

10, 1953

IN THE PRIVY COUNCIL

No. 29 of 1952

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL

33577

B E T W E E N

J. O. IZUORA

Appellant

- and -

THE QUEEN

Respondent

UNIVERSITY OF LONDON
W.C.1.

9-NOV 1956

INSTITUTE OF ADVANCED
LEGAL STUDIES

RECORD OF PROCEEDINGS

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RECORD OF PROCEEDINGS

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL

B E T W E E N

J. O. IZUORA Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

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No. 1.

PROCEEDINGS IN COLE v COLE.

IN THE SUPREME COURT OF NIGERIA

IN THE SUPREME COURT OF THE BENIN JUDICIAL DIVISION,

HOLDEN AT OKENE

BEFORE THE HONOURABLE MR. JUSTICE MANYO-PLANGE,
O.B.E., PUISNE JUDGE.

TUESDAY THE 4th DAY OF SEPTEMBER, 1951.

PROBATE, DIVORCE AND ADMIRALTY DIVISION
(DIVORCE)

Suit No.B/34/1950.

CHARITY IBIYEMI COLE ... Petitioner

versus

JOSEPH ADEBAYO COLE ... Respondent

Parties present -

MR. ILORI for petitioner.

MR. IZUORA for respondent.

Adjourned to tomorrow 5/9/51 morning 9.30 a.m.
for judgment.

(Sgd) J.S.MANYO-PLANGE
4/9/51.

MR. IZUORA asks to be excused from appearing to-
morrow.

Application granted.

MR. ILORI also applies to be excused from appearing
tomorrow.

BY COURT. The Court cannot carry on with Counsel
for both parties absent. In the circumstances Mr.
Izuora's permission is withdrawn and Counsel for

In the Supreme
Court of
Nigeria.

No. 1.

Proceedings in
Cole v Cole
dated 4th & 5th
September 1951.

10

20

In the Supreme Court of Nigeria.

both parties are to attend tomorrow.

(Sgd) J.S.MANYO-PLANGE.
4/9/51.

No. 1.

Wednesday the 5th day of September, 1951.

Proceedings in Cole v Cole dated 4th & 5th September 1951 - continued.

Resumed from 4th September, 1951.

Parties present -

MR. ILORI for petitioner present.

MR. IZUORA for respondent absent.

MR. IZUORA has sent no communication to the Court and his client states he does not know where he is. Mr. Izuora contrary to Rule 11 of Order 16 of the Rules of the Supreme Court has without leave of the Court and before final judgment withdrawn from the case. He has also in defiance of and in contempt of the Court disobeyed the order of the Court to attend today.

10

ORDER: Mr. Izuora to be summoned to attend the Court personally at Benin to shew cause why he should not be committed for his contempt.

(Sgd) J.S.MANYO-PLANGE.
5/9/51.

20

No. 2.

Summons dated 10th September, 1951.

No. 2.

SUMMONS.

IN THE SUPREME COURT OF NIGERIA

IN THE SUPREME COURT OF THE BENIN JUDICIAL DIVISION,

Holden at Benin City.

Case No.M.8/1951.

IN THE MATTER of a CONTEMPT OF COURT by J.O.IZUORA Esquire, Barrister-at-Law, Benin City.

30

To: J.O.Izuora, Esquire,
Barrister-at-Law,
Benin City.

In the Supreme
Court of
Nigeria.

No. 2.

Summons dated
10th September,
1951.

- continued.

10

TAKE NOTICE that you are hereby summoned to appear before this Court at Benin City on Friday the 14th day of September, 1951, at 9 o'clock in the forenoon to show cause why you should not be committed for contempt of Court; the contempt being your failure, without leave of the Court, to attend the Court sitting at Okene on Wednesday the 5th day of September, 1951, in Suit No. B/34/50 - Cole versus Cole, in which you were engaged as Counsel for the Respondent, in defiance of the Court and in disobedience of an Order of Court made on Tuesday the 4th day of September, 1951, for Counsel for the parties to appear at the resumed hearing on the 5th day of September, 1951.

DATED at Benin City this 10th day of September, 1951.

20

(Sgd) J.S.MANYO-PLANGE,
Puisne Judge.

No. 3.

No. 3.

