

*Privy Council Appeal No. 17 of 1934.*

David Evaristo Akerele - - - - - *Appellant*

*v.*

The King - - - - - *Respondent*

FROM

THE SUPREME COURT OF NIGERIA.

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REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 5TH  
JULY, 1934.

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*Present at the Hearing :*

LORD TOMLIN.  
LORD RUSSELL OF KILLOWEN.  
LORD MACMILLAN.  
LORD ALNESS.  
SIR LANCELOT SANDERSON.

[*Delivered by* LORD MACMILLAN.]

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At the conclusion of the hearing of this appeal their Lordships intimated that they would humbly advise His Majesty that the appeal should be allowed and that the convictions and sentences appealed from should be set aside. Their Lordships now state their reasons for so advising.

The appellant was charged in the District Court of Lagos (1) with forging a Government tender and (2) with fraudulently uttering the forged tender, contrary to sections 467 and 468 respectively of the Criminal Code. He was tried summarily before a Police Magistrate, who on 20th March 1933 found him guilty on both charges and sentenced him to nine months imprisonment with hard labour in respect of the first charge and to six months' imprisonment with hard labour in respect of the second charge, the sentences to run concurrently.

The only question with which their Lordships are concerned is whether the Police Magistrate had jurisdiction to try the case summarily and pronounce the sentences which he did.

The Police Magistrate was *ex officio* a commissioner of the court and the jurisdiction of commissioners in criminal matters is defined by section 45 of the Supreme Court Ordinance as follows :—

“ 45. In criminal matters, every commissioner shall have jurisdiction for the summary trial and determination of criminal cases, that is to say,

Where any person is charged with any offence or act punishable either by fine not exceeding fifty pounds or by imprisonment not exceeding six months or by both ;

Where any person is charged with any offence or act punishable or in respect of which any penalty may be recovered, or order made for the payment of money according to law upon summary conviction ;

Where any person is charged with any offence appearing to be of such nature that if proved it would be adequately punished with any one or other of the following punishments, viz. :—imprisonment for not more than six months, or fine not exceeding fifty pounds, such fine in default of payment to be enforced by distress or by imprisonment for not more than six months . . . ”

The next section of the Ordinance reads as follows :—

“ 46. The Chief Justice may, by special order under his hand and the seal of the Court, authorise an increased jurisdiction in civil or criminal matters, or in both, to be exercised by a commissioner to the extent specified in the said order. Such special order may at any time be revoked by the Chief Justice by an instrument under his hand and the seal of the Court, but no such revocation shall prejudice the issue of a new special order in the same or in different terms to the same commissioner or to the person acting temporarily as his substitute.”

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By an order dated 24th February, 1928, purporting to be made under the provisions of section 46 of the Supreme Court Ordinance, the then Chief Justice (Sir Ralph Combe) ordered *inter alia* as follows :—

“ I hereby authorise an increased jurisdiction, viz. :—

(A) In criminal matters, jurisdiction to inflict punishment up to a fine not exceeding £100 or imprisonment for a term not exceeding twelve months or both to be exercised by all Police Magistrates and Acting Police Magistrates, by all Station Magistrates and Acting Station Magistrates, by the District Officer for the Colony and by the Commissioners of the Supreme Courts at Epe, Badagry and Kaduna ”

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On his conviction, the appellant asked for and obtained a stated case to the Appeal Court on the grounds *inter alia* that the Magistrate was wrong in law in trying the appellant summarily and in sentencing the appellant to nine months' imprisonment with hard labour on the first count. The appeal was heard by Sir Donald Kingdon, C.J., sitting as a Divisional Court, and was dismissed on the 15th April, 1933. The learned Chief Justice held that upon the correct interpretation of sections 45 and 46 of the Supreme Court Ordinance and the order of Chief Justice Combe of the 24th February, 1928, the Magistrate had jurisdiction to try the case summarily and that the Magistrate was empowered by the provisions of these sections and the order of the 24th

February, 1928, to inflict the punishment of nine months' imprisonment on the first count.

