IN THE PRIVY COUNCIL

39, 1960

No. 24 of 1959

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

(1) ANGELINA AREFUNWON
(2) CATHERINE AYODELE
(3) SAMUEL S.I. WRIGHT DE SOUZA

Defendants/Appellants

- and -

(1) SALLY SHOLA BARBER
(2) EMILY LANDE BARBER
(3) HENRIETTA YETUNDE BARBER
(4) SAMUEL BANDELE BARBER
(5) BEN LOLADE BARBER

Plaintiffs/Respondents

RECORD OF PROCEEDINGS

HATCHETT JONES & CO.,
90, Fenchurch Street,
E.C.3.
Solicitors for the Appellants.

53003

UNIVERSITY OF LONDON
W.C.1.
- 7 FEB 1961
INSTITUTE OF ADVANCED
LEGAL STUDIES

IN THE PRIVY COUNCIL No. 24 of 1959

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N

(1) ANGELINA AREFUNWON
(2) CATHERINE AYODELE
(3) SAMUEL S.I. WRIGHT DE SOUZA
Defendants/Appellants

- and -

(1) SALLY SHOLA BARBER
(2) EMILY LANDE BARBER
(3) HARRIETTA YETUNDE BARBER
(4) SAMUEL BANDELE BARBER
(5) BEN LOLADE BARBER Plaintiffs/Respondents

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

E X H I B I T S

LIST OF DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL BUT NOT REPRODUCED

Description of Document	Date
High Court of Lagos	
Registrars Statement	
Registrars Note	4th January 1954

Description of Document	Date
Motion on Notice for leave to Appeal against Judgment of 1st March 1954	8th March 1954
Affidavit in support of Motion	8th March 1954
Order refusing leave to Appeal	15th March 1954
Note of relevant documents for Record of Appeal to the Federal Supreme Court	August 1957
Certificate of Service of Notices of Appeal and compliance with conditions of Appeal	-
Motion on Notice for Conditional Appeal to Her Majesty's Privy Council	29th May 1958
Affidavit in support of Motion for Conditional leave to Appeal	29th May 1958
Order giving Conditional leave to Appeal to Her Majesty in Council	23rd June 1958
Motion on Notice for final leave to appeal to Her Majesty's Privy Council	12th August 1958
Affidavit in support of Motion	14th August 1958
Order adjourning Motion	1st September 1958
Affidavit of Service of Notice of Motion	4th September 1958

IN THE PRIVY COUNCIL No. 24 of 1959

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N :-

(1) ANGELINE AREFUNWON
(2) CATHERINE AYODELE
(3) SAMUEL S.I. WRIGHT DE SOUZA
Defendants/Appellants

- and -

(1) SALLY SHOLA BARBER
(2) EMILY LANDE BARBER
(3) HENRIETTA YETUNDE BARBER
(4) SAMUEL BANDELE BARBER
(5) BEN LOLADE BARBER
Plaintiffs/Respondents

RECORD OF PROCEEDINGS

No. 1

In the Supreme Court of Nigeria

No. 1

Particulars of Claim.

27th October, 1953.

IN THE SUPREME COURT OF NIGERIA

In the Supreme Court of the Lagos Judicial Division

Suit No.566/53

BETWEEN:

1. SALLY SHOLA BARBER
2. EMILY LANDE BARBER
3. HENRIETTA YETUNDE BARBER
4. SAMUEL BANDELE BARBER
5. BEN LOLADE BARBER
Plaintiffs/Respondents

- and -

1. ANGELINA AREFUNWON
2. CATHERINE AYODELE
3. SAMUEL S.I. WRIGHT DE SOUZA
Defendants/Appellants

The plaintiff's claim against the defendants

In the Supreme Court of Nigeria

No. 1

Particulars of Claim.

27th October, 1953.
- continued.

is for an order that the defendants do execute in favour of the plaintiffs a deed of Re-conveyance in respect of the property at 19, Williams Street, Lagos which property was once mortgaged by the Plaintiffs ancestor William George Barber (Deceased) to one James Emanuel Wright now deceased and whose real and personal estates devolved on the defendants as surviving next of kin of the said James Emanuel Wright the Mortgage debt having been fully satisfied.

2. The Plaintiffs also claim recovery of possession of the said property.

Dated at Lagos this 27th day of Oct., 1953.

(Sgd.) C.A. Awoyele
SOLICITOR FOR THE PLAINTIFFS.

Plaintiffs' Address:- c/o Their Solicitor,
10, Oroyinyin Street, Lagos.
1st Defendant's Address:- 16, Tinubu St. Lagos.
2nd Defendant's Address:- 90/92, Broad St. Lagos.
3rd Defendant's Address:- 90/92, Broad St. Lagos.

No. 2

Civil Summons.

10th November, 1953.

No. 2

CIVIL SUMMONS

IN THE SUPREME COURT OF NIGERIA

Book No. U 84 — CIVIL SUMMONS — U 8367

Suit No. 566 of 1953

BETWEEN

SALLY SHOLA BARBER (1)
EMILY LANDE BARBER (2)
HENRIETTA YETUNDE BARBER (3)
SAMUEL BANDELE BARBER (4)
BEN LOLADE BARBER (5) Plaintiffs

- and -

ANGELINA AREFUNWON (1)
CATHERINE AYODELE (2)
SAMUEL S.I. WRIGHT DE SOUZA (3) Defendants

To ANGELINA AREFUNWON of 16, Tinubu Street, Lagos
2nd & 3rd Def. - 90/92 Broad Street, Lagos.

You are hereby commanded in His Majesty's name

to attend this court at Tinuby Square, Lagos on Monday the 28th day of December, 1953, at 9 o'clock in the forenoon to answer a suit by Sally Shola & Ors. (See back) of c/o Their Solicitor, 10, Oroyinyin Street, Lagos against you.

In the Supreme Court of Nigeria

No. 2

Civil Summons.

10th November, 1953 - continued.

The Plaintiffs' claim against the defendants is for an order that the defendants do execute in favour of the plaintiffs a deed of Re-conveyance in respect of the property at 19, Williams Street, Lagos, which property was once mortgaged by the Plaintiffs ancestor William George Barber (Deceased) to one James Emanuel Wright now deceased and whose real and personal estates devolved on the defendants as surviving next of kin of the said James Emanuel Wright the Mortgage debt having been fully satisfied.

2. The plaintiffs also claim recovery of possession of the said property.

Added by Order of Court d/25/1/54.

(Intld.) ?

Issued at Lagos the 10th day of November, 1953.

TAKE NOTICE:- That if you fail to attend at the hearing of the suit or at any continuation or adjournment thereof, the Court may allow the Plaintiff to proceed to judgment and execution.

No. 3

STATEMENT OF CLAIM

((Title as No. 2)

No. 3

Statement of Claim.

18th January, 1954.

STATEMENT OF CLAIM

(1) The plaintiffs are the issues of one William George Barber (Deceased) who was once the owner of the land in dispute and was in possession of the property up to the time of his death in 1904.

In the Supreme Court of Nigeria

No. 3

Statement of Claim.

18th January, 1954 - continued.

(2) The said William George Barber in the year 1896 mortgaged the said property along with another adjacent property known as 90/92, Broad Street, Lagos to one James Emanuel Wright on one mortgage Deed Registered as No. 75 at page 429 in Volume 25 of the Register of Deeds in the Office at Lagos.

(3) By a Deed of Conveyance dated the 13th day of July, 1898 and registered as No. 125 at page 388 in Volume 51 the said William George Barber sold and conveyed the property known as 90/92 Broad Street, Lagos to the said James Emanuel Wright for the sum of £300 (Three Hundred Pounds) but no deed of re-conveyance relating to the joint mortgage of the two properties could be traced.

(4) The said William George Barber was as aforesaid in possession of the property No. 19, Williams Street, Lagos up to the time of his death in 1904 and after his death his wife Mrs. Rebecca Barber the plaintiffs grandmother lived in the house built on the land until 1926 when it was demolished by the Lagos Town Council Authorities as a dangerous building and compensation was paid to one Bolaji Barber the eldest brother of the Plaintiffs who died in 1930.

(5) The said James Emanuel Wright died in 1928 and sometime after the defendants' mother, Henrietta de Souza a sister of James Emanuel Wright entered the land and took possession as against the issues of William George Barber, the present plaintiffs.

(6) The said Henrietta de Souza also died and the present defendants who are the sole surviving next of kins of the said James Emanuel Wright continued in possession and denied the title of the plaintiffs to the land.

(7) The plaintiffs then brought an action for declaration of title, that is, Suit No. 32/1951 against the defendants in the Supreme Court at Lagos wherein the learned trial judge held inter alia as follows:- (1) "The inference I draw from the circumstances is that the mortgage debt had been satisfied and that the mortgagee had no more claim on the security" (2) "I am satisfied that the property No. 19, Williams Street, belongs to the Plaintiffs as descendants of William George Barber."

(8) The defendants have not appealed against findings in the above case

(9) WHEREUPON the plaintiffs say they are estopped from raising any fresh issues on the said findings of facts and have therefore claimed as per their writ of summons including a claim for recovery of possession of the said property.

Dated this 18th day of Jan., 1954.

(Sgd.) C.O. Awoyele

Solicitor for the Plaintiffs.

In the Supreme Court of Nigeria

No. 3

Statement of Claim.

18th January, 1954 - continued.

No. 4

MOTION ON NOTICE

(Title as No. 2)

MOTION

No. 4

Motion on Notice.

7th January, 1954.

TAKE NOTICE that this Honourable Court will be moved on Monday 11th of January, 1954, or so soon thereafter as Counsel can be heard on behalf of the above-named Plaintiffs for an Order amending my writ of summons by adding paragraph 2 that "The plaintiff also claims recovery of possession of the said property" and for such further order or orders as this Honourable Court may deem fit to make in the circumstances.

Dated at Lagos this 7th day of January, 1954.

(Sgd.) C.A. Awoyele

SOLICITOR FOR THE PLAINTIFFS.

In the Supreme Court of Nigeria

No. 5

Affidavit in support of Motion for leave to Amend Writ.

7th January, 1954.

No. 5

AFFIDAVIT in support of Motion for leave to Amend Writ

(Title as No. 2)

A F F I D A V I T

I, Cornelius Olutayo Awoyele, Yoruba, Solicitor of 10, Oroyinyin Street, Lagos make oath and say as follows :-

(1) That I am representing the plaintiffs in the above matter.

(2) That my instructions included a claim for the recovery of possession of the piece of land the subject matter of the action.

(3) That the omission from the writ of summons was my mistake and not of my clients.

(4) That the defendants would have no defence to the claim for possession if the first part of the claim succeeds.

(Sgd.) C.O. Awoyele.

Sworn to at the Supreme Court Registry, Lagos this 7th day of January, 1954.

Before Me,
(Sgd.) Ola Scott
Commissioner for Oaths.

No. 6

ORDER ON MOTION

(Title as No.2)

In the Supreme Court of Nigeria

No. 6

Order on Motion.

25th January, 1954.

UPON READING the affidavit of Cornelius Olutayo Awoyele, Yoruba, Solicitor of No. 10, Oroyinyin Street, Lagos, sworn to and filed on the 7th day of January, 1954, and after hearing B.A. Agusto Esqr. holding Mr. Awoyele's brief Counsel for the Plaintiffs and Mr. F.R.A.Williams Counsel for the Defendants:

IT IS ORDERED that the above named plaintiffs be and are hereby allowed to amend their writ of Summons by the addition of paragraph two "The plaintiffs also claim recovery of possession of the said property" and that when the pleadings are completed, the Court shall listen to any application by the defence if made for separate trials of the two issues and that the sum of £3. 3. Od. costs be allowed the defendants against the plaintiffs.

Dated at Lagos this 25th day of January, 1954.

(Sgd.) M. J. Abbott
PUISNE JUDGE.

No. 7

MOTION ON NOTICE

(Title as No. 2)

No. 7

Motion on Notice.

12th February, 1954.

MOTION ON NOTICE

TAKE NOTICE that this Honourable Court will be moved on Monday 22nd of February, 1954 or so soon thereafter as Counsel can be heard on behalf of the above named Plaintiffs for an Order that judgment be entered in favour of the plaintiffs in the above action and for such order or orders as this Honourable Court may deem fit to make in the circumstances.

Dated at Lagos this 12th day of February, 1954.

(Sgd.) C.O. Awoyele
SOLICITOR FOR THE PLAINTIFFS.

No. 8

AFFIDAVIT in support of Motion for Judgment

In the Supreme Court of Nigeria

No. 8

Affidavit in support of Motion for Judgment.

12th February, 1954.

(Title as No. 2)

A F F I D A V I T

I, Theophilus Abiodun, Yoruba, Clerk of No. 7 Layeni Street, Lagos make oath and say as follows:-

(1) That I am a clerk in the Chambers of Mr.C.O. Awoyele the Solicitor for the plaintiffs in the above action.

(2) That on the 4th day of January, 1954 this Honourable Court ordered that pleadings be filed within 14 days on each side.

(3) That the Statement of Claim was filed and served on the defendants' Solicitor within time.

(4) That no Statement of Defence has since been filed and the time has now expired.

(Sgd.) T.A. Abiodun.

Sworn to at the Supreme Court Registry, Lagos this 12th day of February, 1954.

Before Me
(Sgd.) Ola Scott
Commissioner for Oaths.

No. 9

Order on Motion.

1st March, 1954.

No. 9

ORDER ON MOTION

(Title as No. 2)

UPON READING the affidavit of Theophilus Abiodun, Yoruba, Clerk of No. 7 Layeni Street, Lagos sworn to and filed on the 12th day of February, 1954 and after hearing Mr. C.O. Awoyele, Counsel for the Plaintiffs and Mr. Isikalu, Counsel for the Defendants;

In the Supreme Court of Nigeria

No. 9

Order on Motion

1st March, 1954 - continued.

THE COURT DOTH ORDER as follows:-

"I am informed by Mr. Isikalu that a motion "for extension of time has been filed, to be "heard on 8.3.54. Application should have "been made for that motion to be put on to-"day's list. If there was any difficulty "about that in the Registry, Application "could have been made to me. I do not con-"sider that the defendants are entitled to "any sympathy from this Court and that the "plaintiffs are entitled to judgment. I "therefore order that the defendant shall, "within two weeks from today, execute a Re-"conveyance as asked in the writ and within "the same period give up possession of 19, "Williams Street. The Plaintiff must have "£10.10.- costs plus £5 for disbursements".

DATED at Lagos this 1st day of March, 1954.

(Sgd.) M.J. Abbott
PUISNE JUDGE.

No. 10

Statement of Defence of 2nd and 3rd Defendants.

20th February, 1954.

No. 10

STATEMENT of DEFENCE of SECOND and THIRD DEFENDANTS

(Title as No. 2)

Statement of Defence for the 2nd and 3rd Defendants

1. Save and except as are hereinafter specifically admitted the 2nd and 3rd defendants deny each and every allegation of facts contained in the Plaintiffs' Statement of Claim as if each were set out seriatim and separately denied.

2. The defendants deny paragraphs 1 and 4 of the Plaintiffs' Statement of Claim.

3. With reference to paragraph 2 of the Plaintiffs' Statement of Claim the defendants admit that the said W.G. Barber sold and conveyed 90/92 Broad Street, Lagos to the said James Emanuel Wright in 1898.

In the Supreme Court of Nigeria

No. 10
Statement of Defence of 2nd and 3rd Defendants.

20th February, 1954
- continued.

The defendants plead further that no deed of re-conveyance in either property was ever made by the said W.G. Barber to the said James Emanuel Wright as the said properties were both sold by the said W.G. Barber to James Emanuel Wright.

4. The defendants plead that the said property No. 19, Williams Street, Lagos was sold to the aforementioned James Emanuel Wright in the year 1923 and further that the said James Emanuel Wright went into possession of the said land and remained in possession and exercised all rights of ownership thereof until the time of his death testate in 1928.

5. The defendants deny paragraph 5 of the plaintiffs' Statement of Claim and plead further that after the death of the said James Emanuel Wright (deceased) his sister entered into possession of the said property and exercised all rights of ownership thereon without let or hindrance.

6. The defendants in answer to paragraph 6 of the Plaintiffs' Statement of Claim admit that all the present defendants continued the said possession of Henrietta de Souza and exercised all rights of ownership thereof without any challenge to their ownership or possession until the plaintiff instituted proceedings in Suit No. 32 of 1951.

7. The defendants plead long possession, acquiescence, stale claim, laches and all equitable defences in support of their defence against the plaintiffs.

8. The defendants will also rely on the Statutes of Limitation.

9. The defendants plead further that the plaintiffs' Claim is misconceived.

Dated at Lagos this 20th day of February, 1954.

(Sgd.) Thomas, Williams & Kayode
SOLICITORS TO THE DEFENDANTS
2nd and 3rd.

No. 11

MOTION ON NOTICE

In the Supreme Court of Nigeria

No. 11

Motion on Notice.

26th February, 1954.

(Title as No. 2)

MOTION ON NOTICE

TAKE NOTICE that this Honourable Court will be moved on Monday the 8th day of March. 1954 or so soon thereafter as counsel can be heard on behalf of the above named 2nd and 3rd defendants for an order that the time within which to file Statement of Defence in the above-mentioned matter be enlarged to the 20th February, 1954 and for such further order or other orders as this Honourable Court may deem fit to make.

Dated at Lagos this 26th day of Feb. 1954.

(Sgd.) Thomas, Williams & Kayode
SOLICITORS TO THE 2nd & 3RD DEFENDANTS.

No. 12

No. 12

AFFIDAVIT in support of Motion to enlarge time for Defence to be filed.

Affidavit in support of Motion to enlarge time for Defence to be filed.

26th February, 1954.

(Title as No. 2)

A F F I D A V I T

I, William Ade Tella, Yoruba, British Protected Person, Clerk of No. 41, Idumagbo Avenue, Lagos do hereby make oath and say as follows;-

1. That I am a clerk engaged in the Chambers of Messrs. Thomas, Williams and Kayode, Solicitors to the defendants in the above-mentioned matter.

2. That the claim is for an order that the defendants do execute in favour of the plaintiffs a deed of Re-conveyance in respect of the property at 19, Williams Street, Lagos.

In the Supreme Court of Nigeria

No. 12

Affidavit in support of Motion to enlarge time for Defence to be filed.

26th February, 1954 - continued.

3. That on the 4th January, 1954 this Honourable Court ordered pleadings to be filed giving each side 14/14 days within which Statements of Claim and Defence should be filed.

4. That owing to some difficulties it is not possible for us to get at our clients to brief us for their defence.

5. That we have since got the facts from our clients and the defence has been filed and served.

6. That it may please this Honourable Court to enlarge the time within which the Statement of Defence to be filed till the 20th February, 1954.

(Sgd.) W.A. Tella

Sworn to at the Supreme Court Registry, Lagos this 26th day of February, 1954.

Before Me
(Sgd.) ?
Commissioner for Oaths.

No. 13

Order on Motion.

8th March, 1954.

No. 13

ORDER ON MOTION

(Title as No.2)

UPON READING the affidavit of William Ade Tella, Yoruba, British Protected Person, Law Clerk of No. 41, Idumagbo Avenue, Lagos, sworn to and filed on the 26th day of February, 1954, and after hearing Mr. M.A. Odesanya, holding brief for Messrs. Thomas, Williams and Kayode, Counsel for the 2nd and 3rd defendants, withdrew his application:

IT IS ORDERED that the application that time within which to file Statement of Defence in the above mentioned cause be enlarged to the 20th February, 1954 be and is hereby struck out.

Dated at Lagos this 8th day of March, 1954.

(Sgd.) M. J. Abbott.
PUISNE JUDGE.

In the Federal Supreme Court

No. 14

Notice and Grounds of Appeal.

24th March, 1954.

No. 14

NOTICE AND GROUNDS OF APPEAL

FEDERAL SUPREME COURT

Suit No.566/1953

NOTICE OF APPEAL

BETWEEN:

1. SALLY SHOLA BARBER	)	
2. EMILY LANDE BARBER	)	
3. HENRIETTA YETUNDE BARBER	)	Plaintiffs/
4. SAMUEL BANDELE BARBER	)	Respondents
5. BEN LOLADE BARBER	)	

- And -

1. ANGELINA AREFUNWON	)	
2. CATHERINE AYODELE	)	Defendants/
3. SAMUEL S.I. WRIGHT DE SOUZA	)	Appellants.

TAKE NOTICE that the defendants being dissatisfied with the judgment of the Supreme Court Lagos contained in the Judgment dated the 8th day of March, 1954 doth hereby appeal to the West African Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

AND the Appellants further states that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5.

2. Whole Judgment.

3. Grounds of Appeal.

(1) The learned trial judge erred in law in giving judgment for the plaintiff without calling upon the defence when there was a statement of defence filed by the defendants showing a good defence to the claim already in record, although filed out of time ordered by the Court.

(2) The learned trial judge erred in law

In the Federal Supreme Court

No. 14

Notice and Grounds of Appeal.

24th March, 1954. - continued.

and on the facts in giving judgment for the plaintiff for an equitable relief of specific performance in the absence of evidence justifying the granting of the said equitable relief.

(3) The judgment is against the weight of evidence.

4. Relief sought from the West African Court of Appeal: That the judgment of the Court below be set aside and for any further or other order as the Court may deem fit in the circumstances.

5. Persons directly affected by the appeal:

Names:	Addresses:
1. Sally Shola Barber	
2. Emily Lande Barber	c/o C.O. Awoyele, 10, Oroyinyin Street, Lagos.
3. Henrietta Yetunde Barber	
4. Samuel Bandele Barber	
5. Ben Lolade Barber	

Dated at Lagos this 24th day of March, 1954.

(Sgd.) Thomas, Williams & Kayode
APPELLANTS' SOLICITORS.