BAILIFF'S REPORT AND ORDER FOR SERVICE

IN THE SUPREME COURT OF NIGERIA

IN THE SUPREME COURT OF THE BENIN JUDICIAL DIVISION,

Bailiff's Report
and Order for
Service dated
14th September,
1951.

Holden at Benin City

Before The Honourable Mr. Justice Manyo-Plange,
O.B.E., Puisne Judge.

Friday the 14th day of September, 1951.

30

Case No.M.8/1951.

Title as No.2.

Bailiff reports that he has made several attempts to serve summons to show cause on respondent but has been unable to find the respondent to effect service on him.

In the Supreme Court of Nigeria.

No. 3.

Bailiff's Report and Order for Service dated 14th September, 1951.

- continued.

ORDER: Return date of summons to be extended to Tuesday 18th September, 1951, and service to be effected personally if respondent found before that date and, if not, service to be effected by the summons being left at respondent's office by leaving it with respondent's clerk or the person in charge thereof for the respondent.

(Sgd) J.S.MANYO-PLANGE.

14/9/51.

No. 4.

Proceedings dated 18th September, 1951.

No. 4.

10

PROCEEDINGS.

IN THE SUPREME COURT OF NIGERIA.

IN THE SUPREME COURT OF THE BENIN JUDICIAL DIVISION,

Holden at Benin City.

Before The Honourable Mr. Justice Manyo-Plange, O.B.E., Puisne Judge.

Tuesday the 18th day of September, 1951.

Case No.M.8/1951.

Title as No. 2.

Respondent present.

20

Respondent called upon to show cause why he should not be committed for contempt as cited in order to show cause.

MR. NELSON-WILLIAMS with him MR.MBANEFO for respondent show cause - No contumely intended by respondent. Matter due to misunderstanding. Court be lenient.

MR. MBANEFO addresses: Pleads for leniency as matter due to misunderstanding.

No. 5.JUDGMENT AND SENTENCE

In the Supreme
Court of
Nigeria.

No. 5.

Judgment and
Sentence dated
18th September,
1951.

10 I have heard all that has been said on behalf
of the respondent and the assurances of his Counsel
against future recurrence of such conduct. Had the
circumstances been different, I would have been more
disposed to take a lighter view of the matter; but
in this case, the respondent is a legal practition-
er, and an officer of the Court, and his conduct in
this instance was a direct defiance of the authority
of the Court, such conduct belittles the dignity
and authority of the Court and is apt to interfere
with the administration of justice which, it is my
first duty to prevent when and where possible.
Therefore it will be a failure of duty on my part
to overlook respondent's conduct. Had I had any
doubt in my mind as to any misunderstanding on the
part of the respondent, I would be more disposed to
take a more lenient view of respondent's conduct.
20 But for the respondent's inexperience, I would not
hesitate to commit him to prison. On account of
that inexperience and what has been said on his be-
half by his Counsel I do not propose in this in-
stance to impose any such severe punishment. Taking
everything into consideration I consider the author-
ity and dignity of the Court will be amply vindi-
cated by the imposition of a fine.

I accordingly fine respondent £10 or 2 months
imprisonment in default.

(Sgd) J.S.MANYO-PLANGE.
18/9/51.

30 £10 paid C.R.No.A345229
of 18/9/51.

No. 6.NOTICE OF APPEAL

IN THE WEST AFRICAN COURT OF APPEAL.

Title as No.2.

To the Registrar of the Supreme Court, Benin City.

I, Joseph Orakwue Izuora, Barrister and

In the West
African Court
of Appeal

No. 6.
Notice of
Appeal dated
27th September,
1951.

In the West African Court of Appeal

No. 6.

Notice of Appeal dated 27th September, 1951.

- continued.

Solicitor of the Supreme Court of Nigeria, having been convicted of the offence of a Contempt of Court and now living at Benin City do hereby give Notice of Appeal against my conviction (particulars of which hereinafter appear) to the Court on question of law, that is to say :-

- 1. The action of the defendant in the circumstances does not and cannot amount to Contempt of Court.
- 2. The Court has no jurisdiction to try the defendant. 10
- 3. The procedure for contempt was not followed.

(Sgd) J.O.IZUORA
Appellant.

PARTICULARS OF TRIAL AND CONVICTION

- 1. Date of trial 18th September, 1951.
- 2. In what Court tried .. Supreme Court, Benin City
- 3. Sentence ... £10 fine or 2 months imprisonment in default.
- 4. Whether above questions of law were raised at the trial ... No. 20

Received in the Supreme Court Registry at 9.25 a.m. on 27/9/51.

