"In High Court proceedings, a solicitor can only be discharged from liability to receive service of proceedings by substitution on the record of another solicitor, or of the party in person. After such a discharge has been effected and entered on the record the discharged solicitor cannot be served, nor can he accept service. See *Reg.* v. *Justices of Oxfordshire* [1893] 2 Q.B. 149. . . ."

For these reasons I hold that the service on Mr. Rogers-Wright for the applicants of the notice of motion No. 2 herein was irregular. I therefore set aside the order made herein on December 28, 1962, that the applicants do sign and execute. Costs of £2 2s. 0d. to defendant/applicant in any event.

Freetown
March 27
1963

Bankole Jones J.

[SUPREME COURT]

SAMUEL RETTEW . . . . . *Plaintiff*

v.

S. D. ROGERS . . . . . *Defendant*

[C.C. 66/60]

Tort—Claim for damages for unlawful threat—Threat by means of "swear" by medicine-man—"Swear" sanctioned by Native Court—Remoteness of damages.

Judgment was given against plaintiff in a Native Court at Bo for a debt which he owed defendant. When plaintiff failed to satisfy the judgment, defendant obtained from the court a written permit to "swear" the plaintiff for payment of the debt. Plaintiff agreed to pay on a fixed date, but when the date arrived it was found that plaintiff had left Bo. A week later, defendant performed the swearing ceremony on the highway near plaintiff's house.

Plaintiff brought suit against defendant, alleging that when he returned to Bo he was ostracised because of the "swear" performed by defendant, that, as a result, he and his wife had been forced to move to Freetown and that he had lost business profits and had had to incur extraordinary expenses. Plaintiff asked the court to award him £897 10s. 0d. damages.

Held, for the defendant, even if plaintiff's evidence was true, his damages were too remote to be recoverable.

Note: This decision was affirmed by the Court of Appeal on November 11, 1963 (Civil Appeal 10/63).

Nathaniel A. P. Buck for the plaintiff.
S. Hudson Harding for the defendant.

BANKOLE JONES J. The plaintiff's claim is for the recovery of the sum of £897 10s. 0d., being losses as a result of the defendant unlawfully threatening the plaintiff, who acted to his detriment, and others who acted to his injury, loss and privation, whatever this may mean. The original claim included one for damages for assault on the plaintiff's family. At the hearing this was abandoned. As I understand the plaintiff's claim it is one founded on a threat of death issued by the defendant against the plaintiff, his wife and all persons who should give aid and assistance to him. The threat relied upon is a "swear" on a Mende medicine by a medicine-man procured by the defendant, invoking the wrath of thunder.

The facts are that the plaintiff owed the defendant the sum of £5 15s. 0d.

The plaintiff was sued for this amount in a Native Court at Bo. He did not attend because he considered that he was not subject to the jurisdiction of that court. Nevertheless, judgment was given against him. All this happened in 1958. In November of that year when the plaintiff failed to satisfy the judgment debt, the defendant obtained from the Native Court a written permit to swear the plaintiff for payment of the debt. On the first occasion when he went to swear and in the presence of their section chief, the plaintiff implored him not to do so, promising to pay the amount on a fixed date. When this date arrived, the plaintiff was found to have gone out of Bo. The defendant held his hand, and a week after, whilst the plaintiff was still away, and in the presence of their section chief, performed the swearing ceremony on the highway opposite the dwelling-house of the plaintiff. Since then and up to today neither the plaintiff nor his wife or any other person who gave the plaintiff aid or assistance has died. According to the plaintiff, when he returned to Bo, he found that his wife had left his home owing, it is said, to fear, and he suffered quite a lot of physical discomfort and financial loss. He had to borrow the sum of £800 on no security whatever from a licensed moneylender who was not called to give evidence. He said he was ostracised wherever he went in Bo when people knew that a "swear" was on him and as a result he had to come to Freetown. Both he and his wife are now living in Freetown.

