

## R. v. YAMBAYAMBA AND SAMPA.

A CRIMINAL REVIEW CASE OF 1933.

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*Leave of Court necessary before witness may be treated as hostile by side calling him—procedure where witness is cross-examined as to evidence given at preliminary inquiry—right of one accused person to cross-examine another person jointly accused in certain circumstances—two persons jointly charged having separate defences should be defended by different counsel.*

In this case helpful direction is given in connection with the procedure in criminal prosecutions, relating to a hostile witness.

The right of one accused person to cross-examine another person jointly accused where the latter has given evidence incriminating the former was established by the decision in *Rex v. Hadwen and Ingham* (1902) 1 K.B. 882.

As to treating a witness as hostile see also *R. v. Ali Chembe* 5 N.R.L.R. 612.

**Hall, J.:** Before a Crown witness can be cross-examined by the prosecution, i.e., be treated as a hostile witness, the leave of the Court has to be obtained.

When a witness is cross-examined as to what he or she said at the preliminary enquiry, the following is the procedure:

- (a) Did you give evidence at the preliminary enquiry ?
- (b) Was your statement taken down in writing and read over to you ?
- (c) Did you sign it ?

On affirmative answers having been received to these questions, the exact words used in the deposition are then put to the witness. Subsequently the deposition is put in evidence and read over in the presence of the accused.

The second accused gave evidence incriminating the first accused, therefore the first accused or his representative should have had an opportunity of cross-examining the second accused. Failure so to allow was a serious omission and might have vitiated the trial if there had not been ample evidence aliunde. As the two accused had separate defences, they should have been separately defended if possible. If two officers were not available to defend, possibly it might have been better to let both accused defend themselves with the assistance of the Magistrate from the bench. It was impossible for one man to run both the defences in the circumstances of the case.

