Donald Grant. They are set down as children of the deceased but from the evidence it was revealed that they are the niece and nephews of the deceased. This discrepancy does not, however, disqualify them under the Fatal Accident Acts. The other claimants, apart from the widow, Matilda Grant and Ola Macfoy, fall also within the category. Ola Tolbert appears to be in a different position and I presume that it was on that account she was left out of the statement of particulars, and for the same reason I am not considering any claim on her behalf.

The deceased was 59¾ years old at the time of his death and was on the eve of retiring from the teaching profession in which his earnings were £480 per annum together with another £240—not questioned—which he gained from giving private lessons. I do not think it is really good sense to fix takings from private tuition at a particular figure. These takings, even under the best of conditions, are known to fluctuate. I think it is reasonable to assess it at £120—an amount which could be considered generous. From the extent of voluntary responsibility the deceased seemed to have been doing pretty well on about £600 a year. It is from this background I propose to make the awards. Patricia was 18 years old at the time of the accident and has now left school. She is about 20 years of age—a young woman. I award £3 a month from end of May 1962, until she is 21 years old. This, calculated to December 1964, is £96; the twins I grant £250 for both for five years; the mother £30 a year for two years; Ola Macfoy £100 for eight years; wife, £500, making a total of £2,706 and costs for the plaintiff against defendant. There will be no award for pain and suffering as deceased was unconscious from the date of the accident to the time of death.

[SUPREME COURT]

Freetown
Sept. 30,
1963
Cole Ag.C.J.

ALPHA KAMARA . . . . . *Appellant*

v.

S. A. T. KOROMA . . . . . *Respondent*

[Magistrate Appeal 53/63]

Criminal Summons brought by Private Individual—Larceny Act, 1916 (*Vol. I, Laws of Sierra Leone*, 1960, *p.* 212), *ss.* 1, 32 (1)—*Debtors Act* (*Cap.* 24, *Laws of Sierra Leone*, 1960), *s.* 35 (1)—*Courts* (*Appeals*) *Act*, 1960 (*No.* 18 *of* 1960), *s.* 4—*Whether appellant was "person aggrieved" by "decision of a magistrate"—Whether magistrate can refuse to commit accused person for trial before taking evidence—District Councils Act* (*Cap.* 79, *Laws of Sierra Leone*, 1960), *ss.* 5, 52 (1)—*Offences against Port Loko District Council—Whether appellant could institute criminal proceedings without authority from council—Constitution of Sierra Leone* (*P.N. No.* 78 *of* 1961, *Sch.* 2), *s.* 73.

Appellant brought a criminal summons against respondent charging him with certain offences against the Port Loko District Council contrary to sections 1 and 32 (1) of the Larceny Act, 1916, and section 35 (1) of the Debtors Act. The Police Magistrate held that the subject-matter of the summons was an "individual grievance" and, therefore, that criminal proceedings could be instituted only by the body aggrieved, i.e., the council or its duly authorised

agent. Having found that the appellant had no authority from the council, the magistrate dismissed the summons. Appellant appealed from this decision to the Supreme Court. Respondent objected to the jurisdiction of the court to hear the appeal on the ground that section 4 of the Courts (Appeals) Act, 1960, provides that no appeal shall lie against a refusal to commit a person for trial.

Held, allowing the appeal, (1) that before a magistrate can properly refuse to commit an accused person for trial by the Supreme Court he must have taken the whole of the evidence and must have considered such evidence insufficient to put the accused on his trial;

(2) that the Supreme Court had jurisdiction to hear the appeal under section 4 of the Courts (Appeals) Act, 1960, since appellant was a "person aggrieved" by a "decision of a magistrate" and was appealing "on a question of law" against the "discharge of the defendant"; and

(3) that any person can lay an information for a public offence to which a penalty is attached, unless the statute under which the proceedings are taken contains special limiting provisions.

Cases referred to: *Cole* v. *Coulton* (1860) 29 L.J.M.C. 125; *Allman* v. *Hardcastle* (1903) 89 L.T. 553; *Giebler* v. *Manning* [1906] 1 K.B. 709; *Duchesne* v. *Finch and others* (1912) 107 L.T. 412.

