

1, 1969

IN THE PRIVY COUNCIL

No. 33 of 1966

O N A P P E A L
FROM THE SIERRA LEONE COURT OF APPEAL

B E T W E E N :

JOSEPH ALLEN SMITH (Plaintiff) Appellant

- and -

1. FATULA CHRISTIANA WALKER (Defendants) Respondents
2. TAIWO VICTORIA EDWARDS

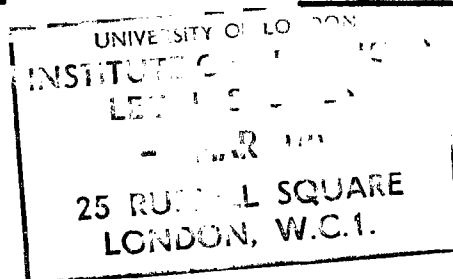
SUPPLEMENTAL RECORD OF PROCEEDINGS
(EXHIBITS)

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Respondents



(i)

IN THE PRIVY COUNCIL

No. 33 of 1966

O N A P P E A L
FROM THE SIERRA LEONE COURT OF APPEAL

B E T W E E N :

JOSEPH ALLEN SMITH (Plaintiff) Appellant

- and -

1. FATULA CHRISTIANA WALKER
2. TAIWO VICTORIA EDWARDS (Defendants) Respondents

SUPPLEMENTAL RECORDS OF PROCEEDINGS
(EXHIBITS)

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7.	Notice and Grounds of Appeal	10th November 1961	21
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10.	Plan on Exhibit L.1., Indenture, Ransolina P. Cromanty to Joseph C. Metzger	16th November 1932	Separately Reproduced
11.	Plan on Exhibit M.1., Indenture, Ransolina P. Cromanty to Fatola C. Walker and Another	6th October 1953	Separately Reproduced
12.	Plan on Exhibit N.1. Indenture, William Smith to James B. Sawyer	6th July 1887	Separately Reproduced

1.

IN THE PRIVY COUNCIL

No. 33 of 1966

O N A P P E A L
FROM THE SIERRA LEONE COURT OF APPEAL

B E T W E E N :

JOSEPH ALLEN SMITH (Plaintiff) Appellant

- and -

1. FATULA CHRISTIANA WALKER

2. TAIWO VICTORIA EDWARDS

(Defendants) Respondents

10

SUPPLEMENTAL RECORD OF PROCEEDINGS
(EXHIBITS)

EXHIBIT B

No. 1

WRIT OF SUMMONS

Colony of Sierra Leone.
(To wit)

C.C.85/58.B. 1958. S. No. 10.

IN THE SUPREME COURT OF SIERRA LEONE.

Exhibit B

No. 1

Writ of
Summons

18th
February
1958

20

Between

JACOB WILLIAMSON SAWYERR, MARY MELVINA
METZGER, ERNEST ONESIMUS SMITH, JOSEPH
ALLEN SMITH, EDGAR OLUWOLE SMITH,
ARCHIBALD CAMPBELL AND WALTER CAMPBELL

Plaintiffs

and

GEORGIANA LUCRETIA ROSE, ISAAC IMANUEL
MACRAE, ALBERT ONESIMUS WALKER AND
CRISPIN KENNETH EDWARDS AS EXECUTORS OF
THE ESTATE OF RANSOLINA PATIENCE CROMANTY
(DECEASED)

Defendants

30

Elizabeth the Second by the Grace of God of the
United Kingdom of Great Britain and Northern
Ireland and of her other realms and territories
Queen, Head of the Commonwealth Defender of the
Faith.

Exhibit B

No. 1

Writ of
Summons

18th
February
1958

(Cont.)

To :-- GEORGIANA LUCRETIA ROSE OF 14, CROOKE STREET, FREETOWN IN THE COLONY OF SIERRA LEONE, ISAAC IMANUEL MACRAE OF 10c, MALTA STREET, FREETOWN AFORESAID, ALBERT ONESIMUS WALKER OF 17, MAMMY YOKO STREET, FREETOWN AFORESAID AND CRISPIN KENNETH EDWARDS OF 24, POWNALL STREET, FREETOWN AFORESAID AS EXECUTORS OF THE ESTATE OF RANSOLINA PATIENCE CROMANTY - (DECEASED).

WE command you that within 8 days after the Service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Supreme Court of Sierra Leone in an Action at the suit of JACOB WILLIAMSON SAWYERR, MARY MELVINA METZGER, ERNEST ONESIMUS SMITH, JOSEPH ALLEN SMITH, EDGAR OLUWOLE SMITH, ARCHIBALD CAMPBELL AND WALTER CAMPBELL, and take notice that in default of your so doing the Plaintiff may proceed therein, and judgment may be given in your absence.

10

20

Witness the Honourable VAHE ROBERT BAIRAMIAN ESQUIRE Chief Justice of Sierra Leone at Freetown, the 18th day of February, in the year of Our Lord 1958.

(Sgd.) F.H.S. Bridge.

Master and Registrar.

N.B. This Writ is to be served within twelve calendar months from the date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

30

The Defendant may appear hereto by entering an Appearance either personally or by Solicitor at the Master's Office Supreme Court of Sierra Leone.