In the Federal Supreme Court

No. 15

Order allowing Appeal.

29th October, 1956.

No. 15

ORDER ALLOWING APPEAL

SUIT NO.566/1953
W.A.C.A.271/1955

ON APPEAL from the judgment of the Supreme Court of the Lagos Judicial Division.

BETWEEN:

1. ANGELINA AREFUNWON
2. CATHERINE AYODELE
3. SAMUEL S.I. W.De SOUZA — Appellants

- and -

1. SALLY SHOLA BARBER
2. EMILY LAIDE BARBER
3. HENRIETTA YETUNDE BARBER
4. SAMUEL BANDELE BARBER
5. BEN LOLADE BARBER — Respondents

(Sgd.) O.Jibowu
ACTING CHIEF JUSTICE
OF THE FEDERATION.

Monday the 29th day of October, 1956.

UPON READING the Record of Appeal herein and after hearing Mr. R.A. Fani Kayode of counsel for the Appellants and Mr. J.A. Odeku of counsel for the Respondents:

IT IS ORDERED that this appeal be allowed and that the judgment of the Court below be and is hereby set aside with the order for costs and the case is sent back to the Court below to enable the Appellants to make a fresh application for enlargement of time to file their defence.

AND IT IS FURTHER ORDERED that the Respondents do pay to the Appellants costs of appeal fixed at £13.1.-.

(Sgd.) S.A. Samuel
AG: CHIEF REGISTRAR.

In the Federal Supreme Court

No. 16

Judgment.

29th October, 1956.

No. 16

J U D G M E N T

IN THE FEDERAL SUPREME COURT OF NIGERIA

MONDAY THE 29TH DAY OF OCTOBER, 1956

BEFORE THEIR LORDSHIPS

OLUMUYIWA JIBOWU	ACTING CHIEF JUSTICE OF THE FEDERATION
M.C. NAGEON DE LESTANG	FEDERAL JUSTICE
PERCIVAL CYRIAL HUBBARD	ACTING FEDERAL JUSTICE

W.A.C.A.271/1955

BETWEEN:

ANGELINA ARIFUNWON and 2 ORS. Appellants

Vs.

SALLY SHOLA BARBER and 4 ORS. Respondents

J U D G M E N T

The only point raised in this appeal is that the learned trial Judge gave judgment for the plaintiff without considering the defence filed out of time by the defendants.

It is a fundamental principle of the law that the Court should hear both sides before adjudicating on the matter before them. If no defence had been filed, the learned Judge would have been entitled to give Judgment for the plaintiff in default of a defence, but Gill V. Woodfin, 25 Ch. (1) 804 is an authority for the proposition that when a defence, filed out of time, as on the file of the Court, the defence cannot be argued. In this case though the fault of the Registry in defence filed about 10 days before the Court dealt with the matter had not been placed on the file of the Court. However, it was possible that the papers would have been sent up to the Court, if the Court had caused an enquiry to be made in the Registry.

In the Federal Supreme Court

No. 16

Judgment.

29th October, 1956 - continued.

In the circumstances, the judgment cannot be allowed to stand. It is therefore set aside with the order for costs and the case is set back to the Court below to enable the appellant to make a fresh application for enlargement of time to file their defence.

The appellants are granted £13.1.- costs of their appeal.

(Sgd.) O. Jibowu. Ag. F.C.J.

I concur. (Sgd.) M.C. Nageon de Lestang, F.J.

I concur. (Sgd.) Percy C. Hubbard Ag. F.J.

In the Supreme Court of Nigeria

No. 17

Motion on Notice.

27th November, 1956.

No. 17

MOTION ON NOTICE

(Title as No.2)

MOTION ON NOTICE

TAKE NOTICE that this Honourable Court will be moved on Monday the 10th day of December, 1956 or so soon thereafter as counsel can be heard on behalf of the above-named defendants for an order that the time within which to file Statement of Defence in the above mentioned matter be enlarged to the 20th day of February, 1954 and for such further order or other Orders as this Honourable Court may deem fit to make in the circumstances.

Dated at Lagos this 27th day of November, 1956.

(Sgd.) Thomas, Williams, Kayode. & Akinrele
SOLICITORS TO THE DEFENDANTS.

In the Supreme Court of Nigeria

No. 18

Affidavit in support of Motion to enlarge time for filing Defence.

5th December, 1956.

No. 18

AFFIDAVIT in support of Motion to enlarge time for filing Defence

(Title as No.2)

A F F I D A V I T

I, Aaron Olajide Adeyeye, Yoruba, British Protected Person, Clerk of No. 47, Tokunboh Street, Lagos, Nigeria, do hereby make oath and say as follows:-

1. That I am the Managing Clerk in the firm of Messrs. Thomas, Williams, Kayode and Akinrele, Solicitors to the Defendants in the above mentioned matter.

2. That the claim is for an order that the defendants do execute in favour of the plaintiffs a Deed of Re-conveyance in respect of property at 19, Williams Street, Lagos.

3. That on the 4th January, 1954, this Honourable Court ordered pleadings to be filed giving each side 14/14 days within which Statement of Claim and Defence should be filed.

4. That owing to difficulties beyond our control it was not possible for us to get at our clients to brief us for their defence.

5. That we had however got the facts from our clients, and the Defence had been filed and served since 20th day of February, 1954.

6. That on the 26th day of February, 1954 the Defendants filed a Motion for enlargement of time within which to file their Statement of Defence.

7. That when the said Motion came up on the 8th of March, 1954 it was struck out by this Honourable Court.

8. That upon refusal to enlarge the time within which to file Statement of Defence the Defendants lodged an appeal to the Federal Supreme Court sitting at Lagos.

9. That on the 29th October, 1956, the said appeal came up before the Federal Supreme Court for hearing.

10. That the appeal was allowed and an order was made for a fresh application for enlargement of time to be made.

11. That the Statement of Defence has been filed, on the 20th of February, 1954 and service of the said Statement of Defence has been effected on the plaintiffs.

12. That the defendants have a good defence to the action.

Sworn to at the High Court Registry, Lagos this 5th day of December, 1956.

(Sgd.) A.O. Adeyeye.

Before Me

(Sgd.) J. Bade Okusami
Commissioner for Oaths.

In the Supreme Court of Nigeria

No. 18

Affidavit in support of Motion to enlarge time for filing Defence.

5th December, 1956 - continued.

No. 19

COURT NOTES of Order extending time for filing defence

No. 19

Court Notes of Order extending time for filing defence.

17th December, 1956.

(Title as No. 2)

Rewane for Applicant

Somolu for Respondent.

Time to file Defence extended until today and defence filed on 20th February, 1954, to be accepted as now duly filed in time.

£2.2/- costs to Respondent.

Hearing fixed for 26th & 27th July, 1957.

(Intld.) G.L.J.

In the Supreme Court of Nigeria

No. 20

Statement of Defence of 2nd & 3rd Defendants.

17th December, 1956.

No. 20

DEFENCE of 2nd & 3rd DEFENDANTS

(Title as No. 2)

STATEMENT OF DEFENCE FOR THE 2ND AND 3RD DEFENDANTS

1. Save and except as are hereinafter specifically admitted the 2nd and 3rd defendants deny each and every allegation of facts contained in the plaintiffs' Statement of Claim as if each were set out seriatim and separately denied.

2. The defendants deny paragraphs 1 and 4 of the Plaintiffs' Statement of Claim.

3. With reference to paragraph 2 of the Plaintiffs' Statement of Claim the defendants admit that the said W. G. Barber sold and conveyed 90/92, Broad Street, Lagos to the said James Emmanuel Wright in 1898.

The defendants plead further that no deed of re-conveyance in either property was ever made by the said W. G. Barber to the said James Emmanuel Wright, as the said properties were both sold by the said W. G. Barber to James Emmanuel Wright.

4. The defendants plead that the said property No. 19, Williams Street, Lagos was sold to the aforementioned James Emmanuel Wright in the year 1923 and further that the said James Emmanuel Wright went into possession of the said land and remained in possession and exercised all rights of ownership thereof until the time of his death testate in 1928.

5. The defendants deny paragraph 5 of the Plaintiffs' Statement of Claim and plead further that after the death of the said James Emmanuel Wright (deceased) his sister entered into possession of the said property and exercised all rights of ownership thereon without let or hindrance.

6. The defendants in answer to paragraph 6 of the Plaintiffs' Statement of Claim admit that all the present defendants continued the said possession of Henrietta de Souza and exercised all rights

of ownership thereof without any challenge to their ownership or possession until the plaintiff instituted proceedings in Suit No. 32 of 1951.

7. The defendants plead long possession, acquiescence, stale claim, laches and all equitable defences in support of their defence against the Plaintiffs.

8. The defendants will also rely on the Statutes of Limitation.

9. The defendants plead further that the plaintiffs' Claim is misconceived.

Dated at Lagos this 17th day of December, 1956.

(Sgd.) Thomas, Williams, Kayode & Akinrele
Solicitors to the 2nd & 3rd Defendants.

In the Supreme Court of Nigeria

No. 20
Statement of Defence of 2nd & 3rd Defendants.

17th December, 1956
- continued.

No. 21

SALLY SHOLA BARBER

(Title as No. 2)

Plaintiffs' Evidence

No. 21

Sally Shola Barber.

28th February, 1957.

Odeku for Plaintiffs

Akinrele for Defendants

Akinrele: The subpoenas on 4 witnesses have not been served and I may be unable to proceed with the Defence today.

ORDER: If adjournment asked for now or before end of hearing it will be on terms.

Akinrele I wish to proceed now.

Odeku calls

SALLY SHOLA BARBER: First P.W. Sworn on Bible. Live 21, Olumegbon Street, Lagos. Petty Trader. I know defendants. They are the children of the late Henrietta de Souza.

Examination.

In the Supreme Court of Nigeria

Plaintiffs' Evidence

No. 21

Sally Shola Barber.

28th February, 1957.

Examination - continued.

I knew William George Barber. He was my grandfather. He was married according to English law - a Church marriage. The name of his wife was Rebecca Barber. They had only one child named Gabriel Williams Barber who was my father. My father had 7 children. They are, George Bolaji Barber, Samuel Bandele Barber, Jonathan Babatunde Barber, Sally Shola Barber, Ebenezer Lolade Barber, Emily Lande Barber, Henrietta Yetunde Barber.

George Bolaji Barber and Jonathan Babatunde Barber are both dead and the other all still alive and are the plaintiffs in this action. The two who died left no children.

I know the property known as 19, Williams Street, Lagos. The original owner was Beal Bucock. He left it in his will to my grandfather - William George Barber. I produce the Probate of Will of Beal Bucock which was granted to John Thompson and Dick Sawyer (admitted Exhibit 1). In the will a Crown grant by property was referred to. I produce the grant (admitted Exhibit 2). I found it among my grandfather's documents. It refers to property in Williams Street.

In 1896 my grandfather mortgaged the land the subject by the Crown grant. He also mortgaged property at 90-92, Broad Street, Lagos. The mortgagee's name was James Emmanuel Wright. I produce the deed of mortgage. (admitted Exhibit 3).

Williams Street used to be known as Taiwo Lane. In 1898 my grandfather sold 90/92 Broad Street to Re. James Emanuel Wright. There were conveyances of the property executed. I produce it (Admitted 4). He never sold 19 Williams Street.

My Grandfather died 1904. In 1901 my grandfather mortgaged 19, Williams Street to J. I. Rodrigies. I produce the mortgage (Admitted Exhibit 5).

My grandfather repaid the mortgage money and there is a receipt written on the back of Exhibit 5. My grandfather gave the money to Reverend Wright to pay to Rodigues.

My grandfather then mortgaged it to another person in 1902. A document was prepared. This is it. (Admitted Exhibit 6).

After my grandfather's death my grandmother was still living at 19, Williams Street. My father (Gabriel) was also living there.

My grandmother and my father, after my grandfather's death mortgaged the property in 1912. There was a deed executed. I produce it (Admitted Exhibit 7). They repaid the mortgage money later and I produce the three receipts they got in repayment in 1919, 1920 and 1920. (Admitted Exhibit 8).

In 1916 my grandmother was sued in the Court for non-payment of rates. (Admitted Exhibit 9).

My grandmother and my father lived in 19, Williams Street after death of grandfather up to 1926. All my father's children lived there also.

We were all born in that house. In 1926 the premises were demolished by the Lagos Town Council. They first posted notices on the wall. I saw the notices. I did not receive one and as far as I know they were destroyed. The notices were that we should leave the house and they were going to demolish it. The house was dilapidated at back not alright in front. That was why the house was demolished. The Council paid compensation for demolishing the building. They paid £250 to George Bolaji Barber my eldest brother who is now dead. Died 1930 while we were living at 19, Williams Street after the death of my grandfather up to 1926.

The Rev. James Emmanuel Wright was living at 90/92, Broad Street up to 1926. He never told my grandmother and my father that he was still owner of 19, Williams Street.

19, Williams Street is behind and next to 90/92 Broad Street.

When compensation was paid for demolition of building in 1926 Rev. Wright was still alive.

I know he made an application for the compensation to be paid to him. Rev. Wright died in 1938. He made a will. I got a copy from the Probate Office which I now produce. (Admitted Exhibit 10).

In the Supreme Court of Nigeria

Plaintiffs' Evidence

No. 21

Sally Shola Barber.

28th February, 1957.

Examination - continued.

Rev. Wright has a sister, whose nearest cousin is Henrietta de Souza and she is the mother of the defendants in this action.

When Rev. Wright died he left most of his property to his sister Henrietta de Souza.

When house demolished in 1926 we left the place and it has been and still is vacant land. I used to visit the place from time to time and one time I discovered somebody had put some planks - firewood - there. I made enquiries. I was told that the de Souzas had put the planks there. I enquired from Henrietta de Souza and Ige de Souza and went and saw them. I went in the company of Marian da Perriera an old woman.

Henrietta de Souza said she had put the planks there and I asked her why she had not informed us. She said I was forward child. Marian de Diven died about 3 years ago.

In 1949 I heard that defendants were about to sell the land. I took them to Court. The case was decided. I produce a certified true copy of the judgment which ended with an order of non-suit (Admitted Exhibit 11). There has been no appeal against the decision.

Nobody has ever said that my grandfather had not repaid the mortgage money on the property.

After the decision on Exhibit 11 we put up a notice on a signboard that the land belonged to the Barber family.

We now claim a re-conveyance of the property and possession of the land.

Cross-examination.

Cross-examined AKINRELE:

When the house was demolished we all went to the Town Council and my brother was paid compensation. Five of us went there and my brother received the compensation on our behalf. We went to Town Council near Campbell Street, Race Course Road. I was given £50 of the money for my share.

George Bolaji Barber got the compensation. Jonathan was dead then. There were then 6 of us

and I got £50 for myself. There was no plague about that time in Lagos. The house was demolished because it was dilapidated When the back of the house was broken we were warned to leave the house. The warning was before the notice was put up.

When I found the planks on the land I went to Henrietta de Souza and she said I was too forward and should go away.

In 1950 I took action against Henrietta de Souza. When I protested about the planks Rev. Wright was then dead. He had just died before then.

Re-examined ODEKU

Later my brother went to see Henrietta de Souza. I did not go to see her in 1949.

In the Supreme Court of Nigeria

Plaintiffs' Evidence

No. 21

Sally Shola Barber.

28th February 1957.

Cross-examination - continued.

Re-examination.

No. 22

EMILY OLAMIDE BARBER

ODEKU calls

No. 22

Emily Olamide Barber.

28th February, 1957.

Examination.

EMILY OLAMIDE BARBER: Second P.W. Sworn on Bible. Live 21, Olumegbon Street. Sewing mistress. I know last witness. She is my elder sister. I am a daughter of Gabriel Barber. I know defendants in this case. I know the property 19, Williams Street. I was born there and so were all the children of Gabriel. We all lived there until 1926. In that year the Government broke it down - Lagos Town Council. It was demolished because someone died in the house and the Council said it was very old and dilapidated. Compensation of £250 was paid to all of us. It was paid to George Bolaji my brother.

I knew Rev. James Emanuel Wright. In 1926 he was living next door 90/92, Broad Street. To my knowledge he did not ask for any compensation for the demolished house. Rev. Wright is now dead, died 1938. All the time we lived on the property up to 1926. Rev. Wright never asked any member of our family about any mortgage debt on the property.

My father had seven children. Five are alive

In the Supreme Court of Nigeria

Plaintiffs' Evidence

No. 22

Emily Olamide Barber.

28th February, 1957.

Examination - continued.

Cross-examination.

today. They are all the plaintiffs in this action. The two who died had no issue. George Bolaji Barber died 1930. After 1936 I used to see the property when passing. We took action against the defendants in 1950. The property 90/92, Broad Street was owned by my grandfather sold by him to Rev. Wright. Nobody ever challenged us as regard to the property 19, Williams Street.

We are claiming as per our writ of Summons.

Cross-examined AKINRELE

The person who died on the property in 1926 died of Fever. I did not know of any epidemic then.

I was very small then. I was about 10 or 11 years of age then. I was able to understand what was going on. I don't know of any plague in 1933. My brother told me he had been paid £250 compensation when he received the money. I only know of the money when it was paid to him. My brother used the money to educate my sister and myself. Some of us he gave their own share.

No. 23

Adebayo Benjamin.

28th February, 1957.

Examination.

No. 23

ADEBAYO BENJAMIN

ODEKU Calls

ADEBAYO BENJAMIN: Third P.W. Sworn on Bible. 9, Odu Abore Street, Muchin. Architect and Asst. Surveyor. I know the Barber family very well. Since my childhood days. I know Rebecca Barber and Gabriel Barber father of the plaintiffs. I know the property 19, Williams Street, It belonged to the Barber family. They were living there until 1926.

The property originally belonged to George William Barber the grandfather of the plaintiffs and on his death it passed to his son Gabriel and widow. They live there with their children all the time. I am a cousin of the Barber family and used to visit them frequently and I lived very

near. The Barber family always paid the water rates and were recognised as the owners of it.

I know Rev. James Emanuel Wright. He lived 90/92, Broad Street about adjoin 19, Williams Street.

In 1926 the 19, Williams Street was demolished by Lagos Town Council because it was in a bad condition. Notice was served on Mrs. Rebecca Barber and posted on the walls of the house. Compensation was paid to one of the Barber children - George Bolaji Barber. It was £250. Rev. Wright was then alive and living at 90/92, Broad Street next door. As far as I know he did not ask for compensation. Up to the time it was demolished nobody to my knowledge asked the Barber family for repayment of any mortgage money on the house.

Rev. Wright left a Will. I know Henrietta de Souza, sister of Rev. Wright and mother of defendants in this case.

The name of my own father is I.Bagon Benjamin. He was an architect, Civil Engineer and Licensed Surveyor. He is now dead. I worked with him when he was alive.

I remember my father making a plan in connection with Rev. Wright's estate. Sometime after the death of Rev. Wright the executors of his Will to my father in my presence to survey 90/92, Broad Street, for purposes of a conveyance. I was present at the survey and boundaries pointed out by the representative of the Executors and the adjacent properties were shown on the plan we prepared. We understood from the Executors that they were that we should survey 90/92, Broad Street.

We handed over the plan to Executors.

After the Rev. Wright's death nobody to my knowledge approached the Barber family for payment of any mortgage debt on the property.

I never heard that Rev. Wright made objection to compensation being paid to Barber family.

Cross-examined AKINRELE

Cross-examination.

I got it from the Land Registry that 19,Williams Street belongs to the Barber family.

In the Supreme Court of Nigeria

Plaintiffs' Evidence

No. 23

Adebayo Benjamin.

28th February, 1957.

Cross-examination - continued.

I think George William Barber died about 1904. I was only one year old then. Mrs. Rebecca Barber told me. I don't know the amount of the water rates paid on the property.

The property was demolished because it was a dangerous structure. My father valued the property on behalf of the Barber family at £250 and Lagos Town Council accepted that figure. My father actually received the money a hundred went to George for distribution.

I know 1st witness very well. She asked me to give evidence in this case.

I never knew of any mortgage on the property.

Rev. Wright was not given notice of the demolition.

Re-examination.

Re-examined ODEKU:

I know there was former proceedings in this matter in 1950 and gave evidence in that case.

Plaintiffs' Case

Adjourned to tomorrow - 1st March.

(Intld.) G.L.J.

Defendants' Evidence

No. 24

Samuel Simeon Ige Wright Souza.

1st March, 1957

No. 24

SAMUEL SIMEON IGE WRIGHT SOUZA

FRIDAY THE 1ST MARCH, 1957.

Odeku for Plaintiffs

Akinrele for Defendants

Examination.

AKINRELE Calls

SAMUEL SIMEON IGE WRIGHT SOUZA: First D.W. Sworn on Bible. 92, Broad Strect, Estate and Commercial Agent. I know the plaintiffs only since this case started in 1953. I am Executor and Trustee of the Estate of the late Henrictta de Souza.

I know the property 19, Williams Street. There was a mortgage of the property in 1896. It was by William George Barber to James Emmanuel Wright. I produce the deed (Admitted Exhibit 12). I ----- 19, Williams Street and 90/92, Broad Street.

In 1898 James Emanuel Wright purchased 90/92, Broad Street property. I produce the original conveyance (Admitted Exhibit 13). 19 Williams Street remained mortgaged.

In 1923 the building in 19, Williams Street was demolished by Lagos Town Council. James Emanuel Wright then gave instructions for the sale of the land by auction. The auction was held and Lawyer Akinsemoyin bought it. He bought it on behalf of the vendor James Emanuel Wright.

