that the rules have been flouted and that an order was made per incuriam and irregularly it will not be fettered from discharging such an order, especially where no third party has been affected. I agree with Mr. Rogers-Wright and I find that the order of this court dated September 5, 1961, was obtained per incuriam and irregularly and I accordingly discharge it.

I order that the costs of this motion be paid by the plaintiff/respondent.

Freetown
April 17,
1962

Bankole Jones
Ag.C.J.

[SUPREME COURT]

VICTOR HAKIME . . . . . *Appellant*

v.

COMMISSIONER OF POLICE . . . . . *Respondent*

[Mag. App. 11/62]

Criminal Law—Dangerous driving—Disobeying instructions of police constable—Appeal against suspension of driving licence—Magistrate's power to suspend licence—Whether necessary for magistrate to take evidence where accused pleads guilty.

Road Traffic Act (*Cap.* 132, *Laws of Sierra Leone*, 1960), *ss.* 16 (1) (*a*), 34, 41.

At about 8.30 a.m. on February 12, 1962, the accused was driving his car at a high speed along Circular Road, and, without reducing his speed, turned sharply into Pademba Road, narrowly missing some children who were crossing the street. A police officer who was on duty stopped the accused, who parked in the middle of the road. He refused to park on the side of the road as requested by the officer. After an argument, the accused was arrested and taken to the Traffic Office, where he was charged with dangerous driving and disobeying the instructions of a police officer contrary to sections 41 (1) and 34 of the Road Traffic Act.

At the trial, the accused pleaded guilty to both charges, and the prosecuting officer then stated the facts to the magistrate. The accused stated that he had driven slowly and asked for leniency. The magistrate fined the accused and also suspended his driving licence for a period of six months. The accused appealed against this decision, asking that the period of suspension be abridged. He argued (1) that the magistrate should have specified the offence with regard to which he was suspending accused's licence; (2) that the magistrate erred in failing to state the special circumstances which made it necessary for him to suspend the licence of the accused, whom the magistrate knew to be a first offender; and (3) that, before finding accused guilty of dangerous driving, the magistrate should have heard evidence of the speed at which accused was driving.

Held, dismissing the appeal, (1) that the fact that the magistrate did not specify the offence with regard to which he was suspending accused's licence did not vitiate the order of suspension;

(2) That the magistrate had no duty to state the special circumstances, if any, upon which he based his order of suspension; and

(3) That, since the accused pleaded guilty, there was no necessity for the magistrate to take evidence on the speed at which accused was driving or on any other matter before finding accused guilty.

Edward J. McCormack for the appellant.
Raymond Awooner-Renner (Crown Counsel) for the respondent.

BANKOLE JONES AG.C.J. This is an appeal against an order of a police magistrate suspending the appellant's driving licence for a period of six months as from February 13, 1962.

The facts are that the accused was charged with two offences, namely (1) dangerous driving contrary to section 41 (1) of Cap. 132; and (2) disobeying the verbal instruction of a police constable contrary to section 34 of Cap. 132. At the trial, the accused pleaded guilty to both charges and the prosecuting officer proceeded to state the facts of the case to the magistrate. He said that on February 12, 1962, at about 8.30 a.m., the accused drove his car at a very high speed from Circular Road into Pademba Road and without reducing his speed turned sharply into Pademba Road regardless of children who were then walking along a zebra crossing. The children had to jump the crossing in fear. A police officer who was on duty stopped the accused, who stopped and parked in the middle of the road. The police officer asked him to park on the side of the road but accused refused to do so. An argument ensued between the two which ended in the accused being arrested and taken to the Traffic Office, where he was charged. At the end of this narration of the facts, the accused, who was not represented by counsel, stated that he had driven slowly and asked for leniency. The magistrate then imposed the following sentences, namely, as to the first count, £30 or four months' imprisonment with hard labour and as to the second count £10 or two months' imprisonment with hard labour and stated as follows: "Fines cumulative and sentences of imprisonment consecutive." He then proceeded to make the order of suspension.

