintiff consequently suffered damage. I have carefully considered the evidence in this case and on the whole the story of the defendant seems to me probable and I accept it. I do not believe the plaintiff nor the witness Barrie Karim and I reject their story. I am satisfied on the evidence that the defendant did not put forward a false case against the plaintiff but honestly believed that the charge preferred against the plaintiff was true. The story of the defendant, which as I have already said I accept, is such that, viewed objectively, a reasonable man would have reasonable cause for prosecuting. I do not find on the evidence any positive proof that the defendant had no belief in the plaintiff's guilt. In those circumstances this action is dismissed with costs—such costs to be taxed.

[SUPREME COURT]

ALASTAIR PETER McNEILE . . . . . *Appellant*

v.

COMMISSIONER OF POLICE . . . . . *Respondent*

[Magistrate Appeal 13/61]

Magistrate's court—summary jurisdiction—Autrefois acquit—Prosecuting officer unable to proceed because of lack of witness—Appellant "discharged" by magistrate—Whether appellant entitled to be "acquitted and discharged."