James Emanuel Wright went into possession after the auction. He kept wood and cattle there, firewood and poultry. At that time he was living at 90/92, Broad Street, which is next door to 19, Williams Street. He continued to occupy the land until the time of his death in 1928. On his death his sister Henrietta de Souza took over possession. She build part of it and let out part of it. The first tenant was a carpenter. It was occupied by him up to the time of her death in 1946. After her death I continued to let the land, and rent was paid to me. The three tenants remained on the land and nobody ever approached me about the land. The 1st plaintiff never approached me and my ----- as she said. I never met her until this case started. She never had any transaction with me about the land 19, Williams Street.

I therefore claim the property for the Estate of my late sister.

Cross-examined ODEKU:

I was born in 1898. I have lived in different part of Nigeria. The building was demolished in 1923. I am sure it was 1923 not 1926. My uncle Rev. Wright gave instructions for the sale of the land in 1923. At that time I was living with my mother Henrietta de Souza at Abeokuta.

I was not present at the auction sale. I read the deed of purchase and that is where I got my information from. I can't remember who required the deed as tender.

In the Supreme Court of Nigeria

Defendants' Evidence

No. 24

Samuel Simeon Ige Wright Souza.

1st March, 1957.

Cross-examination - continued.

In 1944 my mother handed me the deed of purchase together with the grant of 19, Williams Street Exhibits 8 and 9. Mr. Leigh a family friend and adviser, my mother told me so. It was handed over to Mr. Leigh to make a conveyance to my mother. The grant she handed over was the original Crown Grant of 19, Williams Street. In the grant she inherited from her brother.

I read in the purchase receipt but the land was sold in 1923 for about £83. Mr. Leigh is now dead. I applied to the Leigh family for the deeds but they said there was no trace of them.

There was a purchase receipt. I am speaking the truth. I don't know who signed the purchase receipt. The auctioneer was Soyemi Alder. He is also dead.

I am Executor and Trustee of my mother's Estate. My uncle Rev. Wright left a Will. I see Exhibit 10, I have read it and have a copy myself. Most of the properties belonging to Rev. Wright were gifted to my mother. Rev. Wright died in 1928. His Will was made in 1910 and that is why it does not depict 19, Williams Street. I know it was mortgaged before 1910 but he must have disregarded that. From 1904 to 1914 I was at Abeokuta. I came to Lagos 1915 to 1920. I was not a boy. I was living then at No. 8, Marina Lagos. Then 1921 to 1925 I was stationed at Abeokuta and I was going between Abeokuta and Lagos. In 1926 I joined the Government as a teacher and was stationed at Warri. I stayed there until 1928. I returned to Lagos in 1928.

Between 1915 and 1920 my uncle lived at 90/92, Broad Street.

It adjoins 19, Williams Street. I did not know the people living at 19, Williams Street then. I don't know the late James William Barber nor Mrs. Rebecca Barber. I know one of the children of the Barber family - Banji Barber.

I did not know him between 1920 and 1926.

I know nothing about compensation being paid when the building 19, Williams Street was demolished by Town Council. When it was demolished my uncle living next door might be aware of the demolition. I know nothing about £250 being paid.

I see Exhibit 3. The Mortgage of 19, Williams Street and 90/92, Broad Street for £125.11. 6d. My uncle bought 90/92, Broad Street for £300. I say that the mortgage money was not repaid at that time although my uncle paid over £300 to the mortgagor.

In the case 32/1951 I did not give evidence. What I am saying now is the truth.

There is no quarrel between me and 1st defendant. I don't know that 1st defendant has not put on any defence.

My uncle put firewood, poultry and wall on the land. I saw the firewood then in 1928.

I can't say if there was anything on the land before that date.

No. 25

BUARI ALAGBEDE

AKINRELE Calls

BUARI ALAGBEDE: Second D.W. Sworn on Koran and Live at Olusi Street, Lagos. I don't know the number. Firewood cutter. I know the last witness 3rd Defendant. I hired some land from his mother who is now dead. I paid rent to her during her life time and I have been paying rent to 3rd Defendant since her death. I paid 16/- per month.

Nobody else has asked me for rent. I produce some of the receipts for rent I got from 3rd Defendant.

These are all the receipts I have been given I have paid 3rd defendant every month since her mother died. I don't know whether all the receipts are in the bundle I have given you or not. They are all I have seen, some have been destroyed and some lost. I produce all I have (Admitted Exhibit 14) (Note, they cover a period 1949 to 1956).

Nobody was working there before me as far as I know. I hired the land from 3rd Defendant's mother.

I had a master when I was a labourer - I know one Awoyele. I don't know if he worked in area. When I hired the land I did not know anything about it.

In the Supreme Court of Nigeria

Defendants' Evidence

No. 25

Buari Alagbedo.

1st March, 1957.

Cross-examination.

Cross-examined ODEKU:

I was just informed that I was to give evidence in this case yesterday night.

When I first took over the land I met nobody on the land. I found no traces of firewood on it when I took it over. It was bare, vacant land.

I never heard that there was any dispute over the land. I don't know what is written on the receipt Exhibit 14.

No. 26

Samuel Simeon Ige Wright Souza - Recalled.

Examination.

No. 26

SAMUEL SIMEON IGE WRIGHT SOUZA

SAMUEL SIMEON IGE WRIGHT SOUZA: 1st D.W. (recalled at request of Akinrele and put in duplicates of receipts said by last witness to be lost).

I issued receipts for the rent received from the tenants of 19, Williams Street, who were put there by my mother. I produce my counterfoil receipt books. They are all counterfoils of receipts given by me since my mother died in 1946. (Receipt books tendered and admitted as Exhibit 15) on ground that originals have been lost or destroyed.

(Intld.) G.L.J.

Cross-examination.

Cross-examined ODEKU

I don't know where the originals of the receipts are. They were given to the persons who paid me.

AKINRELE: My witness has not been served with the process issued.

By Court.

COURT: Some effort should have been made before the case was called to find them out and to inform the Court. No effort has been made. Adjournment will only be given on terms.

Adjourned to 7th March. Three guineas costs to Plaintiffs.

(Intld.) G.L.J.
1/3/57.

No. 27

CATHERINE AYODELE SOUZA

THURSDAY THE 7TH DAY OF MARCH, 1957.

In the Supreme Court of Nigeria

Defendants' Evidence

No. 27

Catherine Ayodele Souza.

7th March, 1957.

Examination.

Odeku for Plaintiffs

Akinrele for Defendants

AKINRELE Calls

CATHERINE AYODELE SOUZA: Third D.W. Sworn on Bible. Live 92, Broad Street, Lagos. 3rd Defendant in this case. I know the property at 19 Williams Street. Henrietta de Souza was in possession of 19, Williams Street, 1928 - 1946 when she died.

She let the property out to tenants. I know one Awoyele. He was one of the tenants. Henrietta de Souza was my mother. I found some documents among my mother's effects when she died. I produce one of them (Admitted Exhibit 16).

I know D.W.2 Buari (indicated in Court). He was one of the tenants of 19, Williams Street. Awoyele was the tenant before Buari.

I knew the late Rev. James Emanuel Wright. He was my uncle. I produce the certified true copy of the Execution account on the Estate of J.E. Wright (deceased). (Admitted Exhibit 17).

Cross-examination.

Cross-examined ODEKU:

I am one of the defendants in this action. I have never come to Court before this morning in this case. I have not been compelled to say what I have said. From 1920 to 1928 I lived at Abeokuta with my mother Henrietta de Souza. 1st defendant also lived there with us duing the same year.

I know 19, Williams Street was sold. It was sold to Rev. J. E. Wright. When John William Barber mortgaged the property 90/92 Broad Street and 19, Williams Street in 1896. In 1898, he sold the property at 90/92, Broad Street to James Emanuel Wright. He paid £300 for it.

I know the 1896 mortgage of both properties was for £125.

In the Supreme Court of Nigeria

Defendants' Evidence

No. 27

Catherine Ayodele Souza.

7th March, 1957

Cross-examination - continued.

When paying £300 for the property 90/92, Broad Street, James Emanuel Wright did not deduct the £125 from the purchase price to settle the mortgage. I saw the paper that is how I know. I found the paper among the paper given to my late mother by Executors of J. E. Wright (deceased). We saw from the papers that the £125 mortgage money had not been repaid to J. E. Wright. I think this paper should be in the custody of my late mother's executors. The paper is not in our hands. The paper showed that the £125 had not been repaid.

John William Barber gave authority to my late uncle J. E. Wright to sell the property at 19, Williams Street. He sold it by auction; Soyemi was the auctioneer. It was bought by Lawyer Akinsemoyin on behalf of James Emanuel Wright himself.

The instruction to sell was given in writing. The paper might be with the Executors. It was sold for £83 in 1923. James Emanuel Wright obtained a receipt for the payment of £83. I saw the receipt. I don't know where it is now. I understand Mr. Leigh got it from my mother. Property was sold in 1923. I saw the receipt. I was not present at the sale as I was at Abeokuta but when I came to Lagos I saw the receipt myself.

I heard the house was demolished in 1926 but I was not in Lagos then. I don't know if compensation was paid. I was born in Lagos and am 63 years old now. I was 8 years old when we went to Abeokuta - in 1902.

I don't know the 1st Plaintiff. I have never seen him before. I was away from Lagos between 1902 and 1928 but I was told what happened to the property.

The information is what I was told and what I saw in documents connected with the property.

I saw Awoyele at 19, Williams Street myself.

I don't know what year this was. He paid rent to my mother and my mother gave him receipt. I have nothing to show to the Court to support this other than Exhibit 16.

Buari D.W.2 worked with Awoyele. He worked

with Awoyolo before on this property. When Awoyolo failed to pay rent my mother sued him.

When Buari came to the land he met someone there.

It was a person named Iya Onidodo Olanrewaju. It was soon after we came there from Abeokuta in 1928. He was rearing poultry and goats. He paid rent also. The land was partitioned into plots and many people came to hire it. Buari and Iya Onidodo were tenants at the same time on the land.

I think Buari is telling lies if he says he was about on the land.

I know James Emanuel Wright left a Will. I saw it. He gave most of his property to my mother Henrietta. 19, Williams Street was bequeathed to my mother in the Will.

19, Williams Street does not belong to the Plaintiffs.

No. 28

OLUBIYI TAIWO JIBOWU

AKINRELE Calls

OLUBIYI TAIWO JIBOWU: Fourth D.W. Sworn on Bible. Live 48, Breadfruit Street, Lagos. Civil Engineer. I know the 1st Defendant. I know 19, Williams Street. I was living opposite it before. I lived at the junction 55, Broad Street.

I know late James Emanuel Wright. In 1918 there was an epidemic in Lagos. The house at 19, Williams Street was well built house then.

In 1920 or 1921 there was another epidemic and there were found to be plague rats in 19, Williams Street and the house was demolished on this account. That was about 1921. I was living opposite the house in 1921. When broken down the 19, Williams Street property was serving as a back yard to Rev. J.E. Wright house. In 1923 the property was sold by public auction. Auctioned by Soyemi Alder. I don't know how much was paid for it. Lawyer Akinsemoyin bought it. Late J.E.Wright told me that he had given instruction to Lawyer Akinsemoyin to buy 19, Williams Street for him.

In the Supreme Court of Nigeria

Defendants' Evidence

No. 28

Olubiyi Taiwo Jibowu.

7th March, 1957.

Cross-examination.

Cross-examined ODEKU:

I livedin 55, Broad Street from 1917 to 1924. 55 Broad Street is directly opposite 90/92 Broad Street. To get to 19, Williams Street from 55 Broad Street one has to cross the street and go down Williams Street.

I was not present at the auction.

19, Williams Street is about 100 feet from my house and I could see the auction going on. I did not actually attend it. I saw it from my window. I know it was knocked down on the bid of Akinsemoyin.

1st Plaintiff used to live in 19, Williams Street before it was demolished and her mother. My own Tailor used to work on the verandah. I don't know anyone else living there. Don't know family of 1st Plaintiff.

I can't now say if I saw any notice posted on the house before it was demolished. I don't know if compensation was paid.

I did not know the father of 1st Plaintiff, only the mother. D. W. 1 Samuel Ige Wright is my acquaintance - not my friend.

Defendants Case

No. 29

Counsels Addresses.

7th March, 1957.

Akinrele (for Second & Third Defendants).

No. 29

COUNSELS ADDRESSES

AKINRELE addresses Court.

Judgment (Exhibit 11) Statute of Limitation not considered. After protest by 1st Plaintiff in 1928 she took no action.

Applied to this and brought her first action in 1951.

Henrietta in possession - holding

Plaintiff never in possession. Will made in 1910 - W.A.C.A. 104/1954 Judgment Enitan Edu v. Koledoye. Johnson v. Todd 1843 - 5 B.E.A.V. at Page 601.

In the Supreme Court of Nigeria

No. 29

Counsels Addresses.

7th March, 1957.

Odeku (for Plaintiffs).

ODEKU:

Claim that mortgage fully satisfied. Property originally belonged to George William Barber.
Mortgaged in 1896 for £125 (Exhibit 3)
Mortgaged again in 1901 (Exhibit 5)
Mortgaged again in 1902 (Exhibit 4)

Executors refer to Exhibit 2.

Exhibit 9 Possession by Barber family. Water rates paid by them. 1st Defendant not in Lagos at material times. Barber died in 1904 - Instructions said to be given by him for sale much late.

Action is for reconveyance - mortgage debt paid.

Receipt from 1949 - Action late 1951 Vol. 12 Selected Judgment Page 106. W.A.C.A. This does not run in a case and as this Chief Ebenezer v. Keku Akanbi.

No tenant on land by Henrietta - No receipt in her life time. No evidence of long possession. Exhibits 16 and 17 worthless.

See Exhibit 7 refers to Williams Street not 19.

C.A.V.

Judgment on 15th March.

(Intld.) G.L.J.

In the Supreme Court of Nigeria

No. 30

Judgment.

15th March, 1957.

No. 30

J U D G M E N T

IN THE SUPREME COURT OF NIGERIA

IN THE HIGH COURT OF LAGOS

FRIDAY the 15th day of MARCH, 1957.

BEFORE THE HONOURABLE,

MR. JUSTICE GEOFFREY LIONEL JOBLING

J U D G E

Suit No.566/1953.

BETWEEN:

SALLY SHOLA BARBER
EMILY LANDE BARBER
HENRIETTA YETUNDE BARBER
SAMUEL BANDELE BARBER
BEN LOLADE BARBER Plaintiffs

- and -

ANGELINA AREFUNWON
CATHERINE AYODELE
SAMUEL S. I. WRIGHT DE SOUZA
Defendants

J U D G M E N T

ODEKU for Plaintiffs:

Defendants in person.

The plaintiffs seek an order that defendants execute a re-conveyance of certain property to themselves and also claim recovery of possession of the same property.

The evidence shows that the land in question is known as 19, Williams Street, Lagos and was originally owned by William George Barber who married Rebecca Barber and had one son Gabriel who was survived by seven children five of whom are the plaintiffs the other two having died.

In 1896 William George Barber mortgaged, 19, Williams Street, and an adjoining property known as 90/92, Broad Street to the Revd. James Emmanuel Wright for £125 and in 1898 sold 90/92 Broad Street to the mortgagee. A conveyance of this property was duly executed.

In 1901 William George Barber again mortgaged 19, Williams Street to another Mortgagee but repaid it in the same year. He then mortgaged it for the third time in 1902 and after his death in 1904 his wife Rebecca and her son Gabriel repaid the loan by instalments in 1919 and 1920.

According to the 1st Plaintiff she and her brother and sister were all born at 19, Williams Street and lived there with their father and grandmother (Rebecca) until 1926 when the building was demolished by the Lagos Town Council. It seems clear from the fact that Rebecca was sued for water rates in 1916 that she occupied the premises then.

It is alleged by the 1st plaintiff that compensation of £250 was paid by the Town Council to her eldest brother who is now dead. This is supported by the 2nd plaintiff and the witness Benjamin.

After James Emmanuel Wright had purchased 90/92, Broad Street he lived there until his death in 1928 and was there at the time compensation was paid for the demolition of the building but made no claim for it. On his death his sister Henrietta de Souza the mother of the Defendants inherited most of his property and lived at 90/92 Broad Street. It appears that this property adjoins 19, Williams Street and after the demolition of the house on the latter in 1926 Henrietta de Souza made some use of the land as 1st Plaintiff states she found some firewood and planks there. She protested to Henrietta but was told she was a forward child.

Later after Henrietta had died 1st plaintiff heard that Defendants were trying to sell 19, Williams Street and she instituted proceedings in the Court.

During these proceedings it came to light that the legal estate was still vested in the Rev. James Emmanuel Wright and his heirs as there had been no re-conveyance of the property and an order of non-suit was made.

In the Supreme Court of Nigeria

No. 30

Judgment.

15th March, 1957 - continued.

The Plaintiffs then instituted these proceedings to obtain the re-conveyance submitting that the proper inference from the facts is that the amount of the 1896 mortgage had been repaid.

The evidence for the defendants differed on several grounds. It was to the effect that 19, Williams Street was demolished in 1923 - not 1926 - and that this was because it was found to be infested by rats at the time of a plague epidemic.

Further it was stated that after demolition of the building the mortgagee I. E. Wright gave instructions for the sale of the plot and it was sold by public auction to a lawyer named Akinsemoyin who bought it on behalf of the Mortgagee.

No documents were produced to support any of these assertions. After the sale the purchaser J.E. Wright used the land, which was a vacant plot forming a kind of Court yard to his own house 90/92, Broad Street, for keeping firewood, poultry and cattle on it and on his death in 1928 the land passed to his sister Henrietta who let it out in parts to tenants.

None of the witnesses for the Defence know anything about compensation being paid for the demolition of the building.

The points on which findings of fact are necessary are therefore, first whether the building was demolished in 1923 or 1926, secondly whether compensation was paid, thirdly whether the property was auctioned in 1923 and bought by J.E. Wright and fourthly who has been in possession since the demolition.

The evidence of 2nd and 3rd defendants is not of much assistance on the first three of these matters as they were absent from Lagos at the material times. They only repeat what they been told. 2nd Defendant was away from 1902 to 1928 and 3rd Defendant was only living in Lagos from 1915 to 1920 during the period 1904 to 1928.

The main evidence for the defendant on the date of the demolition is therefore that of their witness Jibowu who said he though it was in 1921 at the time of an epidemic. On the other hand the plaintiffs were present and had every reason to remember when their house was demolished. 1st and

2nd plaintiffs impressed as truthful witnesses and they are supported by the witness Benjamin who also gives first hand evidence. I accept their evidence that the house was demolished in 1926.

On the question of compensation I see no reason to disbelieve the plaintiff's evidence but their unsupported statements are not sufficient to prove the payment with any degree of certainty. I find therefore that it has not been proved.

The defence witnesses except Jibowu all speak of what they have been told of the alleged auction in 1923. Jibowu says he saw the auction going on from his house which is only 100 feet distant from 19, Williams Street where it took place. I was not at all impressed with this evidence or with the assertion that the witness heard the property knocked down to the lawyer Akinsemoyin. If the auction took place after the demolition it might have concerned property on the land that was said to have been kept there. I regard this witness' evidence as insufficient to prove the land was auctioned and as it is completely unsupported by any documentary evidence and no conveyance has been produced I find that the auction did not take place as alleged. I should add that the attempt to show that the documents had passed out of Defendants' hands and had been mislaid by a third party was entirely unsatisfactory and I rejected this explanation of their absence.

The question of who has been in possession remains.

The plaintiffs were clearly in possession up to the demolition of the building in 1926. After that they visited the place occasionally and state that they protested when they found it being used for the deposit of firewood by the Defendants' mother. They also took action when they heard defendants were about to sell the land.

For the defendants it is stated that the land was used to keep cattle and poultry and firewood on it and that Henrietta let out plots of the land to tenants. After careful consideration of the witnesses and the evidence they gave I am satisfied that during Henrietta's lifetime from 1926 to 1946 the land was not used by her for more than the occasional deposit of firewood. It is true that if we are to believe the account of the administration of J. E. Wright's estate (Exhibit 17) and

In the Supreme Court of Nigeria

No. 30

Judgment.

15th March, 1957 - continued.

assume that the references to Williams Street refer to No. 19 of that Street, the land was also used on seven days in 1928 - 30 for the deposit of Kola nuts before their sale. But it is unlikely that this entailed their being kept on the land for any length of time. I am also satisfied that there is no reliable evidence that Henrietta let out the land to tenants. No receipt or counterfoils for rent paid to her were produced and their witness on this point, Busari Alagbede, was a man of obviously weak mentality whose evidence could not be accepted without corroboration.

I am satisfied that the land was let by 3rd defendant to tenants between 1946 and 1956 but for deposit of firewood only. On the question of possession I find therefore that the facts are that the plaintiffs vacated the property in 1926 but visited the place from time to time and protested when they considered anyone was exercising rights of ownership over it. The land was vacant and they did not seriously object to it being used occasionally by their neighbour for the deposit of firewood.

I find that the defendants made occasional use of the land for firewood between 1928 and 1946 - how often has not been proved - and let it out between 1946 and 1956 but the letting was of such a nature that it would not necessarily have come to the notice of the Plaintiffs.

Counsel for the defendants submitted first that the claim was barred under the Statute of Limitations and secondly that in any case the defendants had been in long and peaceful possession of the property and could not now be disturbed.

The Statute of Limitations was pleaded and the defence was available to defendants. Under Section 12 of the Limitation Act 1939 a Mortgagor is barred from redeeming the land where the Mortgagee has been in possession for 12 years.

In my view the occasional deposit of firewood on the land by Henrietta de Souza was not an entry into possession. The letting of the land by 3rd Defendant between 1946 to 1956 may be but, even if it is accepted as possession by the Mortgagee, time would only run from 1946 to 1951 when proceedings against the defendants were first instituted, a period of some 5 years.

I find therefore that Section 12 of the Limitations Act 1939 does not apply to bar the plaintiffs from redeeming the mortgage.