Now, before the defendant took out his summons in the Native Court, the plaintiff gave him a promissory note—Exhibit "B"—in which he promised to pay the sum of £7 7s. 0d. on a certain date and failing which he agreed that a summons should be issued. The defendant swore that the plaintiff said that the difference between the amount owed and that contracted to be paid was regarded by the plaintiff as interest. The defendant said he told him he did not want any interest. The plaintiff produced a receipt—Exhibit "A"—purported to have been issued by the Native Court for the sum of £6 1s. 0d. dated September 10, 1959. The writ in this action was issued on February 26, 1960. I find that this receipt has been tampered with in all material particulars contained therein.

These are the set of circumstances from which the plaintiff is asking this court to award him special damages for injury suffered by him as a result of the defendant's threat and/or swearing. I find it difficult to believe either the plaintiff or his wife regarding the sums of moneys it was alleged were spent as a result of the defendant's act, an act which though superstitious and primitive in character, yet had the sanction of an established court of law. But even if the result was as stated by the plaintiff, which I do not for one moment believe, the damages resulting are too remote to be contenanced by this court. The plaintiff, therefore, fails and I accordingly dismiss his claim with costs.

As to the defendant's counterclaim of £5 5s. 0d., not £5 15s. 0d., the plaintiff produced Exhibit "B" referred to above, which, on the face of it, shows that before action he had paid to the Native Court on the account of the defendant the sum of £6 1s. 0d. As I have indicated this receipt is highly suspect. I will, therefore, order the master and registrar to impound it and make the necessary investigation in order to discover what sum, if any, the plaintiff paid to the Treasury of the Native Court. The receipt purports to originate from the Kakua Chiefdom and is numbered F. No. 30451. At the end of his investigation, the master and registrar is ordered to report his findings for this court to give judgment on the defendant's counterclaim and to take any steps that may be found necessary.

Freetown
April 3,
1963

Marke J.

[SUPREME COURT]

REGINA *v.* EMMANUEL CHARLESWORTH DAVIES

Criminal Law—Power of judge to transfer criminal case from Bo to Freetown—Criminal Procedure Act (*Cap.* 39, *Laws of Sierra Leone*, 1960), *s.* 125—*Courts Act* (*Cap.* 7, *Laws of Sierra Leone*, 1960), *s.* 15 (1)—*Jurors and Assessors Act* (*Cap.* 38, *Laws of Sierra Leone*, 1960), *ss.* 39, 40.

The accused was charged on ten counts in an information. On March 11, 1963, he appeared before a Supreme Court judge at Bo and pleaded not guilty to each count. On March 16, at the request of Crown counsel, the judge ordered "that the trial be postponed to the sessions at present holden in Freetown to be mentioned there on Friday, the 22nd of March. . . ." Counsel for the accused objected that the court had no power to order the transfer.

Held, that the accused was not properly before the Supreme Court in Freetown.

Kanja A. Daramy for the Crown.
Berthan Macaulay for the defendant.

MARKE J. The accused was charged on ten counts on this information. He was informed or given notice by the Registrar of the Supreme Court at Bo to attend in the Supreme Court Hall, Bo, on March 6, 1963, for his trial on this information. On March 6, reading from the notes of the learned judge who presided over the sessions at Bo, the accused appeared but the information was short-served. The accused was then asked to plead on Monday, March 11, 1963.

On Monday, March 11, 1963, the accused pleaded not guilty to each count on the information, but his counsel, Mr. Berthan Macaulay, asked for the case to stand down until March 15, 1963, as he had only that morning received the depositions in this case.

The next entry on the record of the learned judge is for March 16, 1963. That entry reads:

> "In the time available this case cannot be heard at this session. Crown counsel applies for case to be transferred to Freetown to be tried at present sessions.
>
> "Macaulay says court has no power to transfer.
>
> "Crown counsel replies, 'One Supreme Court for Sierra Leone. Court has inherent power to transfer. The auditor who is a main witness in this case is due to leave for U.K. very soon and will not be available again until after six months. Accused should have been tried earlier in the sessions if Mr. Macaulay had been available and case was held at his request.'"