No.7.

No. 7.

Affidavit in support of Appeal dated 5th October, 1951.

AFFIDAVIT IN SUPPORT OF APPEAL
IN THE WEST AFRICAN COURT OF APPEAL.

Suit No.M.8/1951.

Filed at 9.25 a.m. on 8/10/51.

Title as No.2.

AFFIDAVIT

I, Joseph Orakwue Izuora. Solicitor of the

Supreme Court of Nigeria, Odiso Chambers, Benin City, African, make oath and say as follows :-

In the West
African Court
of Appeal

No. 7.

Affidavit in
support of
Appeal dated
5th October,
1951.

- continued.

- 10 1. That on the 4th August, 1951, I received a request from His Lordship the Judge, through his Registrar to appear at Okene on the 15th August, 1951, to defend an accused in a murder case. This request was made because I was appearing for the respondent in a divorce suit B/34/50 Charity A. Cole versus Joseph A. Cole, listed for the same session.
2. That I accepted the brief for this murder case and so proceeded on Thursday the 14th August, 1951, to Okene, a distance of about 141 miles away from my headquarters - Benin City.
- 20 3. That on the 15th of August, 1951, when both Counsel in the divorce suit B/34/50, appeared, His Lordship intimated that he would not be prepared to go on with the divorce matter, as he had two criminal cases on the list viz. a murder case, Rex versus Salami Omuya, in which I had accepted to defend the accused, and a manslaughter case in which there was no Counsel.
4. That His Lordship proposed to remain at Okene for 7 days, then proceed to Lokoja for another 7 days, and the divorce suit was then to stand over till the 31st August, 1951, for hearing.
- 30 5. That my proposal at this stage was therefore to conclude the murder case at Okene and proceed to my headquarters, and then return to Okene for the divorce matter on the 31st August, 1951.
6. That on the 15th August, 1951, His Lordship said he would like me to come to Lokoja also to defend an accused in another murder case.
7. That I reluctantly, but out of courtesy to the Court, agreed to go with His Lordship to Lokoja which is 186 miles away from my headquarters.
- 40 8. That on the 22nd of August, 1951, I proceeded to Lokoja for the murder case which was completed on the 29th of August, 1951, and I left on the 30th of August, 1951, back to Okene.
9. That on the 31st of August, 1951, the divorce case B/34/50 was started, and adjourned till

In the West
African Court
of Appeal

No. 7.

Affidavit in
support of
Appeal dated
5th October,
1951.

- continued.

Monday the 3rd September, 1951, for continuance
of hearing.

10. That on Monday the 3rd September, 1951, I received information that my house at Benin City was burgled, and that some of my properties, including my wife's Hand Sewing Machine, were stolen.
11. That being greatly upset by this information, coupled with the fact that there was a state of unrest in Benin, I approached His Lordship in Chambers, and told him that in view of the said news, I was not in the frame of mind to continue my case, and would ask to be permitted to withdraw, and that my client was in sympathy with the situation and could carry on the case to the end. 10
12. That His Lordship said he would have no objection to releasing me if my client would carry on the case without me.
13. That on the next day I repeated the application in open Court, and His Lordship called my client and asked him if he could conduct his case without me, to which my client replied in the negative. There was then only one witness remaining to conclude evidence in the case. 20
14. His Lordship then said to me, "You either refund your retaining to your client, or continue, but that I may consider it advisable to adopt the latter alternative as the Petitioner has only one witness to go and the case should finish by mid-day the following day, when you may go at once" or words to that effect I said that under the circumstances, I would wait till the following day to conclude the case and go. 30
15. That on the 4th of September, 1951, the case for the Petitioner and the Respondent was concluded. Counsel for the parties addressed the Court and the case was adjourned till the 5th of September, 1951, for judgment.
16. That out of courtesy for the Court, I asked for permission not to be present the following day to take judgment in view of the report I had received about my house in Benin City. 40

17. That His Lordship readily consented and permitted me to go. I felt at that stage that I had discharged my obligation to my client, as there was nothing else for me to do, and there was no instruction from the Court that my assistance would in any way be required in the matter.

In the West
African Court
of Appeal

No.7.