But the plaintiffs claim that the mortgage money was re-paid in 1898 at the time of the sale of the Broad Street property to the mortgagee. This claim must now be considered as if it is true then the Mortgagor became the tenant at will of the Mortgagee from the date of repayment and the legal estate of the Mortgagee would be extinguished after twelve years adverse possession of the Mortgagor - (see Sands to Thompson (1883) 22 Ch. D.614 and 32 E. and E. Digest 471). There is no direct proof of re-payment of the mortgage but it was submitted for the plaintiffs that the proper inference from the circumstance disclosed was that it had been.

It appears from the documents tendered that these two properties 90/92 Broad Street and 19, Williams Street were mortgaged for £125 and that 90/92, Broad Street was sold to the mortgagee in 1898 for £300. Further the Mortgagor again mortgaged 19, Williams Street in 1901 and also in 1902 and repaid the loans in each case.

It is inconceivable that the Mortgagee would purchase one of the mortgaged properties without deducting the full amount of the mortgage from the purchase price. I agree that this taken with the fact that the mortgagor thereafter acted as if the property was free from encumbrances constitutes a good ground for assuming that the loan of £125 was fully repaid at the time the 90/92, Broad Street was purchased by the Mortgagee.

After consideration of the evidence I am fully satisfied this is so. The Mortgagor therefore became the tenant at will of the Mortgagee in 1898 and as I have already found he and his successors in title were in possession up to 1926 - a period of some 28 years, it follows that the mortgagee's title has been extinguished.

It also follows from the facts I have found above that the defendant's claim to long possession cannot be accepted.

I enter judgment for the plaintiffs with costs. The defendants to execute a re-conveyance of 19, Williams Street to the Plaintiffs and to give up possession to plaintiffs forthwith. Costs (including disbursements £20) assessed at sixty guineas.

(Sgd.) Geoffrey L. Jobling

J U D G E .

In the Federal Supreme Court

No. 31

Notice and Grounds of Appeal.

19th March, 1957.

No. 31

NOTICE AND GROUNDS OF APPEAL

IN THE FEDERAL SUPREME COURT, LAGOS

NOTICE OF APPEAL

(Rule 12)

Suit No.566/1953.

BETWEEN:

1. SALLY SHOLA BARBER	)	
2. EMILY LANDE BARBER	)	
3. HENRIETTA YETUNDE BARBER	)	
4. SAMUEL BANDELE BARBER &	)	Plaintiffs/
5. BEN LOLADE BARBER	)	Respondents

- and -

1. ANGELINA AREFUNWON	)	
2. CATHERINE AYODELE	)	Defendants/
3. SAMUEL S. I. WRIGHT SOUZA	)	Appellants

TAKE NOTICE that the Defendants being dissatisfied with the judgment of the High Court, Lagos, contained in the judgment dated the 15th day of March, 1957, do hereby appeal to the Federal Supreme Court, Lagos upon the grounds set out in paragraph 4.

AND the Appellants further state that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5.

2. Whole Judgment.

3. Grounds of Appeal:-

(1) The learned trial judge erred in law in holding that the dealings with the property by the defendants' predecessor were inconsistent with the mortgage to the defendants.

(2) The learned trial judge erred in law in holding that the limitation does not apply to the present case.

(3) The learned trial judge erred in law and in fact in rejecting the plea of long possession.

(4) The learned trial Judge misdirected himself in law on the facts in holding that the plaintiff's predecessor must have deducted the mortgage debt from the sale of the property at No. 90 and 92, Broad Street, Lagos.

(5) Judgment against the weight of evidence.

4. Relief sought from the Federal Supreme Court.

That the judgment of the court below be set aside and for any further or other Orders as the Court may deem fit to make in the circumstances.

5. Persons directly affected by the Appeal:

Names:	Addresses
1. Sally Shola Barber 2. Emily Lando Barber 3. Henrietta Yetunde Barber 4. Samuel Bandele Barber 5. Ben Olade Barber	c/o their Solicitor, Mr. J.A. Odeku, 10, Oroyinyin, Lagos.

Dated at Lagos this 19th day of March, 1957.

(Sgd.) Thomas, Williams, Kayode & Akinrele

APPELLANTS' SOLICITORS.

In the Federal Supreme Court

No. 32

Court Notes of Argument.

7th May, 1958.

No. 32

COURT NOTES OF ARGUMENT

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

WEDNESDAY THE 7TH DAY OF MAY, 1958

BEFORE THEIR LORDSHIPS

SIR ADETOKUNBO ADEGBOYEGA ADEMOLA, Kt., FEDERAL CHIEF JUSTICE
WILFRED HUGH HURLEY AG. FEDERAL JUSTICE
SAMUEL OKAI QUASHIE-IDUN AG. FEDERAL JUSTICE

FSC.225/1957

A. AREFUNWON & 2 Ors. Appellants

Vs.

S.S. BARBER & 4 Ors. Respondents

AKINRELE for Appellants

ODEKU for Respondents

GROUNDS 1 & 4.

Refers to page 43 of the Record line 13 et Seq. Then lines 25 to 28. A Reconveyance was made of 90/92 Broad Street. If mortgage debt was paid on 19 Williams Street, why was not a reconveyance made? It is inconceivable that a reconveyance was not insisted on if the money was paid.

Mere fact that three mortgages were made even it all legal, does not mean previous mortgage, has extinguished.

GROUND 2.

Statute of Limitation applies. Evidence is clear that from 1928 - 50, the defendants and defendants appellants were in possession and making an adverse claim. Not now claiming as mortgagee, but as one holding in adverse possession.

Specific Performance: Cheshire on law of contract 3rd Edition at page 503

Long Possession: Possession will be presumed for a length of time. Presumption of continuance. Court to presume one is still in possession. Receipt for letting; evidence of tenancy. Case is one of adverse long possession. Reconveyance in this case is an attempt to nullify the law. Statute has run against the Plaintiffs/Respondents.

ODEKU

Grounds 1 & 4.

Refers to page 43 of the Record - from line 13 of page 43 lines 18 et seq. is important.

Submit Mortgage debt obviously paid in 1898 on 19, Williams Street.

Reasons when 90 & 92 Broad Street was sold by the Mortgagor to the Mortgagee, the latter paying £300 would have deducted debt due to him on 19, William Street.

(2) See page 65 of the Record: that £10 was paid to Rodrigues by Revd. Wright from Barber: see page 22 of the Record. Would Revd. Wright be paying this money on behalf of Barber if his own debt has not been paid?

(3) See Exhibit 6 at page 66.

Debt was made by deposit of title deeds. How could he get the title deeds if Revd. Wright had not released them?

(4) See Exhibit 7: legal Mortgage: page 66 of the Record this is a mortgage by Mrs. Barber the widow and his son in 1912. They then had the title deeds with them as can be seen from page 69 of the Record.

(5) In 1910 the Mortgagee (Wright) made a Will. See pp. 70-73 of the Record. Reading from page 72: he devised properties away but did not refer to 19 Williams Street. If the Mortgagor has not repaid the debt, the equity of redemption would have been willed away. Also if he had bought, he would have devised it.

In the Federal Supreme Court

No. 32

Court Notes of Argument.

7th May, 1958 - continued.

(6) Properties 90 & 92 Broad Street adjoins to 19, Williams Street. In 1919 the widow of the Mortgagor was sued (See Exhibit 9) at page 70. It was in respect of rates.

(7) See Exhibit 11 from page 74 et seq. From page 81. The judgment of Jibowu J. at pp. 74-82 that judgment has not been appealed against.

Ground 2

Statute of Limitation.

Once the mortgage debt has been paid the statute cannot apply. There was no active possession. As soon as therewas an adverse active possession in 1949 the Respondents stepped in and took action. Limitation will only operate when an adverse possession comes in.

Refers to page 23 of the Record line 16. Page 24 line 6 et seq.

Ground 3: Long possession. Only a period of 5 years was shown: Receipts for payments for only five years. For long possession active possession must be shown.

Adjourned till 8/5/58.

(Sgd.) A.Ade.Ademola, F.C.J.

8th May, 1958

THURSDAY THE 8TH DAY OF MAY, 1958.

CORAM & COUNSEL AS BEFORE

AKINRELE

Refers to para. 8 of the Statement of Claim. Submits it is a bad plea with reference to judgment at pages 74 - 82. The appellants were successful in the case, so they could not appeal.

Statute of Limitations.

If a mortgage still exists, sec. 7 of Real Property Limitation Act 1874 applies. After 12 years, there can be no redemption.

If the possession is adverse, Sec. 1 of the same Act applies.

The learned trial Judge obviously took no notice of Paragraphs 5 & 6 of the Statement of Claim where the plaintiffs alleged possession.

See Rains v. Buston (1880) 14 Ch. D.537 on statute of Limitation 1833 on adverse possession.

Long possession: It was proved there were tenants on the land & used for sale of Kola nuts.

When the Will made in 1910, Mr. Wright had not at the time any interest in 19 Williams Street.

Court But the mortgage to him was in 1896?

Counsel This is correct: but it was no sale & he never intended it as his own property. It will come under his Residency Estate now.

Judgment Reserved.

(Sgd.) A. Ade. Ademola,
F.C.J.

No. 33

Judgment.

19th May, 1958.

No. 33

J U D G M E N T

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

MONDAY THE NINETEENTH DAY OF MAY, 1958

BEFORE THEIR LORDSHIPS

SIR ADETOKUNBO ADEMOLA	CHIEF JUSTICE OF THE FEDERATION
WILFRED HUGH HURLEY	AG. FEDERAL JUSTICE
SAMUEL OKAI QUASHIE-IDUN	AG. FEDERAL JUSTICE

FSC.225/1957

BETWEEN:

1. ANGELINA AREFUNWON
2. CATHERINE AYODELE
3. SAMUEL S.I. WRIGHT DE SOUZA

Defendants/Appellants

- and -

1. SALLY SHOLA BARBER
2. EMILY LANDE BARBER
3. HENRIETTA YETUNDE BARBER
4. SAMUEL BANDELE BARBER
5. BEN LOLADE BARBER Plaintiffs/Respondents

J U D G M E N T

QUASHIE-IDUN AG.F.J. The undisputed facts in this

In the Federal Supreme Court

No. 33

Judgment.

19th May, 1958. - continued.

case are briefly as follows :-

The plaintiffs-respondents are the issues of one William George Barber (deceased) who was the owner of the land in dispute situated at 19 Williams Street, Lagos. The said property comprised of a building and the deceased occupied it up to the time of his death in the year 1904. In the year 1896 the said William George Barber mortgaged the property in dispute, and another property adjacent to it known as No. 90/92 Broad Street, Lagos, to one, James Emanuel Wright, who died in 1928. The defendants-appellants are the surviving next-of-kin of the deceased James Emanuel Wright.

In the year 1926 the building on the property in dispute was demolished by the Lagos Town Council and the land on which the building stood is the subject of the present litigation between the parties.

The case of the plaintiffs-respondents is that the late William George Barber paid the mortgage debt in respect of the property in dispute and that by a deed of conveyance dated on the 13th July, 1898, he sold the property known as 90/92 Broad Street, Lagos, to the late James Emanuel Wright for the sum of £300.

James Emanuel Wright lived in the house, No. 90/92 Broad Street, after he had purchased it and continued to live there until he died in 1926. When James Emanuel Wright was alive he never laid any claims to the property in dispute either as a mortgagee or a purchaser. In 1949 the plaintiffs-respondents received information that the defendants-appellants were going to sell the land in dispute.

The plaintiffs-respondents then instituted an action against the defendants seeking a declaration of title in respect of the property in dispute as well as the property No.90/92 Broad Street.

The claim in respect of No. 90/92 Broad Street was withdrawn. The suit which was numbered as No.32/51 was heard by Jibowu J. It is clear from the Judgment of Jibowu J. that besides the issue as to whether or not the property in dispute was sold by William George Barber to James Emanuel Wright, the issue as to whether or not William George Barber paid the mortgage debt in respect of the property in dispute was also tried.

The learned trial Judge (Jibowu) held inter alia that the mortgage debt had been satisfied and that the property in dispute never passed by sale to James Emanuel Wright. Jibowu J. however non-suited the plaintiffs-respondents in that action on the ground that he was unable to make a declaration that the property belonging to the plaintiffs-respondents in fee simple, as, although he was satisfied that the mortgage debt had been paid, there had been no re-conveyance of the property from the mortgagee to the mortgagor.

The plaintiffs-respondents then instituted the present action claiming a re-conveyance of the property by the defendants to them.

In his judgment the learned trial Judge (Jobling) dealt in detail with the evidence and gave judgment for the plaintiffs on their claim. The defendants have appealed from the said judgment on a number of grounds of appeal filed. Counsel for the defendants-respondents, however, argued on ground (1 and 4) and on ground (2).

Ground (2) reads:- The learned trial Judge erred in law and in fact in holding that the Statute of Limitation does not apply to the present case.

In support of this ground of appeal Counsel for the appellants has referred to the Real Property Limitations Act 1874 and has submitted that the defendants-appellants gave evidence of long possession of the property in dispute.

In his judgment the learned trial Judge stated that he was satisfied that the third defendant let the land to tenants between 1946 and 1956 and that at one time his mother deposited firewood on portion of the land; that the plaintiffs vacated the property in 1926, but visited it from time to time and protested when they considered that anyone was exercising rights of ownership over the land. The learned trial Judge continued and stated;-

> "In my view the occasional deposit of firewood on the land by Henrietta de Souza was not an entry into possession."

He also hold that even if the defendants claimed that they had been in possession of the land from 1946 to 1956 this possession was only for a period of five years because the period of

In the Federal Supreme Court

No. 33

Judgment.

19th May, 1958 - continued.

possession would not run from 1946 to 1951 when the plaintiffs instituted the first action in which they were non-suited.

I agree with the learned trial Judge's finding that the defendants failed to prove that they were covered by the Statute of Limitation.

The onus of proving long possession was on the defendants-appellants; and although the plaintiffs-respondents alleged in their Statement of Claim that some time after the death of James Emanuel Wright, his sister, Henrietta de Souza, took possession of the land and that after her death the defendants continued in possession, the evidence adduced supported the finding of the learned Trial Judge that the defendants had not proved long possession.

Grounds (1) and (4) read as follows:-

"1. The learned trial Judge erred in law in holding that the dealings with the property by the defendants' predecessor were inconsistent with the mortgage to the defendants.

4. The learned trial Judge misdirected himself in law on the facts in holding that the plaintiffs' predecessor must have deducted the mortgage debt from the sale of the property at 90 and 92 Broad Street, Lagos."

In support of these grounds, Counsel for the appellants has argued that the learned Trial Judge was wrong when he came to the conclusion that the mortgage debt had been paid and that there was no direct evidence to support that finding.

In my view the learned trial Judge was justified in coming to the conclusion that the mortgage debt had been paid. He considered the evidence led in support of the allegation that after the redemption of the property in dispute and the sale of No. 90/92 Broad Street to Wright, Barber mortgaged the property in dispute in 1901 and in 1902 and repaid the loans in each case. Although the learned trial Judge held that there was not sufficient evidence that the plaintiffs received and were paid compensation when the building on the

land was demolished by the Lagos Town Council. I think it was the duty of the defendants who said they were in possession of the property to have proved that they and not the plaintiffs claimed or were paid compensation by the Town Council. This they never did.

The inference that the mortgage debt had been paid was the only one that could be drawn from the evidence adduced before the trial court.

In my view the appeal should be dismissed. Costs assessed at 30 guineas.

(Sgd.) S.O. Quashi-Idun, Ag. F.J.

I concur (Sgd.) A. Ade. Ademola, F.C.J.

I concur (Sgd.) W.M. Hurley, Ag. F.J.

F.O. Akinrele for the Appellants
J.A. Odeku for the Respondents.

In the Federal Supreme Court

No. 33

Judgment.

19th May, 1958 - continued.

No. 34

ORDER DISMISSING APPEAL

No. 34

Order dismissing Appeal.

19th May, 1958.

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

Suit No.566/1953
F.S.C.225/1957.

ON APPEAL from the judgment of the High Court of Lagos.

BETWEEN:

1. ANGELINA AREFUNWON
2. CATHERINE AYODELE
3. SAMUEL S.I. WRIGHT DE SOUZA

Appellants

- and -

1. SALLY SHOLA BARBER
2. EMILY LANDE BARBER
3. HENRIETTA YETUNDE BARBER
4. SAMUEL BANDELE BARBER
5. BEN LOLADE BARBER

Respondents

Monday the 19th day of May, 1958

UPON READING the Record of Appeal herein and

In the Federal Supreme Court

No. 34

Order dismissing Appeal.

19th May, 1958. - continued.

after hearing Mr. F.O. Akinrele of counsel for the Appellants and Mr. J.A. Odeku of counsel for the Respondents:

IT IS ORDERED that this appeal be dismissed and that the Appellants do pay to the Respondents costs of this appeal fixed at 30 guineas.

(Sgd.) S.A. Samuel
AG. CHIEF REGISTRAR.

No. 35

Order granting Final Leave to Appeal to Her Majesty in Council.

8th September, 1958.

No. 35

ORDER granting FINAL LEAVE to APPEAL to HER MAJESTY IN COUNCIL

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

Suit No.566/1953
F. S. C. 225/1957

APPLICATION for an order for final leave to appeal to Privy Council.

BETWEEN:

1. ANGELINA AREFUNWON
2. CATHERINE AYODELE
3. SAMUEL W.I. WRIGHT DE SOUZA

Applicants

- and -

1. SALLY SHOLA BARBER
2. EMILY LANDE BARBER
3. HENRIETTA YETUNDE BARBER
4. SAMUEL BANDELE BARBER
5. BEN LOLADE BARBER

Respondents

Monday the 8th day of September, 1958.

UPON READING the application herein, the affidavit sworn to on the 14th day of August, 1958, and further affidavit sworn to on the 4th day of September, 1958, both filed on behalf of the Applicants and after hearing Mr. F.O. Akinrele of counsel for the Applicants, the Respondents not being present or represented:

IT IS ORDERED that final leave to appeal to Her Majesty's Privy Council be granted.

(Sgd.) C.O. Madarikan
CHIEF REGISTRAR.

EXHIBITS

Plaintiffs Exhibits

1.

Probate and Will of Beal Bucock.

1893.

Exhibit 1. - PROBATE

IN THE SUPREME COURT OF THE COLONY OF NIGERIA

IN THE MATTER of Beal Bucock Deceased.

BE IT KNOWN that on the 6th day of November, 1893 the last Will ..... (a copy whereof is hereto annexed) of Beal Bucock late of Lagos deceased, who died on the 26th day of April, 1893 at Lagos, and who at the time of his death had his fixed place of abode at Taiwo Lane Lagos within the jurisdiction of this Court, was proved and registered in this Court, and that the administration of the personal property of the said deceased was granted by this Court to John Thompson, farmer of Taiwo Lane, and Dick Sawyer, Farmer of Apapa Street, Lagos the two Executors named in the said Will, they having been first duly sworn.

(Sgd.) ?
Chief Registrar.

THE SUPREME COURT OF THE COLONY OF LAGOS.

Sworn under £5.-.- and that the Testator died on or about the 26 day of April, 1893.

WILL

THIS is the LAST WILL of me Beal Bucock of Taiwo Lane in the Colony of Lagos West Africa I revoke all prior wills. I devise all my dwellinghouse situate in Taiwo Lane aforesaid unto William George Barber and his heirs for ever but the said William George Barber is to find me my livelihood clothing and when necessary repair the said house during my life time and also after my death to pay my funeral and testamentary expenses and debts but I owe nobody at present I bequeath all my personal property unto Charllotte Byron now residing at Victoria Street in the said Colony in consideration of her kindness to me I appoint John Thompson of Taiwo Lane aforesaid and Dick Sawyer of Apapa Street in the said Colony executors of this my Will In Witness whereof I have set my hand to this my Will this eighteenth day of August One thousand

Plaintiffs Exhibits

1.

Probate and Will of Beal Bucock.

1893 - continued.

eight hundred and ninety two.

Beal Bucock his X mark signed by the said Beal Bucock by putting his mark to his name thereto in the presence of us present at the same time who in his presence and in the presence of each other have hereunto subscribed our names as witnesses thereto the foregoing will having been first read over and interpreted by Joas Manoel da Silva to the said Beal Bucock in the Yoruba Language and he seemed perfectly to understand the same the word time between the words life and and having been first interlined.

(Sgd.) J.M. da Silva
of Igbosere Street writing Clerk.

E. C. Ferreira of Bamgbose Street Writing Clerk

I hereby Certify the foregoing to be a true copy of the Original Will as compared by me.

(Sgd.) E. H. Richards.
Acting Chief Justice. 6/11/93.

2.

Crown Grant.

8th July, 1869.

Exhibit 2. - CROWN GRANT

No. 251 Vol.5 Page 251

KNOW ALL MEN, by these presents that I, John Hawley Glover Commander in Her Majesty's Royal Navy and Administrator of the Government of the Island and Territories of Lagos, having duly investigated the Claims set forth by Beal Buko to a Piece of Land situate at Williams Street and Measuring Fifteen feet East in Williams Street Seventeen feet four inches west adjoining land of Taiwo Sixty one feet five inches North adjoining land of John Thompson, and Sixty one feet five inches South adjoining land of William Barber

Do hereby Grant and Assign unto the said

Beal Buko

His Heirs, Executors, Administrators, and Assigns for EVER, the above specified Piece of Land.

(L.S.) As witness my hand under the grant Seal of this Colony, this Eighth day of July, 1869

(Sgd.) John H. Glover
ADMINISTRATOR.

Plaintiffs Exhibits

3.

Deed of Mortgage. William George Barber to James Emanuel Wright.

14th July, 1896.