Then comes the following:

> "By virtue of section 125 of Cap. 39, the court appears to have power to make the transfer. I therefore order that the trial be postponed to the sessions at present holden in Freetown to be mentioned there on Friday, the 22nd of March. . . ."

From this note, it appears that the learned trial judge ordered a transfer of this case from Bo to Freetown and quotes section 125 of Cap. 39 as his authority for doing so. I have great doubts (1) whether this case could be transferred by virtue of section 125, and (2) whether it could be transferred at all. Section 125 provides:

> "It shall be lawful for the court upon the application of the prosecutor or defendant, if the court considers that there is sufficient cause for the delay, to postpone the trial of any accused person. . . ."

From the wording of this section, it appears that this power to postpone the trial is to be exercised where there is going to be a delay and the court considers that there is sufficient cause for such a delay. In that case, the trial may be postponed.

The section gives the right—

> "to postpone the trial of any accused person to the next sessions of the court to be held at the place where the court is sitting at the time of such an application being made, or to subsequent sessions, or to sessions to be held at a time and place to be named at the time of granting such postponement."

It will be observed that the right given to postpone can be exercised in one of three ways only:

(1) to the next sessions of the court to be held at the place where the court is sitting at the time of such application being made.

Applying this subsection to the present case that could be to the next session at Bo; or

(2) to subsequent sessions.

For this to make sense and to carry out the intention of the legislature, it seems to me that there must be read after the word "sessions"; the words ". . . of the court to be held at the place where the court is sitting at the time of such application being made." The word "subsequent" there taken to mean any sessions after the next sessions at such place; or

(3) sessions to be held at a time and place to be named at the time of granting such postponement.

The words here "sessions *to be held*" denote futurity: that is, sessions which are not already in progress but which are to be held at some future time. The case could, under this, have been transferred to sessions to be held at Kenema or Makeni or any other place in the Provinces. So that in my construction of the power to postpone given in section 125 of Cap. 39 it would not be a proper exercise of that power to postpone the trial to a session which is already in progress as was done in this case. The fact that the auditor as the main witness for the prosecution is about to leave for the United Kingdom very shortly would, to my mind, constitute the "sufficient cause for delay" contemplated by section 125, but, in exercising the right of postponement conferred by that section, such right can only be lawfully exercised in the manner laid down by that section, which does not authorise transfer to a session in progress. The transfer, it seems to me, can only be made to a session that has not already begun to sit.

Again, I have grave doubts whether a case which has already begun can be transferred under section 125.

From the notes of the learned trial judge the case had actually begun before him by taking the plea of the accused man. Section 125, it seems to me, contemplates the making of the application before the man is asked to plead. If it were otherwise, one would have expected to see expressed in that section some such words as these: "It shall be lawful for the court at any stage of the trial . . ." just as is to be found in section 37 of the same Ordinance.

Again, section 15 (1) of Cap. 7 provides that in criminal proceedings before the Supreme Court in the Protectorate (or, now, the Provinces) the Supreme Court shall be assisted by two or more assessors but the decision shall be vested in the judge. So that in criminal proceedings in the Protectorate it is the judge who exclusively has to say that a man has been found guilty or not guilty.

By section 39 of Cap. 38 a person charged before the Supreme Court in Freetown can elect to be tried by the court with the aid of assessors instead of being tried by a judge and jury. In such a case the judge who is to try this case selects from persons summoned to act as special jurors not less than three to assist him in such a trial. If the assessors selected by the judge are unanimous their opinions shall constitute the decision of the court; and it is only when such accessors are not unanimous that the decision is vested exclusively in the judge.

Now, if this trial is to be held in Freetown, where or how are the assessors to be obtained; or is the accused free to demand a trial by jury? In Freetown, the Attorney-General can only apply for trial by assessors where he is of opinion that a more fair and impartial trial can be obtained by a trial by a judge with the aid of assessors than by a trial by judge and jury.