10 18. That shortly after, Counsel for the Petitioner also asked for leave not to be present at the judgment. His Lordship refused his request, and said that for no apparent reason both Counsel should appear, and thereafter the Court rose.

Affidavit in
support of
Appeal dated
5th October,
1951.
- continued.

19. That I considered the statement by the Court that both Counsel should appear as an advice and not an order. I was not aware it was entered in the record book. and no order was served on me to that effect.

20 20. That at Okene, I was accommodated at the C.M.S. Rest House, where I did my own catering, and I was already notified to vacate for other occupants on the 4th of September, 1951.

21. That in anticipation that I would go straight from the Court on the 4th of September, 1951, I had packed all my things into my car before going to Court.

30 22. That having concluded evidence and addressed Court, I considered my duty to my client had been accomplished and I told my client to appear the following day to take judgment, which my client readily agreed to.

23. That I had been away from my station for three weeks during which I had lived under very arduous conditions.

40 24. That on Friday the 14th September, 1951, my clerk was served with a summons addressed to me to appear on Tuesday the 18th September, 1951, to show cause why I should not be committed for contempt of Court, the contempt being my failure to attend Court on 5/9/51 to take the judgment in the divorce suit.

25. That in response to the said summons, I appeared before His Lordship on the 18th September, 1951, when he committed me for contempt of Court, and

In the West African Court of Appeal

sentenced me to a fine of £10 or two months imprisonment.

26. That I make this affidavit in support of my appeal.

No.7.

(Sgd) J.O.IZUORA.

Deponent.

Affidavit in support of Appeal dated 5th October, 1951.
- continued.

Sworn to at the Supreme Court Registry, Benin City this 5th day of October, 1951.

Before me,

(Sgd) E.D.A.JAJA.

Commissioner for Oaths.

10

No.8.

No. 8.

Proceedings on Appeal dated 9th and 23rd November 1951.

PROCEEDINGS ON APPEAL

IN THE WEST AFRICAN COURT OF APPEAL

Holden at Lagos, Nigeria.

FRIDAY THE 9th DAY OF NOVEMBER, 1951.

BEFORE THEIR LORDSHIPS

SIR JOHN VERITY, CHIEF JUSTICE NIGERIA
ACTING PRESIDENT

ARTHUR LEWEY, JUSTICE OF APPEAL

OLUMUYIWA JIBOWU - ACTING SENIOR PUISNE
JUDGE, NIGERIA.

W.A.C.A.3645.

Title as No.2.

F.R.A.WILLIAMS holding MBANEFO'S brief asks for adjournment to 23.11.51.

Adjourned to 23.11.51.

(Sgd) JOHN VERITY
Acting President.

FRIDAY THE 23rd DAY OF NOVEMBER, 1951

20

30

MBANEFO for appellant (F. R. A. WILLIAMS, MUNIS & JIBRIL MARTIN with him).

MBANEFO: Appeal from Supreme Court Benin Division against order sentencing appellant to fine of £10 for contempt of Court. Page 5 - Order of the Court. Page 2 summons. Quasi appeal lodged dismissed in re Poku & another as to right of appeal in matter of contempt.

In the West African Court of Appeal

No.8.

This case is distinguishable. There is a right of appeal.

Proceedings on Appeal dated 9th and 23rd November 1951.
- continued.

- 10 1. Not a criminal contempt or on border line. Distinction between civil and criminal finely drawn.
- 2. Jurisdiction - if no jurisdiction there is a right of appeal. Halsbury 2nd Edition Vol.VII, page 54.

Where no jurisdiction - Court of Appeal will hear appeal.

Contempt in procedure is prosecuted as a criminal contempt.

No.9.

No.9.

ORDER STRIKING OUT PROCEEDINGS.

Order striking out Proceedings dated 23rd November 1951.

20 In view of the judgment of this Court in the matter of Poku & another, it is apparent that no appeal can be brought under section 10 of the West African Court of Appeal Cap. 229 in such a matter as the present. There is no appeal therefore before this Court and the proceedings are struck out.

(Sgd) JOHN VERITY

Chief Justice, Nigeria.

In the West African Court of Appeal

No. 10.

JUDGMENT IN THE CASE OF POKU AND JANTUAH.

IN THE WEST AFRICAN COURT OF APPEAL

Holden at Lagos

FRIDAY THE 16th DAY OF NOVEMBER, 1951.