Exhibit 3. - DEED OF MORTGAGE

423 No. 75 M O R T G A G E

WILLIAM GEORGE BARBER

- to -

JAMES EMANUEL WRIGHT

THIS INDENTURE made the fourteenth day of July One thousand eight hundred and ninety six Between William George Barber butcher of Broad Street, Lagos West Africa hereinafter referred to as the mortgagor of the one part AND James Emanuel Wright Minister of the Wesleyan denomination of Broad Street Lagos aforesaid hereinafter referred to as the mortgagee of the other part WHEREAS by a Crown Grant dated the nineteenth day of November, 1894 and registered as Number 181 of Volume 8 of the Register of Crown Grant kept at the General Registry at Lagos aforesaid the hereditaments and premises intended to be hereby granted were granted by the Colonial Government to the said mortgagor his heirs and assigns for ever AND WHEREAS by another Crown Grant dated the eight day of July, 1869 and registered as Number 251 on Page 251 of Volume 5 of the Register of Crown Grants the hereditaments and premises intended to be hereby secondly granted were granted by the said Colonial Government to one Beal Buko his heirs and assigns for ever AND WHEREAS the said Beal Buko late of Taiwo Lane Lagos aforesaid deceased duly made his will dated the eighteenth day of August 1892 wherein the said Beal Buko devised his real estate unto and to the use of the said mortgagor his heirs executors administrators and assigns upon the trusts therein declared concerning the same and appointed John Thompson of Taiwo Lane aforesaid and Dick Sawyer of Apapa Street sole executors of his said will AND WHEREAS the said testator died on the twenty sixth day of April, 1893 without having altered or revoked his said will and such will was duly proved by the said John Thompson and Dick Sawyer on the sixth day of November, 1893 in the principal Registry of the Probate Division of the Supreme Court of the Colony of Lagos AND WHEREAS the said hereditaments and premises hereinafter described and intended to be hereby granted form part of the real estate devised

Plaintiffs Exhibits

3.

Deed of Mortgage. William George Barber to James Emanuel Wright.

14th July, 1896 - continued.

by the said recited will AND WHEREAS the said mortgagee at the request of the said mortgagor has agreed to lend to the said mortgagor the sum of £125.11.6d One hundred and twenty five pounds eleven shillings and sixpence upon having the repayment thereof with interest secured in the manner hereinafter expressed NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £125.11.6 One hundred and twenty five pounds eleven shillings and sixpence now paid to the said mortgagor by the said mortgagee the receipt whereof the said mortgagor doth hereby acknowledge the said mortgagor hereby grants unto the said mortgagee and his heirs firstly ALL that the hereditaments and premises comprised in the first Crown Grant being the first schedule at the foot hereof AND SECONDLY ALL that this hereditaments and premises comprised in the second Crown Grant being the second schedule at the foot hereof together with all rights easements and things appurtenant or reputed as appurtenant thereto TO HAVE AND TO HOLD, the hereditaments and premises hereinbefore firstly and secondly granted or expressed so to be unto and to the use of the said mortgagee his heirs and assigns for ever subject to the covenant for redemption next hereinafter contained PROVIDED ALWAYS that if the said mortgagor his heirs executors administrators or assigns shall on the fourteenth day of July next pay to the said mortgagee his Executors administrators or assigns the said sum of £125.11.6 One hundred and twenty five pounds eleven shillings and six pence with interest for the same after the rate of ten per centum per annum comprised from the date of these presents then and in such case the hereditaments and premises hereby firstly and secondly granted or expressed so to be shall at any time thereafter at the request and cost of the said mortgagor his heirs or assigns be reconveyed to him or them or as he or they shall direct AND THE said mortgagor doth hereby for himself his heirs executors and administrators covenant with the said mortgagee his heirs executors administrators and assigns that he the said mortgagor his heirs executors administrators or assigns will on the fourteenth day of July next pay unto the said mortgagee his executors administrators or assigns the sum of £125.11.6d One hundred and twenty five pounds eleven shillings and six pence with interest for the same after the rate of ten per centum per annum computed from the date of these presents AND

Plaintiffs Exhibits

3.

Deed of Mortgage. William George Barber to James Emanuel Wright.

14th July, 1896 - continued.

the said mortgagor doth hereby for himself his heirs executors and administrators covenant with the said mortgagee his heirs and assigns that he the said mortgagor now hath good right to grant the hereditaments and premises hereby firstly and secondly granted or expressed so to be unto and to the use of the said mortgagor his heirs and assigns in manner aforesaid AND THAT if default shall be made in payment of the said sum of £125.11.6d One hundred and twenty five pounds eleven shillings and six or the interest thereof or any part thereof on the said fourteenth day of July next the said mortgagee his heirs and assigns may at any time thereafter enter into and upon the said hereditaments and premises and shall thenceforth quietly possess and enjoy the same and receive the rents and profits thereof without any lawful eviction interruption claim or demand from or under the said Mortgagor AND THAT free from incumbrances AND FURTHER that he the said mortgagor and all the persons having or lawfully or equitably claiming any or interest in the said hereditaments and premises or any part thereof shall and will from time to time and at all times hereafter at his or their own cost during the continuance of these securities and afterwards at the cost of the person or persons requiring the same do and execute or cause to be done and executed all such acts deeds and things for further and more perfectly assuring the said hereditament and premises unto and to the use of the said mortgagee his heirs and assigns as by him or them shall be reasonably required AND it is hereby DECLARED that the mortgagee his executors administrators or assigns may at any time without any further consent sell the hereditaments and premises hereby firstly and secondly granted or any part thereof either together or in lots and either by public auction or private contract and either with or without special stipulation as to title or otherwise and may buy in at sales by auction and rescind contracts for sale and resell and may also execute assurances give receipts for the purchase money and do all other things for completing the sale which may be thought fit and shall out of the sale moneys first pay the costs and expenses of such sale or otherwise incurred in relation to these securities and secondly pay the money which shall then be owing upon these presents and shall pay the surplus (if any) to the mortgagor his heirs or assigns PROVIDED ALWAYS that the foregoing power of sale shall not be exercised unless default

Plaintiffs Exhibits

3.

Deed of Mortgage. William George Barber to James Emanuel Wright.

14th July, 1896 - continued.

be made in payment of the said sum of £125.11. 6 One hundred and twenty five pounds eleven shillings and six pence or the interest thereof or some part thereof on the said fourteenth day of July next and also for one Calendar month after a written notice requiring payment thereof shall have been given to or left at the usual or last known place of abode in Lagos aforesaid of the said mortgagor or one of his executors or administrators or left or affixed to some part of the said hereditaments or unless default shall be made in some quarterly payment of interest for three successive Calendar month after the time hereby appointed for such payment PROVIDED ALSO that no purchaser upon any sale under the aforesaid power shall be concerned to see or inquire whether any such default has been made or whether any such notice has been given or left or affixed as aforesaid or otherwise as to the necessity or propriety of such sale or be affected by notice that no such default has been made or notice given or left or affixed as aforesaid or that the sale is otherwise unnecessary or improper IN WITNESS whereof the parties hereto have on the day and year before first written affixed their hands and seals

(Sgd.) W. G. Barber (L.S.)

" J. Eml. Wright (L.S.)

Witnessed by us
(Sgd.) Kitoyi Ajasa
" Elijah L. Martino.

THE FIRST SCHEDULE above referred to

ALL THAT piece or parcel of land situate at Broad Street Lagos aforesaid contained by admeasurement being bounded on the North east by Land formerly Beal Buco 46'-0" forty six feet or thereabouts on the South west by the said Broad Street 61'-0" sixty one feet or thereabouts on the North west by part of the said land already sold 39'-6" thirty nine feet six inches or thereabouts and on the South East by Williams Street 53'-0" fifty three feet or thereabouts and is delineated in the map or plan drawn at the foot hereof and coloured yellow.

P L A N

Plaintiffs Exhibits

3.

Deed of Mortgage. William George Barber to James Emanuel Wright.

14th July, 1896 - continued.

THE SECOND SCHEDULE hereinbefore referred to

ALL THAT piece or parcel of land situate at Williams Street Lagos aforesaid bounded on the East by the said Williams Street and measuring 15'0" fifteen feet or thereabouts on the west by land of Taiwo measuring 17'-4" seventeen feet four inches or thereabouts on the North by land of John Thompson measuring 61'-5" sixty one feet five inches or thereabouts and on the south by land of the said William Barber and measuring 61'5" sixty one feet five inches or thereabouts which said piece or parcel of land is more particularly delineated in the map or plan drawn at the foot hereof and coloured yellow.

P L A N

The within instrument is in the opinion of the Commissioners of Stamp Duties chargeable with a duty of Five Shillings and the duty thereon has been assessed accordingly.

Colony of Lagos
25 July '96
Commissioner of Stamp Duties.

(Sgd.) W. Gerald Ambrose
Commr. of Stamp Duties

This Instrument was proved by the testimony of Elijah Luther Martins to be the deed of William George Barber before me this 9th day of October 1896 at 8.30 o'clock in the forenoon.

(Sgd.) Danl Akitoye
Registrar.

General Registry,
22 Oct. '96
Colony of Lagos.
(Intld.) ? 22.10.96.

Plaintiffs Exhibits

4.

Deed of Conveyance. William George Barber to James Emanuel Wright.

13th July, 1898.

Exhibit 4. - DEED OF CONVEYANCE

THIS INDENTURE made the thirteenth day of July One thousand eight hundred and ninety eight BETWEEN WILLIAM GEORGE BARBER of Broad Street, Lagos Butcher of the one part and JAMES EMANUEL WRIGHT of Broad Street Lagos aforesaid Wesleyan Minister of the other part WHEREAS the hereditaments hereinafter described and intended to be hereby conveyed for an estate of inheritance in fee simple in possession is the whole of the land granted by the Lagos Government by a Crown Grant numbered one hundred and eighty one dated nineteenth November One thousand eight hundred and seventy four and registered in number one hundred and eighty one of volume eight page one hundred and eighty one of the Register of Crown Grants AND WHEREAS the said William George Barber has agreed with the said James Emanuel Wright for the absolute sale to him of the said hereditaments at the price or sum of Three hundred pounds sterling NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of Three hundred pounds to the said William George Barber paid by the said James Emanuel Wright (the receipt whereof the said William George Barber doth hereby acknowledge and from the same doth hereby release the said James Emanuel Wright) He the said William George Barber doth hereby grant unto the said James Emanuel Wright and his heirs all that piece or parcel of land situate at Broad Street, Lagos aforesaid and bounded on the north east by land formerly belonging to Beale Buco forty six feet south west by the said Broad Street sixty one feet north west by portion of the said land sold to George Orioye thirty nine feet six inches on the south east by Williams Street fifty three feet and is delineated by a map or plan drawn below these presents coloured yellow TOGETHER with the buildings yards rights and things appurtenant or reputed to be appurtenant thereto AND all the estate right and interest of the said William George Barber therein TO have and to HOLD the hereditaments and premises hereby granted or expressed so to be unto and to the use of the said James Emanuel Wright his heirs and assigns for ever AND the said William George Barber doth hereby for himself his heirs executors and administrators covenant with the said James Emanuel Wright his heirs and assigns that notwithstanding any act deed or thing by him the said William George Barber done or executed or

Plaintiffs Exhibits

4.

Deed of Conveyance. William George Barber to James Emanuel Wright.

13th July, 1898 - continued.

knowingly suffered to the contrary he the said William George Barber now hath good right to grant the hereditaments and premises hereby granted or expressed so to be unto and to the use of the said James Emanuel Wright his heirs and assigns in manner aforesaid AND that the said James Emanuel Wright his heirs and assigns shall and may at all times hereafter peaceably and quietly progress and enjoy the said hereditaments and premises and receive the rents and profits thereof without any lawful eviction interruption claim or demand whatsoever from or by the said William George Barber or his heirs or any person or persons lawfully or equitably claiming as aforesaid from under or for him them or any of them AND that free from all incumbrances whatsoever made or suffered by the said William George Barber or his heirs or any person or persons lawfully or equitably claiming as aforesaid AND further that he the said William George Barber and his heirs and all persons having or lawfully or equitably claiming any estate or interest in the said hereditaments and premises shall and will from time to time and at all times hereafter at the request and cost of the said James Emanuel Wright his heirs or assigns do and execute or cause to be done and executed all such acts deeds and things whatsoever for further and more perfectly assuring the said hereditaments and premises unto and to the use of the said James Emanuel Wright his heirs and assigns in manner aforesaid as shall or may be reasonably required In witness whereof the said parties to these presents have hereunto set their hands and seals at Lagos aforesaid the day and year first above written

(Sgd.) W. G. Barber (L.S.)

(Sgd.) J. Eml. Wright (L.S.)

Signed by the said parties sealed) and delivered in the presence of) us:)

(Sgd.) J. Lloyd Harrison

Received on the day and year aforesaid) of and from the within named James) Emanuel Wright the sum of three hundred) pounds sterling being the consideration) £300.0.0 money paid by him to me as witness my) hand)

(Sgd.) W.G. Barber

Witnesses

(Sgd.) T. Lloyd Harrison
" C. A. Lius

P L A N

Plaintiffs Exhibits

4.

Deed of Conveyance. William George Barber to James Emanuel Wright.

13th July, 1898 - continued.

The within instrument is in the opinion of the Commissioners of Stamp Duties chargeable with duty of one pound and ten shillings and the duty there has been assessed accordingly.

(Sgd.) Frank Robrweger
Commr. of Stamp Duties.

Colony of Lagos
Commissioner of Stamp Duties
16 Jul 98

This Instrument was proved by the testimony of Thomas Lloyd Harrison to be the deed of William George Barber before me this 27th day of July, 1898 at 9.30 o'clock in the forenoon.

(Sgd.) Danl. Akitoye
REGISTRAR.

General Registry,
Colony of Lagos. 29 Jul 98.
(Intld) ? 29/7/98.

5.

Memorandum.

2nd July, 1901.

Exhibit 5. - MEMORANDUM

MEMORANDUM That on this second day of July one thousand nine hundred and one WILLIAM GEORGE BARBER of Williams Street, Lagos West Africa has deposited with Jovins Africo Rodgrgues of Massey Lane Lagos aforesaid the Title deed specified in the schedule hereto as an equitable security for the repayment by the said William George Barber to the said Jovino Africo Rodrigues on the second day of November, 1901 of the sum of Ten pounds Sterling this day lent and advanced by the said Jovino Africo Rodrigues to the said William George Barber together with interest thereon after the rate of sixpence for every pound per month payable monthly computed from the date hereof In witness whereof the parties hereto have hereunto set their hands and seals at Lagos aforesaid the day and year first above written

The Schedule above referred to

By a Crown Grant No. 251 dated 8th July 1869 and registered in Volume 5 page 251 of the Register of Crown Grant in Lagos the said hereditaments therein

described situate at Williams Street Lagos was granted by the Lagos Government to the Grantee Beal Buko.

By the last will and testament of the said Beal Bucock who died on the 26th day of April, 1893 and was dated the 18th day of August, 1892 Probate of which was granted by the Supreme Court of Lagos on the 6th November, 1893 the said hereditaments and premises was given and bequeathed by the said Beal Bucock to the said William George Barber

(Sgd.) W. G. Barber (L.S.)
(Sgd.) J.O. Rodrigues (L.S.)

Signed by the said parties)
sealed and delivered in the)
presence of)

(Sgd.) F. Allison
" Josiah A. King.

Received on the day of the date hereof)
the said sum of Ten pounds sterling)
the consideration money mentioned paid,) £10
lent, and advanced by the said Jovino)
Africo Rodrigues to me as witness my)
hand.)

(Sgd.) W.G. Barber
Witness (Sgd.) F.O. Allison
" J.A. King.

Received from Rev. Wright the sum of Ten pounds and five shlgs. sterling being full settlement of Mr. W.G. Barber's indebtedness to me up to date

(Sgd.) J. O. Rodrigues
1d Stamp affixed

Lagos 17th October, 1901

Witness:

(Sgd.) J.A. King.

Plaintiffs Exhibits

6.

Loan Agreement.

27th January, 1902.

Exhibit 6. - LOAN AGREEMENT

GOOD TO GEORGE OGUNBALEJE FAGBENRO for the sum of Six pounds sterling being amount had and received from him on loan payable at the expiration of three Calendar months with interest of sixpence on every pound per month computed from the date hereof.

£6.0.0 (Sgd.) W. G. Barber.

Witness & Writer,
Josiah A. King of Victoria Road, Lagos.

Received six pounds on account George Fagbenro.
Lagos, 18th July, 1902.

Security for the foregoing loan of Six pounds.

By a Crown Grant No. 251 dated the 8th day of July, 1869 and registered in Volume 5 Page 251 of the Register of Crown Grants in Lagos the hereditaments therein described situate at Williams Street Lagos was granted by Lagos Government to the Grantee Beal Buko.

By the last Will and Testament of the said Beal Buko who died on the 26th day of April, 1893 dated the 18th day of August, 1892 Probate of which was granted by the Supreme Court of Lagos on the 6th day of November, 1893 the said hereditaments and premises were given and bequeathed by the said Beal Buko to the said William George Barber.

7.

Deed of Conveyance. Rebecca Barber to William George Barber.

30th December, 1912.

Exhibit 7. - DEED OF CONVEYANCE

THIS INDENTURE made the Thirtieth day of December in the year of Our Lord One thousand ninehundred and twelve BETWEEN REBECCA BARBER and WILLIAM GEORGE BARBER both of Williams Street Trader and Mercantile clerk hereinafter called the Mortgagors of the one part and DADA ADESHIGBIN of Layeni and Broad Streets, Lagos aforesaid Importers hereinafter called the Mortgagee of the other part WITNESSETH that in consideration of the sum of Seventy six pounds sterling to the said Mortgagors

Plaintiffs Exhibits

7.

Deed of Conveyance. Rebecca Barber to William George Barber. 30th December, 1912 - continued.

now paid by the said Mortgagee the receipt whereof the said Mortgagors hereby acknowledge THEY the said Mortgagors hereby grant unto the said Mortgagee and his heirs THE hereditaments described in the Schedule hereto with all easements rights and things appurtenant or reputed as appurtenant thereto AND ALL the estate and interest of the said Mortgagors therein TO HOLD the same unto and to the use of the said Mortgagee his heirs and assigns PROVIDED ALWAYS that if the said Mortgagors their heirs executors administrators or assigns shall on the thirtieth day of June one thousand nine hundred and fourteen next pay to the said Mortgagee his executors administrators or assigns the sum of Seventy six pounds sterling the said Mortgagee his heirs or assigns shall upon the request and at the cost of the said Mortgagors their heirs and assigns reconvey to them the said hereditaments AND the said Mortgagors for themselves their heirs executors and administrators hereby covenant with the said Mortgagee his heirs and assigns that the said Mortgagors now hath good right to grant the said hereditaments in manner aforesaid, free from incumbrances AND THAT the said Mortgagors and all other persons having an interest in the said hereditaments shall at the request and cost of the said Mortgagee his heirs or assigns and at the cost during the continuance of this security of the said Mortgagors their heirs and assigns and afterwards of the person or persons requiring the same do and each of them execute or cause to be done and executed all such acts, deeds, and things for further assuring the said hereditaments unto and to the use of the said Mortgagors their heirs and assigns as shall be reasonably required AND IT IS HEREBY DECLARED that it shall be lawful the said Mortgagee his executors administrators or assigns at any time without any further consent to sell the hereditaments and premises hereby granted, or any part or parts thereof either together or in lots, and either by Public Auction or Private Contract, and either with or without special stipulations as to title or otherwise with power to buy in the said premises or any part thereof at any sale by Auction or to rescind any contract for the sale thereof and to resell the same from time to time with power also to execute assurances give receipts for the purchase money and do all other things for completing the sale which may be thought fit: AND IT IS HEREBY DECLARED that the said Mortgagee his

Plaintiffs Exhibits

7.

Deed of Conveyance. Rebecca Barber to William George Barber.

30th December, 1912 - continued.

executors administrators or assigns shall out of the moneys arising from any such sale first pay the costs and expenses of such sale or otherwise incurred in relation to this security; secondly, pay the moneys which shall then be owing upon the security; and shall pay the surplus to the said Mortgagors their heirs and assigns PROVIDED ALWAYS that the aforesaid power of sale shall not be exercised unless default shall be made in payment of the said sum of Seventy six pounds sterling or some part thereof respectively on the said Thirtieth day of June One thousand nine hundred and fourteen and also for one month after a written notice requiring payment thereof shall by or on behalf of the said Mortgagee his executors administrators or assigns have been given to the said Mortgagors their heirs executors or administrators or some one of them or left at the usual or last known place or respective places of abode of the said Mortgagors their heirs executors or administrators or some or one of them, or left upon or affixed to some part of the said hereditaments and premises PROVIDED ALSO that no purchaser upon any sale under the aforesaid power shall be concerned to see or inquire whether any such default has been made or whether any such notice has been given, or left or affixed as aforesaid or otherwise as to the necessity or propriety of such sale or be affected by notice that no such default has been made or notice given or left or affixed as aforesaid or that the sale is otherwise unnecessary or improper IN WITNESS whereof the said parties hereto have hereunto set their hands and seals at Lagos the day and year first above written

Rebecca D. Barber Her X Mark (L.S.)

(Sgd.) G.W. Barber (L.S.)

" ? (L.S.)

Signed by the said parties sealed and delivered in the presence of

Joseph B. Jones Solicitor's Clerk
Glover Street, Lagos.

Received of and from the said Mortgagee the sum of Seventy six pounds sterling BEING THE CONSIDERATION MONEY PAID US him to us as witness our hands £76.-.-

Rebecca D. Barber Her X Mark

(Sgd.) Gabriel William Barber.

Witness:
Joseph B. Jones, Solicitor's clerk
Glover Street, Lagos.

Plaintiffs Exhibits

7.

Deed of Conveyance. Rebecca Barber to William George Barber.

30th December, 1912 - continued.