Berthan Macaulay Q.C. (with him *S. Beccles Davies*) for the appellant.
Nathaniel A. P. Buck for the respondent.

COLE AG.C.J. On July 22, 1963, the respondent, S. A. T. Koroma, appeared before the Police Magistrate at Port Loko on Criminal Summons No. 18149 brought by the appellant charging him with the offence of false pretences under section 32 (1) of the Larceny Act, 1916. On that date this charge was replaced by six fresh charges, namely: (i) False pretences contrary to section 32 (1) of the Larceny Act, 1916; (ii) obtaining credit by fraud, contrary to section 35 (1) of Cap. 24 of the Laws of Sierra Leone; (iii) larceny, contrary to section 1 of the Larceny Act, 1916; (iv) false pretences, contrary to section 32 (1) of the Larceny Act, 1916; (v) obtaining credit by fraud, contrary to section 35 (1) of Cap. 24, Laws of Sierra Leone; (vi) larceny, contrary to section 1 of the Larceny Act, 1916.

The appellant was then represented by Mr. Pratt and the respondent by Mr. Buck. No objection was taken to the substitution of the fresh charges.

On the same date—July 22, 1963—counsel for the respondent applied to the court for the summons to be dismissed on the grounds that the information was laid by a private person without the authority of the Port Loko District Council, the body affected by the charges and who was alleged to have been defrauded. He submitted further that the offences with which the respondent was charged were indictable offences for which the Attorney-General's fiat was necessary to initiate the prosecution by a private person.

On August 23, 1963, the learned magistrate in writing ruled in favour of the respondent, dismissed the summons and awarded the costs assessed at 50 guineas to the respondent. In awarding the costs the magistrate wrote, inter alia:

> "The summons is, therefore, dismissed with costs. I am of opinion that the complainant's duty was to bring his findings to the notice of the Port Loko District Council and I can think of no other reason for his acting otherwise than being actuated by malice."

The appellant, through his counsel, gave oral notice of appeal in open court against the ruling and order for costs of the learned magistrate.

By notice dated August 27, 1963, filed herein, Mr. Pratt, for the appellant, gave as the several grounds of his client's appeal the following:

"*Ground 1.* The learned trial magistrate misdirected himself in interpreting sections 5 and 52 (1) of Cap. 79 as making an incorporated district council analogous to an individual for the purposes of determining the party to institute criminal proceedings.

"*Ground 2.* The learned trial magistrate misdirected himself in further interpreting sections 5 and 52 (1) of Cap. 79 to mean that a private person or any other person with no authority from the district council cannot lay an information against a person touching upon an offence alleged to have been committed by that person against the district council.

"*Ground 3.* The learned trial magistrate misdirected himself in holding that the subject-matter of the aforementioned summons was an individual grievance.

"*Ground 4.* The learned trial magistrate applied wrong principles of law in the exercise of his discretion in awarding costs against the complainant/appellant, in that the learned trial magistrate presumed malice on the part of the complainant/appellant from an assumption that the complainant/appellant had a duty to inform the Port Loko District Council of the facts within his knowledge, whereas the complainant/appellant did at the earliest possible opportunity, which fact the learned trial magistrate would have clearly found out if he had investigated his presumption of malice, which presumption he did not give the complainant any opportunity of rebutting before awarding costs against him."

At the hearing of this appeal, Mr. Buck, learned counsel for the respondent, raised a preliminary objection to the jurisdiction of the court to hear the appeal. He submitted that the appellant was not a "person aggrieved" within the meaning of section 4 (1) of the Courts (Appeals) Act, 1960 (No. 18 of 1960), because, the offences with which the appellant was charged being indictable offences, once the summons was dismissed the appellant had no right of appeal. He added that since the ruling of the learned magistrate was tantamount to a refusal by him to commit the respondent for trial by the Supreme Court the appellant had no right of appeal. He rested for his support on proviso (*b*) to section 4 (2) of the Courts (Appeals) Act, 1960 (No. 18 of 1960). I overruled the objection and indicated I would give my reasons for doing so in writing later. I consider this a fitting time to do so.