BEFORE THEIR LORDSHIPS

SIR JOHN VERITY, CHIEF JUSTICE NIGERIA,
ACTING PRESIDENT.

ARTHUR LEWEY, K.C., JUSTICE OF APPEAL
OLUMUYIWA JIBOWU, ACTING SENIOR PUISNE
JUDGE, NIGERIA.

10

GEORGE GILMOUR ROBINSON, PUISNE JUDGE,
NIGERIA.

JAMES REALI GREGG, PUISNE JUDGE, NIGERIA.

W.A.C.A.3640.

IN THE MATTER OF THE COMMITTAL FOR
CRIMINAL CONTEMPT OF COURT OF BEDIAKO
KAKARI POKU AND JOHN ERNEST JANTUAH

- and -

IN THE MATTER OF SECTION 19 OF THE WEST
AFRICAN COURT OF APPEAL ORDINANCE CAP.5

20

J U D G M E N T

(Delivered by Sir John Verity, Ag.P.)

This is a reference by the Governor of the Gold Coast purporting to be made under section 19 of the West African Court of Appeal Ordinance (Cap. 5 of the Laws of the Gold Coast 1936) which provides that the Governor may refer to this Court either the whole case or any point rising therefrom on the consideration or any petition for the exercise of the prerogative of mercy "having reference to the conviction of a person by or in the Supreme Court... or to the sentence (other than sentence of death) passed on a person so convicted

30

The petition in the present matter has reference to the committal of the petitioners by the

Supreme Court for a contempt of Court in the nature of what is known as "criminal contempt".

In the West
African Court
of Appeal

The first point referred by the Governor is whether this Court has jurisdiction to entertain a reference under section 19 in such a case.

—————
No.10.

10 The question is one of considerable importance for, having regard to the provisions of section 9 of the Ordinance which are substantially the same in relation to the right of appeal as are those of section 19 in relation to a reference thereunder, the opinion of this Court on the point first referred by the Governor will in effect determine also whether in such a case as the present there is a right of appeal to this Court. The reference was considered by a full Court of five Judges and argument was addressed to the Court by Crown Counsel for the Gold Coast, Counsel for the petitioners and by the Acting Solicitor-General of Nigeria at the request of the Court as amicus curiae.

Judgment in the
case of Poku
and Jantuah
dated 16th
November 1951.
- continued.

20. After hearing Counsel we held that this Court has no jurisdiction to entertain a reference under section 19 where the petition for the exercise of the prerogative of mercy refers to a committal for contempt of Court and stated that we would give our reasons at a later date.

30 In the first place it is clear that the contempt in the present case is what is known as a criminal contempt and it is equally clear from the authorities cited to us that any proceedings leading to committal therefor are, for the purpose of determining whether there is in England a right of appeal to the Court of Appeal, proceedings in a criminal cause or matter. There can be no doubt, moreover, that a number of eminent Judges have described a committal for criminal contempt as "in effect summary conviction for an offence against the law" (Willes, J., in *Ex parte Fernandez* (1863) L.A.C.C.P. Vol.13 (N.S.) p.321) of "summary conviction for a criminal offence" (Lindley L.J., *O'Shea v. O'Shea and Parnell* (1890) 15 P.D., p.59).

40 The real issue in the present matter, is however, not whether it is a criminal cause or matter and not whether a committal therein may be described as a summary conviction, but whether the statute creating a right of appeal in criminal cases confers such a right upon any persons so committed. It is

In the West
African Court
of Appeal.

conceded that in England that Court of Criminal Appeal Act 1907 confers no such right but it is submitted that the Gold Coast Ordinance (Cap.5) does so.

No.10.

Judgment in the
case of Poku
and Jantuah
dated 16th
November 1951.
- continued.