THIS is the Schedule referred to in the foregoing Indenture

By a Crown Grant No. 251 dated the 8th day of July, 1869 registered in Volume 5 Page 251 of the Register of Grants the hereditaments and premises described situate at Williams Street and measuring Fifteen feet East in Williams Street Seventeen feet four inches West adjoining land of Taiwo, Sixty one feet five inches North adjoining land of John Thompson and sixty one feet five inches south adjoining land of William Barber was granted by the Lagos Government to Beal Buko.

By the last Will and Testament of the said Beal Bucock dated 18th August, 1892 (who died on the 26th April, 1893) and which was proved and registered in the Supreme Court of the Colony of Lagos and Probate thereof granted on the 6th day of November 1893 to John Thompson of Taiwo Lane Lagos Farmer and Dick Sawyer of Apapa Street, Lagos aforesaid Farmer the two executors named in the said Will the said Beal Buko alias Beal Bucock devised the whole of the said property to William George Barber in form and mannor following that is to say "I devise all my dwelling house situate in Taiwo Lane aforesaid unto William George Barber and his hoirs for evor, but the said William George Barber is to find me my livelihood clothing and when necessary repair the said house during my life time and also after my death to pay my funeral and testamentary expenses and debts"

8.

Receipts for various Sums of money.

Exhibit 8. - RECEIPTS for various Sums of money

DADA ADESHIGBIN & SONS

TREASURY RECD. 8 JAN 1912.

No. 415 "THE CAGE", BROAD STREET, LAGOS, 19th November, 1919.

RECEIVED FROM W. GABRIEL BARBER per W. Barber the sum of thirty five Pounds Nil Shillings Nil Pence on a/ct.

£35.0.0.

Pro DADA ADESHIGBIN & SONS
(Sgd.) Dada Adeshigbin.

Plaintiffs Exhibits

8.

Receipts for various Sums of money - continued.

DADA ADESHIGBIN & SONS

TREASURY RECD. 8 JAN 1912.

425 "THE CAGE", BROAD STREET,
LAGOS, 28th May, 1920.

RECEIVED FROM GABRIEL W. BARBER per Mrs. Rebecca Barber the sum of Twenty five Pounds Nil Shillings Nil Pence on a/ct.

PRO DADA ADESHIGBIN & SONS.
£25.-.- (Sgd.) Dada Adeshigbin

DADA ADESHIGBIN & SONS

TREASURY RECD. 8 JAN 1912.

429 "THE CAGE", BROAD STREET,
LAGOS, September 8th 1920.

RECEIVED FROM W. GABRIEL BARBER per Mrs. Barber the sum of Sixteen Pounds Nil Shillings Nil Pence in fullsesettlement of Mortgage Debt.

Pro DADA ADESHIGBIN & SONS
£16.-.- (Sgd.) Dada Adeshigbin.

9.

Writ of Summons.

Municipal Secretary and Rebecca Barber.

24th October, 1916.

Exhibit 9. - WRIT OF SUMMONS

IN THE SUPREME COURT OF NIGERIA

No. 67 IN THE DISTRICT COURT OF LAGOS.

Suit No. 16 1570 1916.

BETWEEN:

MUNICIPAL SECRETARY ... Plaintiff

- and -

MRS. REBECCA BARBER ... Defendant

TO Mrs. Rebecca Barber of 19, Williams Street.

You are hereby commanded in His Majesty's name to attend this Court at Glover M. Hall, on

Plaintiffs Exhibits

9.

Writ of Summons.

Municipal Secretary and Rebecca Barber.

24th October, 1916 - continued.

Tuesday the 31st day of October, 1916 at 8.30 o'clock in the forenoon to answer a suit by Municipal Secretary of Lagos against you

The Plaintiff's claim is 11/- being 4 qrs. water Rate to 31st December, 1916 due and owing by you as per particulars below.

A 150/10 - 19 Williams St. 11/-

Issued at Lagos the 24th day of Oct., 1916

Summons)
Service) Official (Sgd.) ?
Hearing)

Station Magistrate.

TAKE NOTICE:- That if you fail to attend at the hearing of the suit or at any continuation or adjournment thereof, the Court may allow the Plaintiff to proceed to Judgment and execution.

Exhibit 10. - LAST WILL AND TESTAMENT of JAMES EMANUEL WRIGHT

10.

Last Will and Testament of James Emanuel Wright.

24th January, 1910.

THIS IS THE LAST WILL AND TESTAMENT of me JAMES EMANUEL WRIGHT of Broad Street, Lagos Wesleyan Minister.

I give devise and bequeath unto my Executors hereinafter named all and singular my Real and Personal estate and effects to be disposed of by them after my deceased inform and manner following that is to say.

That immediately after my death my Executors shall as soon as convenient pay all my just debts (if any) funeral and testamentary expenses and the Legacies hereinafter mentioned.

I give devise and bequeath my land at Tinubu Square Lagos conveyed to me by Osho by an Indenture dated 25th July 1881 registered in No. 69 Volume 34 page 291 of the Register of Deeds being the whole of the land described in Crown Grant No. 297 dated 22nd March 1866 registered in Volume 1 page 294 of the Register of Grants and a small piece of land adjoining it bought by me from one Ajaratu for

Plaintiffs Exhibits

10.

Last Will and Testament of James Emanuel Wright.

24th January, 1910 - continued.

which I had no conveyance to the Wesleyan Methodist Church Faji Circuit to build Ministers House on, if it should be too small for it, it must not be sold, I then give it to my sister Hannah Henrietta de Souza her heirs and assigns

I give devise and bequeath the house and land where I am at Broad Street Lagos granted me by William George Barber by an Indenture dated 13th July, 1898 registered in the Register of Deeds No. 125 Volume 31 page 388 being the whole of the land described in Crown Grant No. 181 dated 19th November, 1874 registered in Volume 8 page 181 of the Register of Grants and my two lots of lands one at Denton Street, Ebute Metta granted by the Lagos Government by Crown Grant No. 18 Volume 46 page 35 of the Register of Grants to me dated 20th January 1905 the other at Ijero Ebute Metta aforesaid sold to me by Ademuyiwa Haastrup and the one adjoining it sold to me by Elisabeth Elfrida Williams now Pratt at Denton Street, Ebute Metta to my sister the said Hanna Henrietta de Souza her heirs and assigns.

A piece of land at Ijero Ebute Metta aforesaid near the property of John J. Cole Catechist bought by me from Lydia Clarke for Ten Pounds and Two Pounds only paid leaving a balance of Eight Pounds must be paid by my executors, I give devise and bequeath it to my sister the said Hanna Henrietta de Souza her heirs or assigns who can either sell or retain it.

A conveyance or conveyances duly registered of these properties from my executors to my sister the said Hannah Henrietta de Souza must be made.

My two farms at Orugbo in Ijebu country must be maintained by both Faji and Olowogbowo Circuits the proceeds thereof equally divided every year for the supports of both Circuits, if they find it impracticable to keep up the farms as stated above my Executors must sell my interests in the said farms, one half of the proceeds to my sister the said Hannah Henrietta de Souza and the remaining half to be divided equally between the two Circuits.

All my personal effects must be sold by Public Auction by the order of my Executors.

My boy Olanrewaju very serviceable to me must remain with S. Sogunro Davies, the rents of the two

shops of my said house at Broad Street is to be spent for his maintenance and education at the Day and High School till he is of age and then taught a trade.

My boy Joseph Adinu may stay with S. Walton Lumpkin as a Domestic Servant and be taught Tailoring when of age.

I have small sums in the Bank of British West Africa and Bank of Nigeria, these with the proceeds of sale of my personal effects, amounts that may be remitted to me from England and paid by anybody are to be disbursed as directed herein. I have no hand for safe-keeping from Elizabeth Elfrida Williams now Pratt the sum of Sixty pounds sterling this amount must be remitted to her in Freetown Sierra Leone.

I give to my boy David Ollanbiwonninu Illori the sum of Five Pounds.

I give to all my Executors the sum of Ten pounds sterling.

After closing up my estate what amount remain must be handed over to my said sister Hannah Henrietta de Souza

I nominate constitute and appoint S. Sogunro Davies of Balogun Street, Lagos Importer Simeon Walton Lumpkin of Broad Street, Lagos Master Tailor and Peter J.C. Thomas of Broad Street Lagos First Class Clerk Financial Commissioner's Office Lagos to be Executors of this my Will In witness whereof I have hereunto set my hand this 24th day of January One thousand nine hundred and ten

(Sgd.) J. E. Wright.

Signed by the said Testator as his Last Will in the presence of us who in his presence at his request and in the presence of each other have hereunto subscribed our names as witnesses.

(Sgd.) C. A. Sapara-Williams B.L.
" Oguntola Sapara

5/- Pd on receipt No.A439757/54 of 14/XI/51.

Certified true copy
(Sgd.) ?
PROBATE REGISTRAR.

Plaintiffs Exhibits

11.

Judgment in Suit No.32/1951.

16th March, 1953.

Exhibit 11. - JUDGMENT in Suit No.32/1951.

IN THE SUPREME COURT OF NIGERIA

IN THE LAGOS JUDICIAL DIVISION

MONDAY THE 16TH DAY OF MARCH, 1953

BEFORE HIS LORDSHIP

MR. JUSTICE OLUMUYIWA JIBOWU

SUIT NO.32/51.

BETWEEN:

1. SALLY SHOLA BARBER)
2. EMILY LANDE BARBER)
3. HENRIETTA YETUNDE BARBER) Plaintiffs
4. SAMUEL BANDELE BARBER)
5. BEN LOLADE BARBER)

- and -

1. ANGELINA AREFUNWON)
2. CATHERINE AYODELE)Defendants
3. SAMUEL S.I. WRIGHT DE SOUZA)

J U D G M E N T

In this action the plaintiffs seek against the defendants a Declaration of Title in fee simple to all the landed property and buildings thereon situate, being and known as Nos. 91 and 92 Broad Street, and 19 Williams Street, Lagos, Nigeria.

By their statement of claim the plaintiffs withdrew their claim to the property Nos. 90 and 92, Broad Street, Lagos wrongly put down as 90 and 92 Williams Street, Lagos. In the same way the property at Broad Street was wrongly described as 91 and 92 instead of 90 and 92, Broad Street, Lagos. Counsel should be careful to avoid such mistakes which may prove detrimental to their clients' interests. The plaintiffs' case is that the property No. 19, Williams Street, Lagos originally belonged to one Beal Bucock as per Crown Grant, Exhibit "A", dated the 8th July, 1869.

He died on the 26th April, 1893 and Probate of his Will, Exhibit "B", was tendered in evidence to show that he devised his dwelling house at Taiwo Lane Lagos to William George Barber.

In a deed of mortgage Exhibit "E" it is recited that by Crown Grant dated 19th November, 1874, and registered as number 181 at page 181 of Volume 8 of the Register of Crown Grants kept at the General Registry at Lagos, the Colonial Government granted to William George Barber a piece of land at junction of Broad Street and Williams Street, Lagos.

By Exhibit "E" both the land belonging to William George Barber and the land he inherited under Beal Bucock's Will were mortgaged to James Emanuel Wright. Plans of the two pieces of land mortgaged are shown in the first and second schedules at the back of the mortgage deed.

From the first schedule it appears that the two lands were adjacent.

The first schedule also shows that the property shown as that of George Orioye was part of the land of William George Barber which had been sold to George Orioye.

The mortgage deed, Exhibit "E", is dated the 14th July, 1896.

On the 13th July, 1898, by the registered deed of conveyance, of which Exhibits "F" and "G" are certified copies, William George Barber sold and conveyed to James Eman. Wright for £300 the property in the first schedule of Mortgage Deed Exhibit "E". The plaintiffs claimed to be children of William George Barber, which fact was admitted in paragraph 1 of the Defence of the 1st Defendant. The 2nd and 3rd defendants stated that they were not in a position to admit or deny that fact and put the plaintiffs to the proof thereof.

The plaintiffs alleged that the said William George Barber was in possession of the property No.19 Williams Street up to the time of his death in 1904 and that they were in possession of the property which devolved on them on the death of the said William George Barber.

They stated further that they have not sold or transferred the property to the defendants.

The 1st plaintiff gave evidence that she, her grandmother Mrs. Rebecca Barber and others lived in the house until 1926, when it was demolished by

Plaintiffs Exhibits

11.

Judgment in Suit No.32/1951.

16th March, 1953 - continued.

the Lagos Town Council as a dangerous building and that compensation of £250 was paid to Bolaji Barber, the eldest brother of the plaintiffs, who died in 1930.

There is evidence that Mrs. Rebecca Barber, relic of William George Barber, lived on the premises until she died.

A copy of the writ of summons served on her for arrears of Water Rate in 1916 was tendered in evidence marked Exhibit "C".

The first plaintiff further testified that James Emanuel Wright never lived at 19, Williams Street, Lagos, in his lifetime but at 90 and 92 Broad Street; that the defendants' mother also, Hannah Henrietta de Souza, lived at 90 and 92, Broad Street and not 19, Williams Street.

The evidence of the 2nd and 3rd plaintiffs' witnesses also showed that 19, Williams Street, was inhabited only by the plaintiffs' family, before its demolition in 1926.

1st defendant in paragraph 5 of her Defence stated that premises No. 19, Williams Street, Lagos, was granted to James Eman Wright under Indenture of Conveyance dated 13th July, 1898, and registered as No. 125 at page 388 in Vol. 31 of the Register of Deeds kept in the Lands Registry in Lagos, being the whole of the land described in the Crown Grant No. 181 dated the 19th November, 1874 registered at page 181 in Volume 8 of the Register of Grants kept in the Lands Registry at Lagos.

The original of Exhibits "F" and "G" is the deed on which the 1st defendant based her claim.

In paragraph 6 of the 2nd and 3rd defendants' Defence, they claimed that 90 and 92 Broad Street and 19, Williams Street, Lagos, formed part of the estate of the Wright de Souza. I should observe that there is no person as Wright de Souza.

They further alleged in paragraph 7 of their Defence that 19, Williams Street was mortgaged to J.E. Wright deceased at first and later on sold to him.

Plaintiffs' witness, Benjamin, produced a certified copy of the Will of James Emanuel Wright, deceased, the fifth paragraph of which reads as follows:-

"I give Devise and bequeath the house and land where I am at Broad Street Lagos granted to me by William George Barber by an Indenture dated the 15th July, 1898 registered in the Register of Deeds No.125 Volume 31 page 388 being the whole of the land described in Crown Grant No. 181 dated 19th November, 1874, registered in Volume 8 page 181 of the Register of Grants ..... to my sister the said Hannah Henrietta de Souza her heirs and assigns."

The reference in this Will is to the original of Exhibits "F" and "G".

The three defendants claimed 19, Williams Street through the devise to their mother Hannah Henrietta de Souza in the Will of James Emanuel Wright referred to above.

The question that falls for decision is whether 19, Williams Street formed a part of the land sold by William George Barber to James Eman Wright. If it did, then it would pass under the Will of James Emanuel Wright to the mother of the defendants through whom they claimed.

If, on the other hand, 19, Williams Street did not pass under the sale of land to James Eman Wright, then the defendants' mother had no right to the land and had no interest therein to pass to the defendants.

Exhibit "F" is a mortgage of two separate pieces of land to James Eman Wright. The first was the land to which the mortgagor derived title from Crown Grant of the 19th November, 1874, and the 2nd was the land that he inherited from Beal Buko and was covered by Crown Grant of the 8th July, 1869.

According to Exhibit "F" or "G", the land sold and conveyed to James Emanuel Wright was the first one covered by Crown Grant dated the 19th November, 1874.

This was borne out by the fifth paragraph of the Will cited above.

It is therefore clear that the land covered by Crown Grant of the 8th July, 1869, Exhibit "A", was never sold and conveyed to James Emanuel Wright,

Plaintiffs Exhibits

11.

Judgment in Suit No.32/1951.

16th March, 1953. - continued.

and was not referred to in his Will.

The land referred to in the will is the property now known as 90 and 92, Broad Street and not 19, Williams Street, Lagos.

19, Williams Street did not therefore pass to the defendants' mother under the Will of James Emanuel Wright, deceased.

There can be no doubt from the evidence of the 1st plaintiff that the defendants' mother, after the death of James Emanuel Wright, entered on the property in dispute which has remained a vacant land since the demolition of the house on it in 1926, and let it to firewood sellers who stocked their firewood thereon. This fact came to the knowledge of the 1st plaintiff who went to see her but was driven away and told to sue.

Hannah Henrietta de Souza, mother of the defendants, entered wrongfully on the land without title and was a trespasser.

The plaintiffs, as the evidence led proves, are not the children but grandchildren of William George Barber, who had only one son Gabriel Barber, who was the father of the plaintiffs.

The plaintiffs are therefore the persons who should inherit the property in question which descended to their late father on the death of his own father intestate.

William George Barber was married under the Marriage Ordinance and his son Gabriel Barber had three wives by whom he had 7 children, two of whom had died, leaving the plaintiffs surviving.

The evidence before the Court shows that the plaintiffs are the children of Gabriel Barber and they should inherit his properties under native law and custom, particularly against strangers, which the defendants certainly are to William George Barber.

At the worst, the plaintiffs would be natural children of Gabriel Barber, but they would be entitled to inherit his property all the same.

On this point I think I should refer to my judgment in Suit AG. 68, in the matter of the estate of Herbert Samuel Heelas Macaulay, deceased, the relevant portion of which reads as follows:-

Plaintiffs Exhibits

11.

Judgment in Suit No.32/1951.

16th March, 1953 - continued.

> "In both Savage Versus Macfoy and Abudu Whabi Phillip V. Samuel Philip and Tunde Philip, it is to be noted that the children concerned were all of the same status, all being born out of lawful wedlock."

The two cases may therefore be taken to have decided that where there is no marriage and a man dies intestate leaving natural children, the natural children can share their father's properties among themselves.

The last paragraph but two of the judgment reads:-

> "It may, therefore, be laid down that the rule of native law and custom which recognises illegitimate children in the distribution of their father's estate may be applied when there is no marriage recognised by the law and no children of such marriage."

Reference by the learned Counsel for the 2nd and 3rd defendants to Section 36 of the Marriage Ordinance which was dealt with in H.S.H.Macaulay's case makes no difference to this case.

The position then is that defendants' mother trespassed on the land to which the plaintiffs were entitled and wrongfully claimed the land as hers.

There is, however, no evidence before the Court as to when she made the entry and that she continued in possession to acquire a title under the statute of Limitations.

The 1st defendant who pleaded the Statute did not give evidence and there is no evidence to support Counsel's submission that it was in 1926. Nor is there any evidence before the Court as to when, if at all, the defendants entered the land or any proof that they have acquired a statutory title to the land in question for the same reason. The 2nd and 3rd defendants did not plead the statute and it is therefore not available to them as a defence. The 1st defendant pleaded it but did not prove it by giving evidence and the plaintiffs evidence did not supply the informations.

There is not even evidence of the time James Emanuel Wright died and when Hannah Henrietta de Souza took over the property devised to her by the

Plaintiffs Exhibits

11.

Judgment in Suit No.32/1951.

16th March, 1953 - continued.

will of the said James Emanuel Wright.

I am not impressed by the submission of the 2nd and 3rd defendants' Counsel that the land in dispute has not been identified in view of Exhibits "A", "B" and "E". The plan in the 2nd schedule to Exhibit "E" shows the land in dispute and shows that it adjoins land of William George Barber.

The 2nd plaintiffs Witness gave a description of the land as being behind the property of Wright - which is admitted to be 90 and 92 Broad Street.

The evidence of 3rd Prosecution witness also shows that the land in question adjoins Wright's property which faces Broad Street while the land in dispute faces Williams Street, confirming the plan in schedule 2 to Exhibit "E". He also tendered plan Exhibit "J" which shows the land in dispute edged red behind and adjoining land facing Broad Street, which is obviously 90 and 92 Broad Street.

The learned Counsel stated that 90 and 92 Broad Street on this plan shows more land than is on the first schedule to Exhibit "E".

The answer to this appears to me to be found in the Will of James Emanuel Wright Exhibit "H" and in Exhibit "F" or "G" that the whole of the land covered by Crown Grant No. 181 dated 19th November, 1874, registered in Vol. 8 page 181 of the Register of Grants was conveyed, whereas schedule 1 to Exhibit "E" shows that only part of the land was mortgaged. There must have been some mistake on the plan on Exhibits "F" and "G".

The Surveyor who made the survey and prepared Exhibit "J", obviously surveyed 90 and 92, Broad Street as he found it in 1949 and shows 19, Williams Street behind it edged red.

As there is no further dispute about 90 and 92 Broad Street the extent of the land is not relevant in so far as the disputed land is shown to be adjoining it.

The learned Counsel suggested that 19, Williams Street is included in 90 and 92 Broad Street in Exhibit "J", but the evidence of the 2nd Plaintiffs witness that there was no Well in the land in dispute, whereas a Well is shown on 90 and 92 Broad

Street, and other evidence before the Court satisfy me that the land edged red is the land in dispute. I accept the evidence of the 1st plaintiff, which is not contradicted, that the Street was previously known as Taiwo Lane.

Exhibit "C" shows that the house was subsequently known as 19, Williams Street, Lagos. The learned Counsel for the 2nd and 3rd defendants also submitted that the fee simple of the property in dispute must be in the Executors of Beal Buko, who should have been joined as parties. I find no substance in this submission.

The plaintiffs have produced Beal Bucock's Grant Exhibit "A" which is proof that the Grant had left the possession of the Executors and must have been in possession of William George Barber before he could recite it in Exhibit "E" in July, 1896.

That fact is evidence that the Executors must have handed the title to the land in dispute to the devisee and assented to his taking charge of his property.

An assent may be expressed, implied or presumed and need not be in any particular form. It only shows that the property in question is no longer required by the personal representative or representatives for the payment of debts or legacies. See Philimore J's judgment in Kemp v.Inland Revenue Commissioners, 1904, I. K. Bb 586-7.