In his petition the petitioner states that he was a first offender and prays that the period of suspension be abridged. It is conceded that he was indeed a first offender and I was told that the fines have been paid.

Counsel for the petitioner submitted in the first place that the record does not show in respect of which offence the order of suspension was made. He said that it was obligatory on the magistrate to have stated the special circumstances which made it necessary for him to suspend the accused's licence, who to his knowledge was a first offender. See section 41 (2) of Cap. 132. The subsection reads:

> "41 (2) On a second or subsequent conviction for an offence under this or the preceding section, the court shall order that the offender be disqualified from holding or obtaining a licence unless the court having regard to the lapse of time since the date of the previous or last previous conviction or for any other special reason thinks fit to order otherwise; but this provision shall not be construed as affecting the right of the court to make such order on a first conviction."

It seems to me, therefore, that a magistrate has a wide discretion in making an order of suspension even though to his knowledge an accused person is a first offender.

Apart from this, section 26 (1) (*a*) of Cap. 132 gives him a general discretion in the matter in all motor driving offences created by this Act. I concede that it would have been better if the magistrate had stated in respect of which offence the suspension order attached, but his not doing so does not in my view vitiate the order.

I do not agree that he was bound to have stated the special circumstances which made it necessary for him to make the order. He had all the facts before him and he chose to exercise his discretion in the manner he did. I find that such discretion was in the circumstances not exercised wantonly or capriciously.

Counsel further submitted that in a charge of dangerous driving, evidence of speed should have been led. He said that the magistrate relied on the facts as stated by the prosecuting officer who himself was not at the scene and did not witness the accident. This, to my mind, is a novel proposition. The record shows that the charges were read to the accused and that he pleaded guilty to each. After statement of the facts constituting the offences, the accused stated that he had driven slowly and asked to be shown leniency. He made no attempt to withdraw his pleas after hearing the facts so that the case could be tried on its merits. The magistrate elected to accept the prosecuting officer's statement, who obviously spoke from his instructions, and, therefore, there was no necessity for him to have taken evidence on speed or for that matter on any other matter.

I find there is no substance in this appeal and I accordingly dismiss it.

Freetown
May 1,
1962
Bankole Jones
Ag.C.J.

[SUPREME COURT]

BERTHAN MACAULAY . . . . . *Plaintiff/Respondent*

v.

JIM DIAMANTOPOULOS . . . . . *Defendant/Applicant*

[C.C. 2/62]

Practice and Procedure—Judgment by default—Motion to set aside judgment—Discretion of judge.

Plaintiff's writ of summons against defendant was issued on December 10, 1961, and was served on defendant on December 21, 1961. On January 22, plaintiff wrote defendant that he would sign judgment in seven days, and on February 6, 1962, the plaintiff signed judgment in default of appearance. On February 19, he filed a notice of motion to assess damages. On March 1, defendant made a motion for an order "setting aside the writ and service thereof and all subsequent proceedings . . . for grave irregularities on the grounds that the service was irregular and that the judgment was irregularly signed." This motion was denied on the ground that defendant had delayed making it for an unreasonable length of time after he had knowledge of the alleged irregularities. Defendant then moved that the judgment be set aside on the ground that it had not been obtained on the merits and that defendant's supporting affidavit disclosed a substantial ground of defence.

Held, granting the motion, that, even though "defendant treated the court with contempt by not appearing to the writ even when the plaintiff wrote to tell him that he would sign judgment within a certain time, yet . . . this is not necessarily good ground for refusing to set aside the judgment if there is disclosed a defence on the merits and the circumstances warrant it."

Cases referred to: *Leggo* v. *Young and Another* (1856) 25 L.J.C.P. 176, 139 E.R. 1190; *Ilderton* v. *Burt* (1848) 136 E.R. 1317; *Macfoy* v. *U.A.C.* [1961] 3 All E.R. 1169; *Evans* v. *Bartlam* [1937] 2 All E.R. 646.