In the King v. Animashaun (4. W.A.C.A. p.144) the learned Judges of this Court who entertained the appeal appear to have held the view that the Nigerian Statute analogous to the Gold Coast Ordinance and expressed in similar if not identical words, does confer this right on persons committed for criminal contempt and therefore by analogy the statute would confer on the Governor the power to refer such a case, and upon this Court the jurisdiction to entertain it. Counsel did not appear to rely upon this decision but nevertheless it is right that we should give it consideration. The appeal was from a summary conviction for perjury under section 42 of the Criminal Procedure Ordinance then in force in Nigeria, an enactment which provided (inter alia) that when it appeared to the Court that any person had been guilty of perjury in proceedings before it, the Court might try him summarily "as for a contempt of Court". With great respect for the learned Judges who decided that case we are nevertheless of the opinion that they were led by a misinterpretation of these words to the conclusion that the issue before them was whether there was an appeal from a committal for contempt. In our view the words "as for a contempt of Court" do not refer to the nature of the offence nor the nature of the proceedings, which remains a summary trial for the criminal offence of perjury. The words are purely procedural and substitute in such cases a particular form of procedure for the ordinary procedure under the Ordinance. While therefore it is beyond doubt that it was rightly decided that an appeal lay from a summary conviction for perjury we are not able to adopt or follow the ratio decidendi which we think inapplicable to the real question which falls for determination.

It is clear nevertheless from the judgment in that case that the learned Judges held the view that the Nigerian West African Court of Appeal Ordinance confers a right of appeal against a committal for contempt of Court and although their observation in this regard should, we think, be treated as obiter, they are entitled to examination. Their Lordships observed that -

"The reason why no appeal lies in England is the general rule that no appeal on the merits lies from a summary conviction for a criminal offence in the High Court. But here the law on this point is the opposite, having been changed in 1933. By the wide terms of section 9 of the West African Court of Appeal Ordinance the legislation (sic) has deliberately conferred upon all convicted persons the rights given by the section regardless of whether the conviction be had upon information or summarily".

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In the West
African Court
of Appeal

—————
No. 10.

Judgment in the
case of Poku
and Jantuah
dated 16th
November 1951.
- continued.

We would observe in passing that we do not find ourselves altogether in agreement with the learned Judges as to the reason which they ascribe for the absence of such a right of appeal in England, nor with their statement that here the law is "the opposite". Nor can we agree that section 9 of the Ordinance confers a right of appeal "upon all convicted persons regardless of whether the conviction be had upon information or summarily", for neither in the Nigerian nor in the Gold Coast Ordinance does the relevant section confer any right of appeal to this Court from summary conviction before a Magistrate. Nevertheless it is apparent, we think that the learned Judges had in mind the fact that while the English statute confers a right of appeal upon any person convicted "upon indictment or information" the local statutes omit these words and instead confer the right upon any person convicted "by or in the Supreme Court" (Nigeria) or "by or in a Divisional Court or by any Judge" (Gold Coast). It was apparently their Lordships' view that this difference determined the matter, and indeed it is this view that is urged by Counsel.

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30

We do not think that the question can be dealt with so simply, more especially when it is borne in mind that the omission of the words "upon indictment or information" in the local statute may readily be explained, not upon the supposition that the legislature intended to extend the scope of the enactment beyond that of the statute upon which it is modelled, but because the procedure in criminal proceedings in the Supreme Court of the Gold Coast and of Nigeria would make inapt the use of the words "indictment or information". No cases are tried upon indictment in the Supreme Court and cases therein are not necessarily tried upon information, for by the Criminal Procedure Ordinance (Cap. 10)

40

In the West
African Court
of Appeal.

it is provided that ordinary criminal cases may be tried summarily in the Supreme Court.

No. 10.

Judgment in the
case of Poku
and Jantuah
dated 16th
November 1951.
- continued.

Counsel did not indeed go so far as to submit that it was the express intention of the legislature to confer a right of appeal in the Gold Coast in criminal cases which does not exist in England, or, for instance in Trinidad where such cases are tried upon indictment in the Supreme Court and the local Ordinance is identical in respect of criminal appeals with the English Act. He did submit, however, that by the omission of the words "upon indictment or information" the legislature had "let in" appeals in cases of the present kind.

10

Where the Court is called upon to interpret enactments the terms of which may be found to be ambiguous, it is proper to look to the general intention of the statute and in Nokes v. Doncaster Amalgamated Collieries (1940) A.C. 1014, it was said ".... Where, in construing general words the meaning of which is not entirely plain there are adequate reasons for doubting whether the legislature could have been intending so wide an interpretation as would disregard fundamental principles then we may be justified in adopting a narrower construction". So, as is pointed out by the learned author of Maxwell on Interpretation of Statutes, where sec.19 of the Judicature Act 1873 gave the Court of Appeal jurisdiction to hear appeals from "any judgment or order" save as thereafter mentioned, it was held that this did not give an appeal against an order of discharge of a prisoner on habeas corpus. It was so held in Cox v. Hakes (1890) 15 App. Cas. 506, partly on the ground that an order would be ineffective and partly on the ground that so important a change in the law was not contemplated by the legislature. It is indeed necessary that general words should not be so interpreted as to carry the effect of any specific provision beyond the scope of the statute, for as the same learned author says (at p.85) it is regarded "as more reasonable to hold that the legislature expressed its intention in a slovenly manner than that a meaning should be given to them which could not have been intended".