Section 40 of Cap. 38 provides:

> "The Attorney-General, whenever he is of opinion that a more fair and impartial trial of any person or persons charged with any criminal offence who has or have been committed for trial, can be obtained by such person or persons being tried by the court with the aid of assessors instead of by a judge and jury, may make an application to the court for an order, which shall be made as of course, that any such person or persons shall be tried by the court with the aid of assessors instead of by a judge and jury."

So far as I am aware this is the only provision in our law whereby an Attorney-General can apply for trial by assessors; and the basis of that application is that a more fair and impartial trial can be had by judge and assessors than by judge and jury. So that it appears that if the case were to be tried the Attorney-General cannot apply for trial by assessors, as in the Freetown Supreme Court trial by assessors can only be had

(1) where accused himself applies for it; or

(2) where the Attorney-General applies for it on the grounds stated in section 40 of Cap. 38.

If that, then, is the case, how would this accused man be tried?

The more one goes into this matter the more one is convinced that it was never the intention of the legislature that criminal cases pending in the Provinces should be transferred to the Supreme Court in Freetown; and as I find no authority whereby a criminal committed to the Supreme Court in the Provinces can be transferred to the Supreme Court in Freetown during the sessions of that court in Freetown, I hold that the accused is not properly before the Supreme Court in Freetown. As I cannot take the plea of the accused, it follows that I cannot make any order in this case.

[SUPREME COURT]

Freetown
May 3,
1963

Dobbs Ag.J.

REGINA . . . . . *Respondent*

v.

RICHARD B. SAWYERR, ANNIE R. SAWYERR AND SAMUEL B. THOMAS . . . . . *Applicants*

[C.C. 124/63]

Criminal Law—Application for order of prohibition—Nolle prosequi—Whether formal discharge necessary—Whether defendants lawfully before court—Summary Conviction Offences Act (*Cap.* 37, *Laws of Sierra Leone*, 1960).

Nolle prosequi—Whether bar to antecedent charge of same offence on same facts—Meaning of "subsequent proceedings" in section 37 *of Criminal Procedure Act* (*Cap.* 39, *Laws of Sierra Leone*, 1960).

On January 22, 1963, the applicants appeared before the police magistrate at Freetown on charge No. 313, which alleged that they had assaulted one Boyzie John at Regent Village on January 1. They pleaded not guilty, and the case was adjourned to February 6 and then to March 7. On March 7, the applicants appeared, and the case was adjourned to March 21. As they were leaving the dock, a police sergeant arrested them inside the court. They went into the dock again and were there joined by two other defendants. Charge No. 1002, which was the same as charge No. 313, was read out to the five of them, and they all pleaded not guilty. The case was adjourned to March 21, on which date both cases were adjourned to April 3.

On April 3, case No. 313 was called first, and the magistrate announced that a nolle prosequi had been entered by the Acting Attorney-General. When case No. 1002 was called, counsel for the applicants objected that the nolle prosequi covered this case also. The magistrate reserved his decision until April 11, when he held that the nolle prosequi applied only to case No. 313. Case No. 1002 was then adjourned to May 10.

The applicants then applied to the Supreme Court for an order of prohibition to be directed to the police magistrate and the Commissioner of Police prohibiting them from proceeding further with the cases. They also asked that they be discharged from the charges.

Held, dismissing the application, (1) that the applicants were lawfully before the magistrate on charge No. 1002, since, "if a party is before a magistrate and he is then charged with the commission of an offence within the jurisdiction of that magistrate, the latter has jurisdiction to proceed with that charge without any information or summons having been previously issued, unless the statute creating the offence imposes the necessity of taking such a step."

(2) That the nolle prosequi effectively terminated case No. 313, even though the applicants were not formally discharged; and

(3) That case No. 1002 was a subsequent proceeding within the meaning of section 37 of the Criminal Procedure Act so as not to be banned by the entry of the nolle prosequi.

Cases referred to: *Reg.* v. *Hughes* (1879) 4 Q.B.D. 614; *Poole* v. *Reginam* [1960] 3 All E.R. 398.

Solomon A. J. Pratt for the applicants.

John H. Smythe, Acting Attorney-General (*Constant Davies* with him) for the respondent.