Appeals from decisions of magistrates to this court are creatures of statute and are governed by the provisions of the Courts (Appeals) Act, 1960 (No. 18 of 1960). The relevant section is section 4, which is as follows:

"4.—(1) Any person aggrieved by a decision of a magistrate in criminal proceedings may appeal from the decision to the Supreme Court:

Provided that no appeal shall lie—

(*a*) against the acquittal or discharge of the defendant, except on a question of law;

(*b*) against conviction, where the defendant pleaded guilty, except by leave of a judge, which may be given if the judge is satisfied—

(i) that the defendant did not appreciate the nature of the charge or did not intend to admit he was guilty of it; or

(ii) that upon the admitted facts he could not in law have been convicted of the offence charged;

(*c*) against an order committing a person for trial by the Supreme Court, or against a refusal to commit him for such trial;

(*d*) against sentence, where it is fixed by law;

Provided further that a defendant in criminal proceedings may give notice of appeal either orally in open court immediately after the decision of the court is pronounced or in writing in accordance with Rules of the Court made under section 12 of this Ordinance.

"(2) The Attorney-General, even though he was not a party to the proceedings, may appeal to the Supreme Court from any decision of a magistrate in criminal proceedings:

Provided—

(*a*) that no appeal shall lie against the acquittal or discharge of the defendant, except on a question of law, and

(*b*) that no appeal shall lie against a magistrate's refusal to commit a person for trial by the Supreme Court."

On a close scrutiny of this section, it will be seen that subsection (1) regulates appeals in criminal proceedings by persons other than the Attorney-General and subsection (2) regulates appeals in criminal proceedings by the Attorney-General. It is my considered view, and I so hold, that provisos (*a*) and (*b*) to subsection (2) apply only to appeals in criminal proceedings by the Attorney-General. That being so, this appeal not being one made by the Attorney-General, proviso (*b*) to subsection (2) is inapplicable. Even if it does apply, according to the record of proceedings in this appeal, the stage at which the learned magistrate could properly refuse to commit the respondent had not been reached when the summons was dismissed, the magistrate not having taken any evidence. In my view, before a magistrate can properly refuse to commit an accused person for trial by the Supreme Court he must have taken the whole of the evidence and must have considered such evidence insufficient to put the accused on his trial—section 107 of the Criminal Procedure Act, Cap. 39, refers. For this reason I further hold that proviso (*b*) to subsection (2) of section 4 of the Courts (Appeals) Act, 1960 (No. 18 of 1960), does not apply to this case, nor does proviso (*c*) of the first proviso to subsection (1) of section 4 apply. To entitle the appellant to appeal—(a) he must be a person aggrieved; (b) there must be a decision of a magistrate of which he was aggrieved; (c) there must be an acquittal or discharge; and (d) the question raised on appeal must be one of law. As to (a), although neither before the learned magistrate nor in his notice of grounds of appeal dated August 27, 1963, did the appellant's solicitor state that his client was aggrieved by the decision of the learned magistrate, I find the circumstances here show unmistakably that the appellant was aggrieved by the decision. His grievance was peculiar to him and was direct. It was not contended that there was not a decision of the learned magistrate or that there was not a discharge of the respondent by the magistrate or that the question raised in this appeal was not one of law. I am of the opinion that this case falls within the ambit of section 4 (1) of the Courts (Appeals) Act, 1960 (No. 18 of 1960). For these reasons I overruled the objection of learned counsel for the respondent.

Mr. Macaulay argued only ground 2 of the notice of grounds of appeal and abandoned the others. This ground reads:

"The learned trial magistrate misdirected himself in further interpreting sections 5 and 52 (1) of Cap. 79 to mean that a private person or any other person with no authority from the district council cannot lay an information against a person touching upon an offence alleged to have been committed by that person against the district council."

Cap. 79 is the District Councils Act. Section 5 of this Act reads as follows:

"Every district council shall be a body corporate with perpetual succession and a common seal, with power to alter such seal from time to time, and shall be capable in law of suing and of being sued, of purchasing, holding and disposing of property of any description, and generally of doing and performing all such acts and things as bodies corporate may by law do and perform, subject to the provisions of this Ordinance and of any other law for the time being in force in the Protectorate."