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30

40

We do not consider that it would be in accordance with the canons of good construction, therefore, to assume that in adapting to local procedure

an earlier English statute upon which the Ordinance is patently modelled, the legislature intended, without the use of language clearly directed to that end, to extend the application and scope of the Ordinance to matters to which the original statute did not refer, and using the words of Counsel, to "let in" in such other matters.

In the West
African Court
of Appeal.

No.10.

Judgment in the
case of Poku
and Jantuah
dated 16th
November 1951.
- continued.

10 More especially is this so when by a consideration of the succeeding sections of the Ordinance it becomes apparent, as we think, that the section conferring a right of appeal was intended to confer that right only in cases which there is a verdict based upon evidence (sec. 10) an information or charge, a trial by Judge or jury, the possibility of substituting a verdict for some other offence, a special verdict, a verdict of guilty but insane, (sec.11) orders for the payment of compensation (sec.12) and other matters of procedure and of powers readily applicable to the hearing of appeals
20 from convictions upon trial in accordance with the rules of procedure in ordinary criminal cases but by no means applicable to summary committals for contempt.

30 It is obvious that this must be so for all these provisions are taken from the English statute which has no application to such committals, and so careful has the legislation been to make provision for the variety of questions that may arise in the trial of ordinary criminal cases and appeals from convictions therein that it would in our opinion be giving to section 9 a meaning which could not have been intended were we to hold that the scope of the statute was extended to "let in" matters for which no such provision has been made.

40 In our view the Ordinance is intended to apply and does apply to ordinary criminal cases the proceedings in which follow the procedure laid down by the law relating to the procedure in criminal cases (Cap.10) of the Laws of the Gold Coast). It is patent that committals for contempt of a criminal nature are not conducted in accordance with such procedure, which has no relation to them. The powers of the Court in such matters are specifically excluded from the operation of the Criminal Code (Cap. 9 sec.12) where in it is to be observed that in relation to other matters excluded, reference is made to the trial and punishment of persons, whereas in

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regard to contempt of Court no trial is mentioned. Clearly therefore the statutes recognize that such powers are not exercised under the Criminal Code or the Criminal Procedure Code and cannot be deemed therefore to be exercised in such ordinary criminal cases as those in which alone the right of appeal is conferred by the West African Court of Appeal Ordinance.

That committals for criminal contempt are not such cases has indeed been recognised by the Judicial Committee of the Privy Council which, while making it clear that appeals in such cases may be entertained by His Majesty in Council in exercise of what was described by Lord Atkin in Ambard v. Attorney-General of Trinidad and Tobago (1936) A.C. p.322. as "the general prerogative of the Crown to review all judicial decisions of Courts of record in the Dominions overseas whether civil or criminal", has held that, as was said by Lord Goddard in Parashuram Detaram Shamdasani v. The King-Emperor (1945) A.C. p.264, in regard to such a contempt, "although this matter is known as a criminal contempt it obviously is in a different category from an ordinary criminal case". 10 20

As in our view the scope of the Ordinance (Cap. 5) does not extend beyond the category of the ordinary criminal case to which alone its provisions are intended to apply, we are of the opinion that a committal for contempt of Court is not a "conviction" within the meaning of section 9 of the Ordinance, and that same word as used in section 19 has no more extended meaning than in section 9. It follows therefore that when the legislature in section 19 conferred upon the Governor power to refer to this Court cases arising from petitions having reference to the conviction of persons by or in the Supreme Court such power was conferred only in cases in which the convictions were had in the course of ordinary criminal proceedings, and not in such a case as the present matter which is in a different category and not within the scope of the Ordinance. 30 40

As we must hold that the Governor's power to refer does not extend to the present case we held that this Court has no jurisdiction to entertain the reference. The second part of the reference

did not therefore arise.

(Sgd) JOHN VERITY
Acting President.