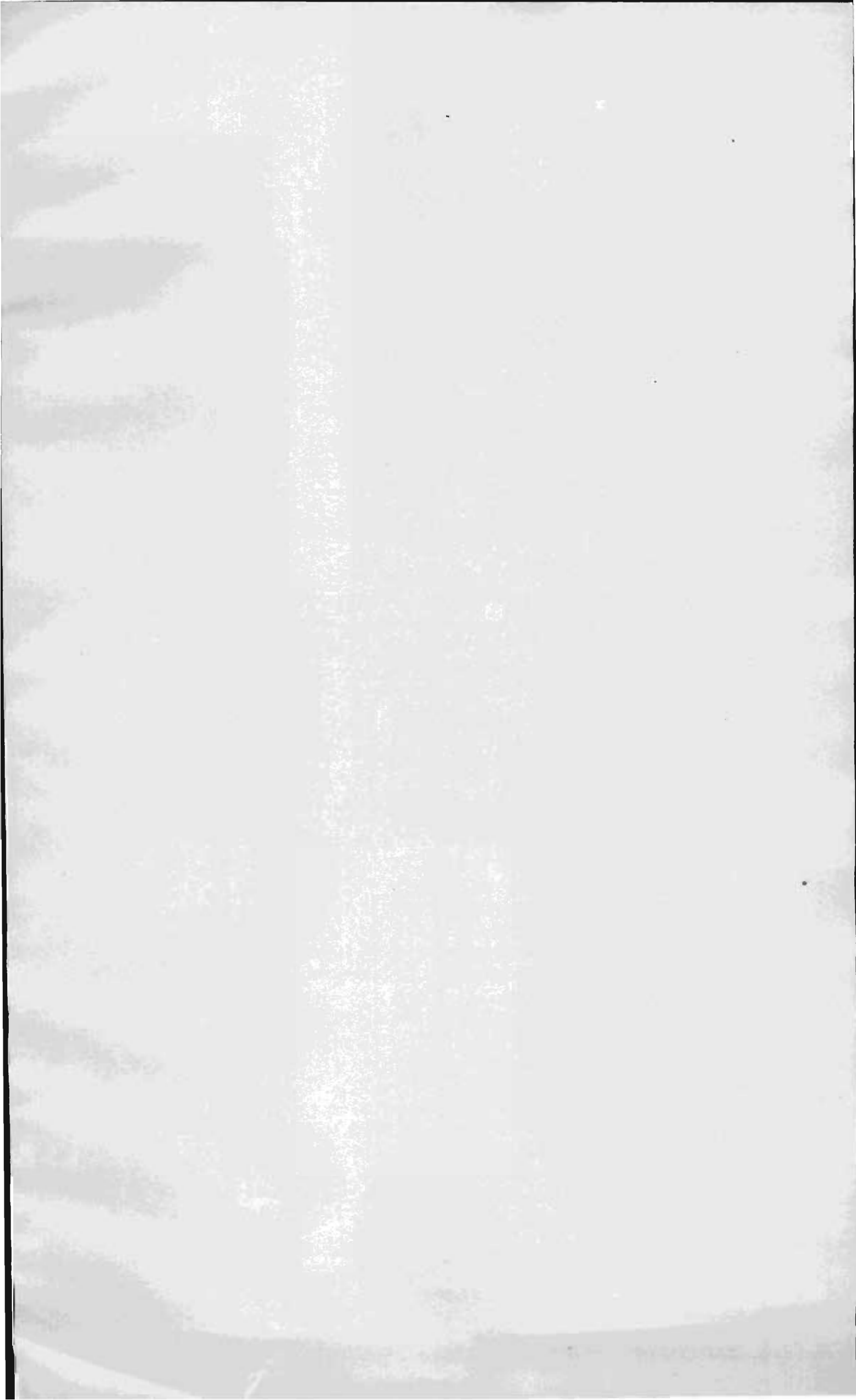
The judgment of the learned Chief Justice does not deal with the question which became the main topic of argument before their Lordships, namely, whether the order of the 24th February, 1928, had been competently made. The appellant, however, in his case to this Board expressly states that the point was argued at the hearing before the Divisional Court.

The Magistrate, in deciding to try the case summarily, did so because, in the exercise of the discretion conferred upon him by the third paragraph of section 45, the offences with which the appellant was charged appeared to him to be of such a nature that if proved they would be adequately punished by a punishment within his competence, which he conceived to extend, in virtue of the order of 24th February, 1928, to a fine of £100 or imprisonment for twelve months. The sentence of nine months' imprisonment which he pronounced in respect of the first charge was, of course, also dependent for its justification on the validity of the order of the 24th February, 1928. In their Lordships' opinion, section 46 of the Supreme Court Ordinance did not empower the Chief Justice to make a general order in the terms of the order of 24th February, 1928, increasing the criminal jurisdiction of all Police Magistrates indiscriminately. The power conferred on the Chief Justice by section 46 is to make a "special order" increasing the jurisdiction to be exercised, not by commissioners generally, but, "by a commissioner." That the special order is intended to be applicable to an individual and not to a class is put beyond doubt by the second sentence of section 46, which provides that where a special order is revoked, this is not to prejudice "the issue of a new special order . . . to the same commissioner." The power conferred on the Chief Justice is plainly one intended to meet cases of special urgency or emergency and enables him to issue to an individual commissioner a special order increasing his civil or criminal jurisdiction to any extent specified in the order. It would certainly have been remarkable if the Ordinance had given the Chief Justice an unlimited power to increase at his own hand the jurisdiction, civil and criminal, of all commissioners to any extent and presumably to confer on all commissioners the power to try summarily cases which might be punished by such penalties, however extended. The order of the 24th February, 1928, was thus in their Lordships' opinion, *ultra vires* of the Chief Justice who made it. Consequently, the decision of the Police Magistrate to try the present case summarily and the sentence of nine months' imprisonment, which he passed on the appellant in respect of the first charge, which decision and sentence both proceeded on the assumption of the validity of the order of 24th February, 1928, were unjustified. Their Lordships find it unnecessary to express any opinion on the question of the interpretation of the terms of the order, and have

proceeded on the assumption that if it had been *intra vires* it would have effectively extended the jurisdiction of the Police Magistrate, so as to justify him in trying the case summarily and pronouncing the sentence on the first count, which he did.

Counsel for the Crown sought to find an alternative justification in section 71 of the Criminal Procedure Ordinance, which provides that "if it shall appear to the Court in the course of a preliminary investigation that the offence is of such a nature that it can be suitably dealt with under the powers in criminal cases possessed by the Court, the Court may . . . hear and finally determine the matter and either convict the accused or dismiss the charge." But this section merely empowers the Court which is conducting a preliminary investigation to proceed to dispose of the charge then and there if it appears to the Court that the offence is of such a nature that it can be suitably dealt with under the powers possessed by the Court conducting the preliminary investigation. The section does not enlarge these powers and is consequently of no avail to the Crown for the present purpose.

Their Lordships at the hearing were accordingly of opinion that they should humbly advise His Majesty that the appeal should be disposed of as above stated.



In the Privy Council.

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DAVID EVARISTO AKERELE

THE KING.

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DELIVERED BY LORD MACMILLAN.

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