A Defendant appearing personally may, if he desire enter his appearance by post and the appropriate forms may be obtained by sending a postal order for 2s.6d. with an addressed envelope, foolscap size, to the Master and Registrar, Supreme Court, Freetown.

40

The Plaintiff's Claim is against the defendants as Executors and Trustees of the Estate of Ransolina Patience Cromanty (deceased) for:-

Exhibit B

No. 1

Writ of
Summons

18th
February
1958

(Cont.)

10

(a) A declaration that the plaintiffs are beneficially interested in the hereditaments and premises situate at Fourah Bay Road, Malta Street and Lucas Street all in Freetown in the Colony of Sierra Leone and devised by the Will of Jacob Williamson Sawyerr (deceased) to his brothers Richard Williamson Sawyerr, James Beresford Sawyerr, his sister Ransolina Patience Cromanty and his daughters Georgiana Lucretia Sawyerr and Jane Alice Sawyerr in equal shares.

(b) An account of Mesne profits received by the late Ransolina Patience Cromanty in respect of the above premises.

(Sgd.) Charles S.T. Edmondson.

20

Counsel.

30

This Writ was issued by J.E. Mackey of 13, Gloucester Street, Freetown in the Colony of Sierra Leone, Solicitor - Jacob Williamson Sawyerr of Malta Street, Freetown in the Colony of Sierra Leone, Mary Melvina Metzger and Ernest Onesimus Smith of 8, Eastern Street, Freetown aforesaid, Joseph Allen Smith and Edgar Oluwole Smith of 7, Lucas Street, Freetown aforesaid, Archibald Campbell and Walter Campbell of Pademba Road, Freetown, aforesaid.

(Sgd.) J.E. Mackey.

PLAINTIFFS' SOLICITOR

Exhibit B

No. 2

Statement
of Claim

16th
April
1958

EXHIBIT B

No. 2

STATEMENT OF CLAIM

C.C.85/58. 1958. S. No. 10.

IN THE SUPREME COURT OF SIERRA LEONE.

JACOB WILLIAMSON SAWYERR, MARY MELVINA
METZGER, ERNEST ONESIMUS SMITH, JOSEPH ALLEN
SMITH, EDGAR OLUWOLE SMITH, ARCHIBALD
CAMPBELL AND WALTER CAMPBELL PLAINTIFFS

AND

10

GEORGIANA LUCRETIA ROSE, ISAAC EMANUEL
MACRAE, ALBERT ONESIMUS WALKER AND CRISPIN
KENNETH EDWARDS AS EXECUTORS OF THE ESTATE
OF RANSOLINA PATIENCE CROMANTY (DECEASED)
DEFENDANTS

STATEMENT OF CLAIM

JACOB WILLIAMSON SAWYERR late of Accra in
Ghana (formerly the Gold Coast Colony) was
seised in fee simple absolute of hereditaments
and premises with buildings thereon situated at
Fourah Bay Road, Malta Street, Lucas Street
and farm land situate at Fourah Bay Road, all
in Freetown in the Colony of Sierra Leone.

20

2. The said Jacob Williamson Sawyerr died on
the 15th day of August, 1916 having made and
executed his last will and testament dated the
30th day of May, 1908 probate whereof was on the
14th day of October, 1918, committed and granted
by the Supreme Court of former Gold Coast now
Ghana to Ransolina Patience Cromanty the then
sole surviving executor and trustee under the
will of the said Jacob Williamson Sawyerr.

30

3. In the said will the said Jacob Williamson
Sawyerr inter alia made the following devise:-

"I devise and bequeath by freehold lands
with the buildings thereon situate at
Fourah Bay Road, Malta Street, Lucas Street,

and Farm land at Fourah Bay Road, all in Freetown Sierra Leone to my brothers Richard William, James Beresford, and my sister Ransolina Georgiana Lucretia and Jane Alice all in equal share and it is my express desire that these lands be not sold but that they must descend from children to children."

Exhibit B

No. 2

Statement
of Claim

16th
April
1958

(Cont.)

10 4. Richard William and James Beresford referred to in the aforesaid devise died before the testator Jacob Williamson Sawyerr. The said Richard William died leaving four lawful children three of whom have since died leaving no lawful issue. The Plaintiff Jacob Williamson Sawyerr is the lawful surviving child of the said Richard William. The said James Beresford died a widower and leaving no lawful issue.

20 5. Jane Alice referred to in the said devise was married to a certain Emanuel Onesimus Smith and became known as Jane Alice Smith.

6. The said Jane Alice Smith died on the 24th day of December, 1957, having made and executed her last will and testament dated the 11th day of December, 1957 probate whereof was on the 27th day of February, 1958, committed and granted by the Supreme Court to Ernest Onesimus Smith and Jacob Williamson Sawyerr the executors and trustees therein named.

30 7. By her said will the said Jane Alice Smith inter alia made the following devises:-

Para. 12. I devise my share of arrears of rent due me during my lifetime in the property situate at Fourah Bay Road in Freetown aforesaid now being used as Saint Philips Church Parsonage to all my male children mentioned in this my Will.