He also submitted that the plaintiffs have not got the fee simple of the land because there is no evidence that there had been a re-conveyance of the lands mortgaged by Exhibit "E".

It is clear that until Exhibit "E" was put to the 1st plaintiff that she was not aware that the properties comprised in the mortgage were ever mortgaged to James Emanuel Wright in 1896, some 57 years ago. What happened between that time and 1898 when Exhibits "F" and "G" were executed can only be a matter of speculation. One thing, however, is certain that one of the two pieces of land mortgaged was sold to James Emanuel Wright.

The uncontradicted evidence before the Court is that after the death of the mortgagor in 1904, his wife, his son, some of his grandchildren and other

Plaintiffs Exhibits

11.

Judgment in Suit No.32/1951.

16th March, 1953 - continued.

members of his family lived in the house without interference by J.E. Wright. When the house was demolished and compensation was paid, it was paid to a grandson of the mortgagor and James Emanuel Wright did not interfere.

If his mortgage still subsisted it is not likely he would not have taken steps to recover the mortgage debt from the mortgagor before his death or from his family after his death.

Furthermore, it is not likely that he would have done nothing when his security was being demolished and compensation therefor was being paid to the son of the mortgagor.

The inference I draw from the circumstances is that the mortgage debt had been satisfied and that the mortgagee had no more claim on the security. After a mortgage debt has been satisfied, the mortgagee should reconvey the legal estate in the land to the mortgagor.

It is impossible to say whether there has been a re-conveyance.

In the circumstances, although I am satisfied that the property No. 19, Williams Street belongs to the plaintiffs as descendants of William George Barber and that the property never passed by sale to James Emanuel Wright, that the property did not pass to defendants' mother under the Will of the said James Emanuel Wright, under whom the defendants are claiming, I am unable to declare that the property belongs to the plaintiffs in fee simple in the absence of evidence of re-conveyance of the property to William George Barber.

The plaintiff is therefore non-suited.

Each party to bear his own costs.

(Sgd.) O. Jibowu
PUISNE JUDGE.

Exhibit 12. - DEED OF MORTGAGE

Defendants Exhibits

12.

Deed of Mortgage. William George Barber to James Emanuel Wright.

14th July, 1896.

THIS INDENTURE made the fourteenth day of July, One thousand eight hundred and ninety six BETWEEN WILLIAM GEORGE BARBER Butcher of Broad Street, Lagos, West Africa hereinafter referred to as the mortgagor of the one part And JAMES EMANUEL WRIGHT Minister of the Wesleyan denomination of Broad Street - Lagos aforesaid hereinafter referred to as the mortgagee of the other part - WHEREAS by a Crown Grant dated the nineteenth day of November, 1874 and registered as Number 181 on page 181 of Volume 8 of the Register of Crown Grants kept at the General Registry at Lagos aforesaid the hereditaments and premises intended to be hereby granted were granted by the Colonial Government to the said mortgagor his heirs and assigns for ever AND WHEREAS by another Crown Grant dated the eighth day of July 1896 and registered as Number 251 of Volume 5 of the Register of Crown Grants the hereditaments and premises intended to be hereby secondly granted were granted by the said Colonial Government to one Beal Buko his heirs and assigns for ever AND WHEREAS by another Crown Grant dated the eighth day of July 1869 and registered as Number 251 of Volume 5 of the Register of Crown Grants the hereditaments and premises intended to be hereby secondly granted were granted by the said Colonial Government to one Beal Buko his heirs and assigns for ever AND WHEREAS the said Beal Buko late of Taiwo Lane Lagos aforesaid deceased duly made his Will dated the eighteenth day of August, 1892 wherein the said Beal Buko devised his real estate unto and to the use of the said mortgagor his heirs executors administrators and assigns upon the trusts therein declared concerning the same appointed John Thompson of Taiwo Lane aforesaid and Dick Sawyer of Apapa Street sole executors of his said will AND WHEREAS the said testator died on twenty sixth day of April 1893 without having altered or revoked his said will and such will was duly proved by the said John Thompson and Dick Sawyer on the sixth day of November, 1893 in the principal Registry of the Probate Division of the Supreme Court of the Colony of Lagos AND WHEREAS the said hereditaments and premises hereinafter described and intended to be hereby granted form part of the real estate devised by the said recited will AND WHEREAS the said mortgagee at the request of the said mortgagor has agreed to lend

Defendants Exhibits

12.

Deed of Mortgage. William George Barber to James Emanuel Wright.

14th July, 1896 - continued.

to the said mortgagor the sum of £125.11.6d. One hundred and twenty five pounds eleven shillings and six pence upon having the repayment thereof with interest secured in the manner hereinafter expressed NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £125.11. 6 One hundred and twenty five pounds eleven shillings and six pence now paid to the said mortgagor by the said mortgagee the receipt whereof the said mortgagor doth hereby acknowledge the said mortgagor hereby grants unto the said mortgagee and his heirs ALL that the hereditaments and premises comprised in the first Crown Grant being the first Schedule at the foot hereof AND SECONDLY ALL that the hereditaments and premises comprised in the second Crown Grant being the second schedule at the foot hereof TOGETHER with all rights easements and things appurtenant or reputed as appurtenant thereto TO HAVE AND TO HOLD the hereditaments and premises hereinbefore firstly and secondly granted or expressed so to be unto and to the use of the said mortgagee his heirs and assigns for ever subject to the covenant for redemption next hereinafter contained PROVIDED ALWAYS that if the said mortgagor his heirs executors administrators or assigns shall on the fourteenth day of July next pay to the said mortgagee his executors administrators or assigns the said sum of £125.11.6d One hundred and twenty five pounds eleven shillings and sixpence with interest for the same after the rate of ten per centum per annum computed from the date of these presents then and in such case the hereditaments and premises hereby firstly and secondly granted or expressed so to be shall at any time thereafter at the request and cost of the said mortgagor his heirs or assigns be reconveyed to him or them or as he or they shall direct AND the said mortgagor doth hereby for himself his heirs executors and administrators covenant with the said mortgagee his heirs executors administrators and assigns that he the said mortgagor his heirs executors administrators or assigns will on the fourteenth day of July next pay unto the said mortgagee his executors administrators or assigns the sum of £125.11.6 One hundred and twenty five pounds eleven shillings and six pence with interest for the same after the rate of ten per centum per annum computed from the date of these presents AND the said mortgagor doth hereby for himself his heirs executors and administrators covenant with

Defendants Exhibits

12.

Deed of Mortgage. William George Barber to James Emanuel Wright.

14th July, 1896 - continued.

the said mortgagee his heirs and assigns that he the said mortgagor now hath good right to grant the hereditaments and premises hereby firstly and secondly granted or expressed so to be unto and to the use of the said mortgagee his heirs and assigns in manner aforesaid AND THAT if default shall be made in payment of the said sum of £125.11.6 One hundred and twenty five pounds eleven shillings and sixpence or the interest thereof or any part thereof on the said fourteenth day of July next - the said mortgagee his heirs and assigns may at any time thereafter enter into and upon the said hereditaments and premises and shall thenceforth quietly possess and enjoy the same and receive the rents and profits thereof without any lawful eviction interruption claim or demand from or by any person or persons whomsoever claiming from or under the said mortgagor AND THAT free from incumbrances AND FURTHER THAT he the said mortgagor and all other persons having or lawfully or equitably claiming any or interest in the said hereditaments and premises or any part thereof shall and will from time to time and at all times hereafter at his or their own cost during the continuance of these securities and afterwards at the cost of the person or persons requiring the same do and execute or cause to be done and executed all such acts deeds and things for further and more perfectly assuring the said hereditaments and premises unto and to the use of the said mortgagee his heirs and assigns as by him or them shall be reasonably required AND IT IS HEREBY DECLARED that the Mortgagee his executors administrators or assigns may at any time without any further consent sell the hereditaments and premises hereby firstly and secondly granted or any part thereof either together or in lots and either by public auction or private contract and either with or without special stipulations as to title or otherwise and may buy in at sales by auction and rescind contracts for sale and resell and may also execute assurances give receipts for the purchase money and do all other things for completing the sale which may be thought fit and shall out of the sale moneys first pay the costs and expenses of such sale or otherwise incurred in relation to these securities and secondly pay the moneys which shall then be owing upon these presents and shall pay the surplus (if any) to the mortgagor his heirs or assigns PROVIDED ALWAYS that the foregoing power of sale shall not be exercised unless default be made in payment of

Defendants Exhibits

12.

Deed of Mortgage. William George Barber to James Emanuel Wright.

14th July, 1896 - continued.

the said sum of £125.11. 6 One hundred and twenty five pounds, eleven shillings and six pence or the interest thereof or some part thereof on the said fourteenth day of July next and also for One Calendar month after a written notice requiring payment thereof shall have been given to or left at the usual or last known place of abode in Lagos aforesaid of the said mortgagor or one of his executors or administrators or left or affixed to some part of the said hereditaments or unless default shall be made in some quarterly payment of interest for three successive calendar months after the time hereby appointed for such payment PROVIDED ALSO that no purchaser upon any sale under the aforesaid power shall be concerned to see or inquire whether any such default has been made or whether any such notice has been given or left or affixed as aforesaid or otherwise as to the necessity or propriety of such sale or be affected by notice that no such default has been made or notice given or left or affixed as aforesaid or that the sale is otherwise unnecessary or improper

IN WITNESS whereof the parties hereto have on the day and year before first written affixed their hands and seals

WITNESSED BY US (Sgd.) W.G.Barber L.S.
" J. Eml. Wright L.S.

(Sgd.) Kitoyi Ajasa
(Sgd.) Elijah A. Martins

THE FIRST SCHEDULE above referred to

ALL THAT piece or parcel of land situate at Broad Street, Lagos aforesaid contained by admeasurement being bounded on the North-east by land formerly Beal Buco 46'-11" forty six feet or thereabouts on the south-west by the said Broad Street 61'-0" sixty one feet or thereabouts on the North-west by part of the said land already sold 39'6" thirty nine feet six inches or thereabouts and on the south-east by Williams Street 53'-0" fifty three feet or thereabouts and is delineated in the map or plan drawn at the foot hereof and coloured yellow -

P L A N

THE SECOND SCHEDULE hereinbefore referred to

ALL THAT piece or parcel of land situate at Williams Street, Lagos aforesaid bounded on the

Defendants Exhibits

12.

Deed of Mortgage. William George Barber to James Emanuel Wright.

14th July, 1896 - continued.

East by the said Williams Street and measuring 15'-0" fifteen feet or thereabouts on the West by land of Taiwo measuring 17'-4" seventeen feet four inches or thereabouts on the North by land of John Thompson measuring 61'-5" sixty one feet five inches or thereabouts and on the South by land of the said William Barber and measuring 61'-5" sixty one feet five inches or thereabouts which said piece or parcel of land is more particularly delineated in the map or plan drawn at the foot hereof and coloured yellow -

P L A N

The within instrument is in the opinion of the Commissioners of Stamp Duties chargeable with a duty of Five shillings and the duty thereon has been assessed accordingly

(Sgd.) W. Gerald Ambrose
Commissioner of Stamp Duties.

This Instrument was proved by the testimony of Elijah Luther Martins to be the deed of William George Barber before me this 9th day of October, 1896 at 8.20 o'clock in the forenoon.

(Sgd.) Danl. Akitoye
Registrar.

Registered as No. 75 on Page 423 of Vol. 25 of the Register of Deeds kept in the General Registry Lagos.

(Sgd.) Danl. Akitoye
Registrar.

Lagos.
22nd October, 1896.

Dated the 14th day of July, 1896

WILLIAM GEORGE BARBER
TO
JAMES EMANUEL WRIGHT

MORTGAGE of two pieces or parcels of land situate lying and being at Broad Street and Taiwo Lane respectively, Lagos, W.C.A.

(Sgd.) Kitoyi Ajasa
Tinubu Street.

Defendants Exhibits

13.

Deed of Conveyance. William George Barber to James Emanuel Wright.

13th July, 1898.

Exhibit 13. - DEED OF CONVEYANCE

Conveyance

THIS INDENTURE made the thirteenth day of July One thousand eight hundred and ninety eight BETWEEN WILLIAM GEORGE BARBER of Broad Street, Lagos butcher of the one part and JAMES EMANUEL WRIGHT of Broad Street, Lagos aforesaid Wesleyan Minister of the other part WHEREAS the hereditaments hereinafter described and intended to be hereby conveyed for an estate of inheritance in fee simple in possession is the whole of the land granted by the Lagos Government by a Crown Grant numbered one hundred and eighty one dated nineteenth November One thousand eight hundred and seventy four and registered in number one hundred and eighty one of volume eight page one hundred and eighty one of the Register of Crown Grants AND WHEREAS the said William George Barber has agreed with the said James Emanuel Wright for the absolute sale to him of the said hereditaments at the price or sum of three hundred pounds sterling NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of three hundred pounds to the said William George Barber paid by the said James Emanuel Wright (the receipt whereof the said William George Barber doth hereby acknowledge and from the same doth hereby release the said James Emanuel Wright) He the said William George Barber doth hereby grant unto the said James Emanuel Wright and his heirs ALL THAT piece or parcel of land situate at Broad Street, Lagos aforesaid and bounded on the north-east by land formerly belonging to Boal Buco forty six feet south west by the said Broad Street sixty one feet north west by portion of the said land sold to George Orioye thirty nine feet six inches on the south east by Williams Street fifty three feet and is delineated by a map or plan drawn below these presents coloured yellow TOGETHER with the buildings yards rights and things appurtenant or reputed to be appurtenant thereto AND all the estate right and interest of the said William George Barber therein TO HAVE AND TO HOLD the hereditaments and premises hereby granted or expressed so to be unto and to the use of the said James Emanuel Wright his heirs and assigns for ever AND the said William George Barber doth hereby for himself his

Defendants Exhibits

13.

Deed of Conveyance. William George Barber to James Emanuel Wright.

13th July, 1898 - continued.

heirs executors and administrators covenant with the said James Emanuel Wright his heirs and assigns that notwithstanding any act deed or thing by him the said William George Barber done or executed or knowingly suffered to the contrary he the said William George Barber now hath good right to grant the hereditaments and premises hereby granted or expressed as to be unto and to the use of the said James Emanuel Wright his heirs and assigns in manner aforesaid And that the said James Emanuel Wright his heirs and assigns shall and may at all times hereafter peaceably and quietly possess and enjoy the said hereditaments and premises and received the rents and profits thereof without any lawful eviction interruption claim or demand whatsoever from or by the said William George Barber or his heirs or any person or persons lawfully or equitably claiming as aforesaid from under or for him them or any of them AND that free from all incumbrances whatsoever made or suffered by the said William George Barber or his heirs or any person or persons lawfully or equitably claiming as aforesaid AND further that he the said William George Barber and his heirs and all persons having or lawfully or equitably claiming any estate or interest in the said hereditaments and premises shall and will from time to time and at all times hereafter at the request and cost of the said James Emanuel Wright his heirs or assigns do and execute or cause to be done and executed all such acts deeds and things whatsoever for further and more perfectly assuring the said hereditaments and premises unto and to the use of the said James Emanuel Wright his heirs and assigns in manner aforesaid as shall or may be reasonably required IN WITNESS whereof the said parties th these presents have hereunto set their hands and seals at Lagos aforesaid the day and year first above written

(Sgd.) W. G. Barber (L.S.)
" J. Eml. Wright (L.S.)

Signed by the said parties sealed)
and delivered in the presence of)
us:)

(Sgd.) T. Lloyd Harrison

C.A. Lino.

Defendants Exhibits

13.

Deed of Conveyance. William George Barber to James Emanuel Wright.

13th July, 1898 - continued.

Received on the day and year aforesaid of and from the within named James Emanuel Wright the sum of three hundred pounds sterling being the consideration money paid by him to me as witness my hand) £300.-.-

(Sd.) W. G. Barber

Witnesses

(Sd) T. Lloyd Harrison
C. A. Lino

P L A N

The within instrument is in the opinion of the Commissioners of Stamp Duties chargeable with a duty of one pound and ten shillings and the duty thereon has been assessed accordingly

(Sd) Frank Robrweger
Commr. of Stamp Duties.

Colony of Lagos
Commissioner of Stamp Duties
16 Jul 98.

This instrument was proved by the Testimony of Thomas Lloyd Harrison to be the deed of William George Barber before me this 27th day of July, 1898 at 9.30 o'clock in the forenoon.

(Sd) Danl. Akitoyo
Registrar.

General Registry,
Colony of Lagos
29 Jul 98
(Intld.) ? 29/7/98.

Defendants Exhibits

16.

Summons. Souza v. Owoyede. 3rd February, 1944.

Exhibit 16. - SUMMONS

IN THE SUPREME COURT OF NIGERIA

IN THE DISTRICT COURT OF LAGOS

SUIT NO. OF 1944

H. H. SOUZA ... Plaintiff

V.

OWOYEDE ... Defendant

The Plaintiff's claim from the defendant is for the sum of One pound Twelve Shillings (£1.12/-) being arrears of rents for four months from October 1943 to January, 31st 1944 at the rate of 8/- per month in an apartment of a yard at No. 19, Williams Street, Lagos.

The plaintiff also claims for possession.

Annual value £10.-.-

Dated at Lagos this 3rd day of Feb., 1944.

£1.16.- H.H. de Souza
Plaintiff

Plaintiff's address;
92, Broad Street, Lagos.

Defendant's address:-
19, Williams Street, Lagos.

17.

Administration Account. Judgment in W.A.C.A. No.104/54 and proceedings and Judgment in Suit No.183/49.

Exhibit 17. - ADMINISTRATION ACCOUNT

IN THE SUPREME COURT OF NIGERIA

IN THE MATTER OF THE ESTATE OF THE REV. JAMES EMANUEL WRIGHT (Deceased)

ADMINISTRATION ACCOUNT

This is the Exhibit marked "A" referred to in the Affidavit of Simeon Walton Lumpkin and Peter John Claudius Thomas sworn this 24th day of December, 1930.

(Sgd.) J. H. Smith
COMMISSIONER FOR OATHS.

Defendants Exhibits

17.

Administration Account.

		£ s. d.	£ s. d.
1928	Rents Collected		
May 8	Abudu Salami - Part Payment of rent of 92, Broad Street Shop from February to May, 1928	2.10. -	
" 15	T. F. Fabiyi - Rent of 90 Broad Street Shop from February to May, 1928 at £2.10/- per month	10. -. -	
July 17	Abudu Salami - Payment on account of Rent of 92, Broad St. Property	1.17. -	
" 18	A.J.Tangalakis & Co. - Rent of 7a, Broad Street for half year ending 31st December, 1928	150. -. -	
" 21	T.F.Fabiyi - Rent of Shop at 90, Broad Street for June 1928	2.10. -	
Sept.10	Abudu Salami - Payment on account of Rent of the shop	2. 6. -	
1929			
Jan. 17	T.F.Fabiyi - Rent of shop at 90 Broad Street from July to December 1928 at £2.10/- per month	15. -. -	
" 21	A.J.Tangalakis & Co. - Rent of 7a,Broad Strect property from 1st January, 1929 to June 30th 1929	150. -. -	334. 3. -
1928	Debts Received		
Jan. 23	E.A.Franklin - Money owed Testator by Mr. M.A.Thomas	5.14. -	5.14. -
1928	Cash Received by S. Thomas & Co.		
Jan. 12	By cash for Kolanuts sold	17. -	

Defendants Exhibits

17.

Administration Account - continued.

			£ s. d.	£ s. d.
1928		Brought forward	17. -	339.17. -
Jan.	22	By 4 Tins Palm Oil sold to Messrs. Jurgens Colonial Products Ltd. Ex. Rev. Wright's farm	1.11. 3	
"	28	By 1 Tin Palm Oil sold to Standard Co. Ltd.	6. -	
July	23	Proceeds on 1 Basket 1400 Kola nuts sold	1.19. -	
"	"	Do. Half Okeh bad kolanuts sold	4. -	
Oct.	30	By cash sales at Williams Street 2800 kolanuts	3.10. -	
Dec.	1	By cash sales at Williams Street - 1000 Kolanuts	1. 5. -	
"	10	By Cash sales 1 basket wormy kolanuts	6. -	
"	17	Do. at Williams Street - 2100 kolanuts	1. 6. 3	
"	20	By cash sales at Williams Street 4000 kolanuts	5. 1. 6	
1929				
Feb.	11	By cash sales at Williams Street 1000 kolanuts	1.10. -	
"	"	Do. Do. 3000 kolanuts	3. -. -	
"	"	Do Do. 1300 "	6. 6	
"	"	Do. few quantity of kolanuts with worms	2. -	
1930				
Jan.	1	Do. at Williams Street for kolanuts ex Rev. Wright's farm	22. 7. -	43.11. 6
				£383. 8. 6

Defendants Exhibits

17.

Administration Account - continued.