(Sgd) ARTHUR LEWEY
Justice of Appeal.

(Sgd) OLUMUYIWA JIBOWU
Acting Senior Puisne Judge.

(Sgd) G. G. ROBINSON
Puisne Judge, Nigeria.

(Sgd) JAMES REALI GREGG
Puisne Judge, Nigeria.

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No. 11.

ORDER GRANTING SPECIAL LEAVE TO APPEAL
IN THE PRIVY COUNCIL.

In the Privy
Council.

No.11.

AT THE COURT AT BUCKINGHAM PALACE
The 24th day of JUNE, 1952.

Order granting
Special Leave
to Appeal dated
24th June 1952.

PRESENT:

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT
EARL DE LA WARR
EARL FORTESCUE
MR. THORNEYCROFT

MR. MACLEOD
MR. MACLAY
SIR CHARLES MACANDREW

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WHEREAS there was this day read at the Board
a Report from the Judicial Committee of the Privy
Council dated the 27th day of May 1952 in the words
following viz :-

"WHEREAS by virtue of His late Majesty King
Edward the Seventh's Order in Council of the 18th
day of October 1909 there was referred unto this
Committee a humble Petition of Joseph Orakwue Izuora
in the matter of an Appeal from the West African
Court of Appeal between the Petitioner Appellant
and Your Majesty Respondent setting forth (amongst
other matters): that the Petitioner is a Barrister
and Solicitor practising in the Supreme Court of

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In the Privy Council.

No.11.

Order granting Special Leave to Appeal dated 24th June 1952. continued.

Nigeria: that the Petitioner was engaged as Counsel in a case in the Supreme Court of the Benin Judicial Division of the Supreme Court of Nigeria holden at Okene: that on 4th September 1951 evidence and argument having been concluded the Court adjourned until the following day for Judgment whereupon the Petitioner asked to be excused from appearing at the adjourned hearing and the application was granted: that thereupon counsel for the other party in the case made a similar application and the Court then stated that it could not carry on with counsel for both parties absent and in the circumstances withdrew the Petitioner's permission to be absent and stated that Counsel for both parties were to attend at the adjourned hearing: that the Petitioner did not attend at the adjourned hearing and in consequence a summons was issued dated the 10th September 1951 to show cause why he should not be committed for contempt of Court for failing to attend the adjourned hearing: that on the 18th September 1951 the Petitioner appeared before the Court and by his Counsel made apology and asked for leniency but was found guilty of contempt of Court and was fined £10 or two months' imprisonment in default: that the Petitioner then appealed to the West African Court of Appeal primarily on the ground that his action did not and could not amount to contempt of Court: that on 23rd November 1951 the Court of Appeal struck out the proceedings: that the grounds for their Judgment were stated as follows: 'In view of the Judgment of this Court in the matter of Poku and Another it is apparent that no Appeal can be brought under section 10 of the West African Court of Appeal Ordinance Cap.229 in such a matter as the present. There is no appeal therefore before this Court and the proceedings are struck out': that the Appeal appears to have been struck out on two grounds, viz: (1) that the Petitioner was guilty not only of contempt but of criminal contempt and (2) that being a criminal matter there is yet no right of Appeal because it was not 'an ordinary criminal case': And humbly praying Your Majesty in Counsel to grant the Petitioner special leave to appeal from the Order of the West African Court of Appeal dated the 23rd November 1951 and from the Order of the Supreme Court of Nigeria dated the 18th September 1951 or for such other Order as to Your Majesty in Council may seem proper:

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"THE LORDS OF THE COMMITTEE in obedience to

10 His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Order of the West African Court of Appeal dated the 23rd day of November 1951 and the Order of the Supreme Court of Nigeria dated the 18th day of September 1951:

"AND THEIR LORDSHIPS do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same."

20 HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

WHEREOF the Governor or Officer administering the Government of Nigeria for the time being and of all other persons whom it may concern are to take notice and govern themselves accordingly.

(Sgd) F. J. FERNAU.

In the Privy Council.

No.11.

Order granting Special Leave to Appeal dated 24th June 1952.
- continued.

IN THE PRIVY COUNCIL

No. 29 of 1952

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL

B E T W E E N

J. O. IZUORA Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

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Solicitors for the Appellant.

MESSRS. BURCHELLS,
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Solicitors for the Respondent.