

ANNAMALE *v.* THE POLICE

[Appellate Jurisdiction (Seton, C.J.) February 5th, 1948]

*Ss. 209 (2) and 265 of the Penal Code—criminal trespass—common assault—several accused tried together.*

The appellant was convicted of the offence of criminal trespass and common assault contrary to sections 209 (2) and 265 of the Penal Code by the Chief Magistrate, Suva. Arising out of the same facts three other persons were charged with assaults upon the appellant.

At the request and with the consent of the parties all the charges were tried together.

On appeal against conviction.

**HELD.**—The Court had no jurisdiction to try the charges against the appellant jointly with the charges against the other three defendants.

Cases referred to:—

*R. v. Dennis* [1924] 1 K.B. 867.

*R. v. Brett & Parish* (1848) 3 Cox C.C. 79.

*R. v. Parker* [1924] 1 K.B. 867.

*S. Hasan* for the appellant.

*G. J. Horsfall*, Acting Solicitor-General, for the respondent.

**SETON, C.J.**—The appellant appeals on a number of grounds but it is only necessary to deal with one of them, namely, that the Court had no jurisdiction to try the charges against the appellant jointly with the charges against the other three defendants. This appears to be the case although curiously enough, neither Counsel for the appellant nor Counsel for the Crown have been able to cite any decided case on the point so far as regards proceedings in Courts of Summary Jurisdiction. Mr. Hasan for the appellant has however referred to the case of the *King v. Dennis* and the *King v. Parker* [1924] 1 K.B. 867, from which it is clear that two persons charged in separate indictments cannot be tried together even with their consent, a previous decision on the subject, *Brett & Parish* (1848) 3 Cox C.C. 79, being completely overruled.

It seems to me, as Mr. Hasan has argued, that the principle must be the same whether the case is one of a joint trial of two persons charged on separate indictments or a joint trial of two persons charged on separate informations or charges in a Magistrate's Court. Accordingly I feel obliged to hold that the trial was a nullity with the result that the verdict and sentence must be expunged from the record.