		£ s. d.	£ s. d
1928	Funeral & Testamentary Expenses		
Aug. 30	M.A.Akinsemoyin Esq. amount expended for the funeral of Rev. J.E.Wright (Decsd.)	120. 2. 6	
" 31	Nigerian Printing & Publishing Co. for publication of 6 insertions Estate Notices re J.E.Wright, Deceased	3.15. -	
" "	Nigerian Printing & Publishing Co. - 50 copies Estate Notices re late J.E. Wright Deceasod	7. 6	
Feb. 24	Chief Registrar - filing original Will in re J.E. Wright deceased	1. -	
15	Chief Registrar - Filing Oath, Application, Inventory, Affidavit, Certified copy of 12 folios will - Estate Duty on £100	3.15. -	
15	Chief Registrar - Oaths & 2 exhibits	12. -	128.13. -
1928	Legal Expenses		
July 13	Registrar - Summons Fee in re Executors v. Abudu Salami - Suit No.2057/28	6. -	
1929			
Jan. 18	Chief Registrar - Fees Paid on originating summons in re Executors v. Souza	3. 6. -	
Feb. 1	Alakija & Alakija - Retainer fee in re Executors v. A.Salami - Suit No. 2057/28	2. 2. -	

		£ s. d.	£ s. d.	Defendants Exhibits
1929	Brought forward	5.14. -	128.13. -	17.
Feb. 1	Alakija & Alakija - Brief fee in re Rebecca Cole v. Executors - Suit No. 343/1928	12.12. -		Administration Account - continued.
Mar. 28	Alakija & Alakija - Costs awarded plaintiff's counsel in an originating summons	10.10. -		
Apl. 2	Irving & Bonnar - Costs awarded 1st defendant's counsel in an originating summons	10.10. -		
" "	E.J. Alex-Taylor - Costs awarded 2nd and 3rd defendants' counsel in an originating summons	10.10. -	49.16. -	
1929	Debts Paid			
Jan. 29	Rebecca B. Cole - Judgment Debt and costs in re Suit No. 343/28 - E.B. Cole v. Executors, J.E. Wright Estate.	50.12. -		
" 31	Dr. O. Sapara - For medical attendance on Deceased J.E. Wright	10.10. -	61. 2. -	
1928	Miscellaneous expenses incurred by S.Thomas & Co.			
Mar. 10	Cash paid to Mr. A.B.T. Thomas Blacksmith for repairing 2 animal Traps for the late Rev. J.E. Wright	10. -		
" 14	Cash paid to Post Office for one parcel for the late Rev. J.E. Wright	3. -		

Defendants Exhibits

17.

Administration Account - continued.

1928		£ s. d.	£ s. d.
	Brought forward	13. -	110.18. -
Mar. 19	Cash paid to Daniel Sariwaju for travelling expenses from Lagos to the Farm	5. -	
May 25	Cash paid to Daniel Sariwaju for labour and travelling expenses	17. 6	
June 6	Cash paid for buying leaves for kolanuts	6	
Sept. 4	Do. to Madam Janet Efuyele for her husband Daniel Sariwaju for expenses to be incurred in the cleaning of the late Rev. J.E. Wright's farm	5. -. -	
" "	Cost of stamp for receiving above money	2	
Nov. 24	Cash paid to Daniel Sariwaju to buy leaves for covering kolanuts re Rev. J.E. Wright's Farm	3. -	
" 23	Cash paid to Daniel Sariwaju to settle with labourers carrying 9 baskets and 3 Okchs of kolanuts to Williams Street ex Rev. J.E. Wright's Farm	4. 6	
" 27	Wages for one year paid to labourer Amusa at J.E. Wright's Farm	8.10. -	
" "	Cash paid for rent of canoe	8. -	
" "	Cash paid to canoe men	18. -	
" "	Do. to Daniel Wright personal expenses	2.10. -	
" "	Cost of stamp for receiving above payment	2	
		19. 9.10	239.11. -

			£ s. d.	£ s. d.	Defendants Exhibits
1928		Brought forward	19. 9.10	239.11. -	17.
Nov.	27	Cash paid for 1 bundle leaves for Kolanuts	3. 6		Administration Account - continued.
Dec.	4	To Water & Improvement Rates for 90 and 92 Broad Street House	2. -. -		
"	5	To cash paid for buying leaves for kolanuts	1. 6		
"	"	Do. do. do.			
1929					
Feb.	18	Cash paid to Daniel Sariwaju in Lagos for Chop money	5. -		
"	20	To amount paid to Daniel Sariwaju as follows:-			
		Charge for load from Rev. J.E. Wright's Farm to Orogbo Wharf: £ 8. 9			
"	"	Canoe & Canoe Men (1 window Frame) 13. -			
		Canoe fees for 3 days 12. -			
		Allowance for self 2.10. -	4. 8. 9		
May	16	Canoe Fare from Lagos to Rev. J.E. Wright's farm for Amusa Labourer	2. 6		
June	4	500 pieces Bricks 16. -			
		2 Barrels Cement (Portland) 1. 6. 6			
		1 Do. Cement 13. 3			
		3 yards Sand for 7a Broad Street House 10. 6	3. 6. 3d		

Defendants Exhibits

17.

Administration Account - continued.

			£ s. d.	£ s. d.
1929		Brought forward	29.17. 4	239.11. -
June	7	3 Yards of sand for 7a Broad Street House	10. 6	
Dec.	30	Amount paid to Daniel Sariwaju to settle with labourers carrying 13 okehs kolanuts ex. Rev. J.E.Wright's farm from Idumagbo to Williams Street	9. 5	10
June	8	Amount paid to Musa Adeyemi (Bricklayer) for job done at premises No.7a Broad Street House	2.10. -	
Dec.	30	Amount paid to Daniel Sariwaju for personal expenses	2. -. -	20
"	"	Amount paid to Daniel Sariwaju to pay labourer Amusa at Rev. J.E. Wright's farm.	2. -. -	
1930				
Jan.	10	5 per cent commission on £22.7/- costs of Kolanuts ex late Rev. Wright's farm sold by Mrs. Thomas on the 6th inst.	1. 2. 4	
"	10	By 5 per cent on disbursements by S.Thomas & Co. viz. on £42.18.1d	2. 2.11	
"	"	By 5 per cent on sales of produce at Williams Street viz. on £48.11.6d		
		Less Cheque ex Solicitors £5.0.0		
		Sale of Kolanuts 22.7.0	27. 7.-	
		Viz on Net	21. 4.6	1. 1. 3d

	£. s. d.	£ s. d.	Defendants Exhibits
Brought forward	41. 3. 9	239.11. -	17.
S.W. Lumpkin - paid to labourers for cleaning land at Oloto Street, Ebute Metta	5. -		Administration Account - continued.
Lagos Town Council Water Rate paid on 92 Broad Street property on June 14th 1928	1. -. -		
Lagos Town Council Improvement Rate paid on June 14th 1928	1. -. -		
Messrs. S. Walton Lumpkin & Peter J.C. Thomas - Executors Legacy	10. -. -		
Alakija & Alakija - Professional Services rendered as Solicitors to the estate Chief Registrar - Further payment of Estate Duty (£6) Two Oaths, filing Affidavits & marking 20 exhibits	7. 5. -	140. 0. 3	
		379.11. 3	
Balance in the hands of the Executors		3.17. 3	
		£383. 8. 6	
Brought forward	£383. 8. 6		
	£383. 8. 6d		

Certified true copy

(Sgd.) ?
PROBATE REGISTRAR.

Defendants Exhibits

17.(Contd.)

Judgment in W.A.C.A.104/1954.

22nd November, 1954.

Exhibit 17. - (b) JUDGMENT

IN THE WEST AFRICAN COURT OF APPEAL
HOLDEN AT LAGOS

MONDAY THE 22ND DAY OF NOVEMBER, 1954.

BEFORE THEIR LORDSHIPS

SIR STAFFORD FOSTER SUTTON — PRESIDENT
JOSEPH HENRY MAXIME DE COMARMOND — AG.CHIEF JUSTICE NIGERIA
SIR JAMES HENLEY COUSSEY — JUSTICE OF APPEAL.

W.A.C.A. 104/1954.

BETWEEN :

ENITAN EDUN ... Appellant

- and -

1. SALAMI KOLEDOYE
2. IYA SHEGUN
3. SALAMI AKANWO
4. ELIJAH
5. SHOTAYO OJO
6. SAMUEL AKIREMI Respondents

J U D G M E N T

COUSSEY, J.A. In this appeal, in six consolidated actions from the Supreme Court in the Lagos Judicial Division, the plaintiff/appellant, who appears to be an illiterate woman, claimed a declaration of title to land at Denton Street, Ebute Metta. By her Statement of Claim she averred that her immediate Vendor purchased at auction the right, title and interest of the Oloto Chieftaincy family (a land owning family) in the property in question at an execution sale. She pleaded as her title, her Vendor's registered Certificate of Purchase and her own Deed of Conveyance from the Vendor. By their defences the defendants each denied the plaintiff's title. They did not set up any title themselves but they in effect set up a just tertii, averring that the Oloto Chieftaincy family had not been divested of its title by the events and the documents upon which the plaintiff relied.

At the outset of the hearing the Court suggested an issue for trial which, it thought, might settle the case without the necessity of calling any witnesses, namely; that raised by paragraph 5 of the Defence which reads:

> The defendant avers that none of the documents referred to in the Statement of Claim can properly divest the Oloto Chieftaincy Family of their right, title and interest in the property in dispute.

Shortly stated, this was a defence that the interest of the Oloto family had not, in fact, been sold because that interest was not in the Judgment-debtors for whose debt the property was sold in execution.

Counsel for the plaintiff did not agree with this suggestion.

When he intimated that he would lead evidence, the Court warned him of the adverse view of the plaintiff's case it would take if leading evidence resulted in a waste of time.

In my opinion Counsel for the plaintiff was perfectly entitled to conduct his case by calling evidence. The defendants had not moved the Court by way of demurrer under Order 28 of the Rules of Court for the suits to be dismissed. He was entitled to decline to embark upon an issue, the burden of which may have been on the defendants, if called on.

But when the plaintiff, in the course of her evidence, testified that she had bought the land by native law and custom, a statement which she shortly afterwards explained to mean that she had bought the title of the Oloto Chieftaincy (which is a title by native tenure,) the Court ruled that any question directed to lay a foundation for the Deed of Conveyance from her vendor (which had been pleaded) would be inconsistent with her evidence and the claim on her writ to have purchased according to native law and custom. At this stage the Court expressed itself that, in view of her evidence above referred to, Counsel for the plaintiff, was cross-examining his own witness in inviting her to establish the deed upon which, by her Statement of Claim she in fact relied as the foundation of her title. On this it is unnecessary to comment.

Defendants Exhibits

17. (Contd.)

Judgment in W.A.C.A.104/1954.

22nd November, 1954 - continued.

Although the certificate of purchase was, shortly after, admitted in evidence without objection, when the deed of conveyance was tendered the Court refused to admit it unless it were satisfied that it effected a transfer by native law and custom.

Situated as he was, counsel for the plaintiff submitted that he could not prove his case if the deed was not admitted in evidence. He would not call further evidence, and at his request, the Deed was marked as tendered and rejected. Thereupon, on the defendants' submission, the plaintiff's actions were dismissed with costs which, the Court ordered Counsel to pay personally on the ground that he had been negligent in the conduct of the action.

In this case there has been an unfortunate error in procedure on the part of the Court affecting the merits of the case and it is due to the Court looking for technicalities instead of endeavouring to do substantial justice.

The plaintiff, it is true, claimed by her writ a declaration of title in accordance with native law and custom and so stated in her evidence but, as the plaintiff explained in evidence, it was clear that by this assertion she meant that she relied on a purchase of the Oloto interest. The defendants obviously were not embarrassed. Some indulgence is due to an illiterate party. As Lord Langdale M. R. said in Johnstone v. Todd, 1843, 5 Beav. 601: "Witnesses, and particularly illiterate witnesses, must always be liable to give imperfect or erroneous evidence, even when orally examined in open court. The novelty of the situation, the agitation and hurry which accompanied it, the cajolery or intimidation to which the witness may be subjected, the want of questions calculated to excite those recollections which might clear up every difficulty, and the confusion occasioned by cross-examination, as it is too often conducted, may give rise to important errors and omissions."

In these circumstances the Court erred in rejecting the plaintiff's deed; in indicating the manner in which her case should be conducted, and in dismissing her claim.

It is regrettable that the Court adopted an attitude of reproach, almost of asperity to the plaintiff's counsel. In that atmosphere, he could

not be expected to represent his client's interests satisfactorily.

I would therefore allow the appeal, set aside the judgment dismissing the plaintiff's claim and order a new trial before another Judge, with liberty to the plaintiff to amend her writ of summons if so advised.

It is clear, of course, that this Court is not concerned with any question at all as to the merits of the case or the probability of success or otherwise of the plaintiff or the defendants.

(Sgd.) J. Henley Coussey, J.A.
I concur. (Sgd.) S. Foster Sutton, P.
I concur. (Sgd.) M. de Comarmond, Ag. C.J.

Exhibit 17. - (c) PROCEEDINGS in SUIT No.183/49.

Proceedings in Suit No.183/49.

IN THE SUPREME COURT OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION
MONDAY the 11th day of JULY, 1949

BEFORE HIS HONOUR
CECIL GERAINT AMES Esquire,
Ag. Senior Puisne Judge.

Suit No. 183/49

BETWEEN:
ANGELINA AREFUNWON ... Plaintiff

- and -

1. CATHERINE AYODELE
2. SAMUEL SIMON IGE WRIGHT DE SOUZA Defendants

I. Taylor for plaintiff
Cameron for defendant

Pleadings 30 days each side.

(Sgd.) C.G. Ames.

TUESDAY THE 4th DAY OF OCTOBER, 1949.
Suit No. 183/49

Angelina Arefunwon v. Catherine Ayodele & Anor.

For extension of time to file defence.

Defendants Exhibits

17. (Contd.)

Proceedings in Suit No.183/49 - continued.

A. Taylor (holding J.I.C. Taylor's brief).

F.R.A. Williams holding Kayode's brief moving Defence already filed but filed out of time.

7 days extension granted costs assessed at 5 guineas.

(Sgd.) S. B. Rhodes.

J.

IN THE SUPREME COURT OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION
MONDAY the 17th day of OCTOBER, 1949

BEFORE HIS HONOUR,
STEPHEN BANKOLE RHODES, C.B.E.
Puisne Judge.

Suit No.183/49.

BETWEEN:

ANGELINA AREFUNWON ... Plaintiff

- and -

1. CATHERINE AYODELE
2. SAMUEL SIMON IGE WRIGHT DE SOUZA Defendants

Adjourned to 29/11/49 for hearing.

(Sgd.) S.B. Rhodes.

TUESDAY the 29th day of NOVEMBER, 1949

Suit No. 183/49

Angelina Arefunwon v. Catherine Ayodele and Anor.

J.I. Taylor for plaintiff
Kayode for Defendant.

Pleadings filed.

Both Counsel agree that on the claim issue is only joined in para. 9, as all the other are admitted; But defendants says that he is still relying on his 3, 6, 11 and 12 for his defence.

Angelina Arefunwun on Bible sworn state, live at 16, Tinubu Square, Petty Trader. This is the

Defendants Exhibits

17. (Contd.)

Proceedings in Suit No.183/49 - continued.

certified true copy of James Wright's Will deceased admitted marked "A". He died leaving the property in dispute to my mother Hannah Henrietta de Souza. This is a copy of my mother's will now dead. Admitted marked "B" from the will her property was left to both myself and the two defendants. During my mother's lifetime I lived in the property at 90 and 92, Broad Street and continued there for about 2 months after her death when I was driven out by 2nd defendant, who is an executor. My mother died on the 23rd of February, 1946. Since then I resided where I am now and paying rent at the rate of 25/- a month. I am about a year now in arrears. Both defendants are living now at 90 and 92, Broad Street.

I am not allowed by them to occupy a room there and nothing of the rent has been handed to me. I have no voice in the management according to them. I have demanded my share of rents and told I have no say. The defendants are full blooded brother and sister. I am the eldest of us three that is the two defendants and myself we are of the same mother and father.

XXD. by Kayode: As we are not friendly I want my share. At the time of the death of my mother we were not friendly. I am now at 16, Tinubu Square which is my father's house. I know that property 90/92, was mortgaged to Lagos Building Society before the death of my mother.

My mother had other properties but 2nd defendant has never informed me that there are difficulties about her titles. I know of no Court action in connection with these properties. When my mother died four of us that is the two executors (one now dead) the 1st defendant and I went to Lagos Building Society executed a further charge on the mortgage for £50. I have made enquiries and discovered that he is only paying the interest and not the capital. I know of another property belonging to my mother at Williams Street but no one has informed me that the title is contested. The water rates and interests on the Mortgage are paid from the rents of 90/92.

When action was taken about 16, Tinubu Street, I was ordered to pay rents. My mother had a land at Abule Ila Road. I know of no action in connection with it. I know my mother had farmlands at Luwoye and Oshoshe the actions about them were brought to my mother during her lifetime and determined.

Defendants Exhibits

17. (Contd.)

I have often taken to the Police with my children when at 90/92 by 2nd defendant with frivolous complaints. I was actually driven away by 2nd defendant.

Proceedings in Suit No.183/49 - continued.

Close of Plaintiff's case.

Nigel James Tamson on Bible sworn states. Commercial Clerk Lagos Building Society. This is the Mortgage Deed of 90/92, Broad Street admitted marked "C".

No xxd. by Taylor.

Samuel Wright de Souza on Bible sworn states Live at 92, Broad Street, Know plaintiff. She is my full blooded sister. Know property in dispute. Plaintiff lived there before but left of her own free will. I am the sole executor now and she did not like it. After she left her daughter Florence continued to live there. I did unscrew her bedstead and removed it from her room when my mother was in agony and about to die. Plaintiff did not object to this. After the sale of 16, Tinubu Square plaintiff asked me to allow her to return I had no objection but she did not return. The rents I collect I pay interest on the mortgage Water Rate and administration of the Estate. I also paid funeral expenses for my sister Canuta. I filed an account of the Estate in 1947. This is the account of the estate as from June 1947 to August 1949.

Admitted marked "D" This is a receipt showing an action pending in the above Court in connection with the estate admitted marked "E". Property 90/92 Broad Street are the only valuable ones. Without it there are no assets to complete the administration of the Estate.

XXd by Taylor:- I hope to liquidate the debts by closing the Estate.

I admit plaintiff is paying rent where she is residing, I agree the defendants are paying no rents for residing at 90/92, Broad Street. I am paying no rents to her or giving her any money. I do not know whether she has a job. Plaintiff gets nothing from the Estate. It is true we two defendants live rent free in the house.

I did file an action in Court for partition or sale of 16 Tinubu Square where Plaintiff was living and

house over her head. I have been collecting rents on 90/92, Broad Street for the last three years.

re-xd. by Kayode:- I did not stop plaintiff from living rent free in 90/92, Broad Street.

Close of defendants' case.

Adjourned to 5/12/49 for Address by Counsel.

(Sgd.) S.B. Rhodes.
J.

Defendants Exhibits

17. (Contd.)

Proceedings in Suit No.183/49 - continued.

IN THE SUPREME COURT OF NIGERIA

IN THE LAGOS JUDICIAL DIVISION

MONDAY the 5th day of DECEMBER, 1949

BEFORE HIS HONOUR,

STEPHEN BANKOLE RHODES, C.B.E.

Puisne Judge.

Suit No.183/49.

BETWEEN:

ANGELINA AREFUNWON ... Plaintiff

- and -

1. CATHERINE AYODELE
2. SAMUEL SIMON IGE WRIGHT DE SOUZA Defendants

Kayode:-

Most of the facts are not in dispute.

House in dispute is still within the Estate and 2nd Defendant is still Executor and Trustee. Administration still in process. Property in dispute is mortgaged to Irving and Bonnar. Since the lifetime of the Testatrix. Legal Estate still in Irving and Bonnar. Land Transfer Act of 1897 Sec. 1 Sub. (1) Sec. 2 Sub (1) and (3). Action should have been compel the executor to wind up: In re Masden 1864 Vol. 26 Ch. D. L. R. Page 783 refer to 789.

Defendants Exhibits

17. (Contd.)

Proceedings in Suit No.183/49 - continued.

See Taylor v. Grange Vol. 13 Ch. D. L. R. 1879 page 223. In re Kensington 1903 Vol. 1 Chancery Reports page 203 shows all amounts in the hands of the administrator. Miller v. Warnnington Vol. 21 Revised Report Page 216.

Taylor:- This not partition Act in England.

Action based on right of parties.

Thomas and Thomas and Another Vol. 16 N.L.R. Page 5. If partition not possible due to Mortgage then sale could be made and money deposited into Court. First payment should be to Mortgagor, then balance divided. See Giwa Vs. Otu Vol. 11 N.L.R. page 161. £9.10.0d a month for 3 years will be about £402.17.0d.

At this stage Kayode inform Court that water Rate was at £18.3.0d per annum.

Judgment Reserved.

(Sgd.) S.B. Rhodes
J.

---

17. (d)

Judgment in Suit No.183/49

Exhibit 17. - (d) JUDGMENT in Suit No.183/49.

IN THE SUPREME COURT OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION
FRIDAY the 9th day of DECEMBER, 1949

BEFORE HIS HONOUR
STEPHEN BANKOLE RHODES, C.B.E.,
Puisne Judge

Suit No.183/1949

BETWEEN:
ANGELINA AREFUNWUN ... Plaintiff

- and -

1. CATHERINE AYODELE
2. SAMUEL SIMON IGE WRIGHT DE SOUZA ... Defendants

J U D G M E N T

Angelina Arefunwun has come to this Court asking that partition or sale be ordered in

connection with 90 and 92 Broad Street, property which is jointly owned by the three that is the plaintiff and her brother and sister, the two defendants.

There is no doubt that the 2nd defendant who is the sole Executor has not been active over the administration of the Estate.

At the time of the Testatrix's death in 1946 the debt due on the mortgage was £120. Three years later that is to date of summons it is still £120.

I cannot order partition or sale as the Legal Estate still vests in Irving and Bonnar. Any such partition will reduce the value of the property under mortgage; and Sale will not be possible without the Legal Estate.

The accounts are with the Probate Registrar and open to inspection.

Plaintiff's action should have been to compel the Executor to wind up the Estate which I hope she will pursue.

This action is dismissed, each party to bear its own expense.

(Sgd.) S.B. Rhodes
Puisne Judge.

Certified true copy
(Sgd.) S.C. Mafe
for SENIOR REGISTRAR.