By section 52 (1), it is provided that—

"A district council may appear in any legal proceedings by an officer of the council authorised generally or in respect of any particular proceedings by resolution of the council; and any officer, so authorised, shall be at liberty to institute and carry on any proceedings which the council is authorised to institute and carry on under this or any other Ordinance, subject always to any directions which may be given to him by the council."

The learned magistrate in dealing with the point at issue in his ruling said, inter alia:

"The issue to be determined is whether the information is properly laid by the complainant or not. In the absence of some statutory restriction there is no limitation on the common law right of any person to institute proceedings unless the matter is an individual grievance, in which case the information should be laid by the individual aggrieved (*Cole* v. *Coulton* (1860) 24 J.P. 332). In certain cases statutory provisions require that an information be laid by or with the consent of particular individuals or authorities and then the right to lay the information is restricted to them or their duly authorised agents. The prosecutor may lay the information in person or by his counsel or solicitor or other person thereunto authorised."

He then set out the provisions of sections 5 and 52 (1) of the District Councils Act (Cap. 79) and continued:

"The district council thus incorporated is analogous to an individual and I hold that the subject-matter of this summons is an 'individual grievance,' information of which should be laid by the district council or its duly authorised agents.

"I find that the information is not so properly laid.

"The complainant is a private person with no such authority from the Port Loko District Council.

"The summons is, therefore, dismissed with costs."

It is correct that section 5 of the District Councils Act constitutes the Port Loko District Council a body corporate. The general principles of law as to who may institute proceedings appear to have been correctly stated by the learned magistrate. Where he went wrong is in the application of those principles to the facts of this case.

It is a general principle of law that any person can lay an information for a public offence to which a penalty is attached, unless the statute under which the proceedings are taken contains special limiting provisions. As an example, section 42 of the Offences against the Person Act, 1861, prescribing the penalty for common assault, requires that the complaint should be made by or on behalf of the party aggrieved; but a complaint for aggravated assault under section 43 of the same Act may be made by or on behalf of the party aggrieved or otherwise.

In *Cole* v. *Coulton* (1860) 29 L.J.M.C. 125, Cockburn C.J. held that an information for an offence against public policy might be laid by anyone, without authority from the party to whom the penalty to be recovered was to be awarded, so long as he professed that the recovery of the penalties should ensure to the benefit of that party. The cases of *Allman* v. *Hardcastle* (1903) 89 L.T. 553, *Giebler* v. *Manning* [1906] 1 K.B. 709, *Duchesne* v. *Finch and others* (1912) 107 L.T. 412 establish this proposition.

In Halsbury's Laws of England, Vol. 10 (3rd ed.), p. 338, para. 628, it is stated: "In the absence of statutory provisions to the contrary any person may of his own initiative, and without any preliminary consent, institute criminal proceedings with a view to an indictment."

I have carefully examined the various sections of the Acts under which the respondent was charged before the learned magistrate and I find no provision prohibiting any person of his own initiative from initiating proceedings or requiring any preliminary consent. I also find that the offences created under the respective sections of the Acts with which the respondent was charged are public offences with penalties attached. In those circumstances the appellant was legally entitled to initiate the proceedings as a private individual against the respondent. I have given due consideration to the provisions of section 52 (1) of the District Councils Act, Cap. 79. This subsection, in my view, does not in any way operate as a bar to a private individual initiating criminal proceedings relating to matters touching the Port Loko District Council without the authority of the council. I have also given due consideration to section 73 of the Constitution of Sierra Leone (P.N. No. 78 of 1961, Sch. 2), which deals with the functions of the Director of Public Prosecutions which are being lawfully performed by the Attorney-General. I find that it does not adversely affect the legal position. In the circumstances, I find that the learned magistrate was wrong in holding that the information was not properly laid and in dismissing the summons.

I therefore allow the appeal. I order that the case, together with this judgment, be remitted to the Port Loko magistrates' court for an investigation by another magistrate of the alleged offences against the respondent.

The order of the learned magistrate awarding costs of 50 guineas to the respondent is hereby set aside. I order that if the costs so ordered have already been paid they should be refunded to the appellant.

The appellant to have the costs of this appeal.