40 Para. 13. I GIVE DEVISE AND BEQUEATH the rest and residue of my estate (real and personal) not herein

Exhibit B

No. 2

Statement
of Claim16th
April
1958

(Cont.)

devised by this my Will to all my male children share and share alike and I direct that any benefit which under this my Will may become vested in any female herein or hereafter to be born, married or to become married shall be for her sole and separate estate free from the debts control engagements interference or liabilities of any husband.

10

8. The property referred to in para. 12 of the Will of the said Jane Alice Smith is a portion of the freehold lands with the buildings thereon devised by the will of Jacob Williamson Sawyerr as aforesaid.

9. Georgiana Lucretia was married to a certain Rose and became known as Georgiana Lucretia Rose.

20

10. Ransolina Patience Cromanty aforesaid died on the 7th day of March, 1957, leaving no issue and leaving a will probate whereof was on the 13th August, 1957, committed and granted to the defendants herein.

11. The plaintiffs Mary Melvina Metzger, Ernest Onesimus Smith, Joseph Allen Smith and Edgar Oluwole Smith, are the lawful children of Jane Alice Smith (deceased).

12. The plaintiffs Archibald Campbell and Walter Campbell are the lawful children of Evelyn Minette Modupeh Campbell (deceased) a lawful daughter of Jane Alice Smith (deceased).

30

13. Ransolina Patience Cromanty aforesaid has been receiving the rents and profits of the freehold lands with the buildings thereon situate at Fourah Bay Road, Malta Street, Lucas Street, and Farm land at Fourah Bay Road, all in Freetown Sierra Leone devised by the will of Jacob Williamson Sawyerr as aforesaid and has failed to account therefor after demand made by Jane Alice Smith (deceased) and Jacob Williamson

40

Sawyerr (junior) one of the plaintiffs.

Exhibit B

No. 2

Statement
of Claim

16th
April
1958

(Cont.)

14. Ransolina Patience Cromanty one of the executors aforesaid died on the 7th day of March, 1957, leaving a will dated the 5th day of October, 1953, probate whereof was on the 13th day of August, 1957, committed and granted to the defendants (and) the executors therein named.

10 15. By her said will the said Ransolina Patience Cromanty inter alia made the following devises:-

20 "Para. 17. I GIVE AND DEVISE my premises known as No. 10, Malta Street in Freetown aforesaid to Jane Alice Smith and Georgiana Lucretia Rose in the respective shares of as to Jane Alice Smith one fourth as to Georgiana Lucretia Rose three fourths as tenants in common in fee simple.

30 18. I GIVE AND DEVISE my premises known as 28, Lucas Street in Freetown aforesaid otherwise known as "BIG YARD" to Jane Alice Smith, Georgiana Lucretia Rose, Jacob Williamson Sawyerr and Simeon Crispin Edwards (a minor) as tenants in common in fee simple.

40 19. I give and devise my premises known as "SAWYERR'S FARM" comprising Nos. 18 & 20 York Street unto my Trustees in trust for Georgiana Lucretia Rose, Jane Alice Smith and Jacob Williamson Sawyerr in the respective shares of, as to Georgiana Lucretia Rose one half as to Jane Alice Smith one fourth and as to Jacob Williamson Sawyerr one fourth share and interest in the said

Exhibit B

No. 2
Statement
of Claim
16th
April
1958
(Cont.)

property as tenants in common.

20. I GIVE AND DEVISE TO FATULIA
CHRISTIANA CLAUDIA WALKER AND
TAIWO ESTHER EDWARDS my two
Grandnieces in fee simple my
premises known as 98, Fourah
Bay Road, in Freetown in the
Colony of Sierra Leone
absolutely."

16. The hereditaments and premises referred to in paragraph 17, 18, 19, and 20 of the will of the said Ransolina Patience Cromanty, are the same hereditaments and premises devised by the will of the said Jacob Williamson Sawyerr (deceased) as aforesaid. 10

The Plaintiffs therefor claim:-

- (a) A declaration that the plaintiffs are beneficially interested in the hereditaments and premises situate at Fourah Bay Road, Malta Street and Lucas Street all in Freetown in the Colony of Sierra Leone and devised by the Will of Jacob Williamson Sawyerr (deceased) to his brothers Richard Williamson Sawyerr, James Beresford Sawyerr, his sisters Ransolina Patience Cromanty and his daughters Georgiana Lucretia Sawyerr and Jane Alice Sawyerr in equal shares. 20
- (b) An account of Mesne profits received by the late Ransolina Patience Cromanty in respect of the above premises. 30

(Sgd.) Charles S.T. Edmondson.
COUNSEL.

DELIVERED and FILED the 16th day of April, 1958
by J.E. Mackay, of 13, Gloucester Street,
Freetown, Plaintiffs' Solicitor, pursuant to
the Rules of Court.

EXHIBIT B

No. 3

DEFENCE

C.C.85/58. 1958. S. No. 10.

Exhibit B

No. 3

Defence

26th
April
1958

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN:-

JACOB WILLIAMSON SAWYERR AND OTHERS
Plaintiffs

and

GEORGIANA LUCRETIA ROSE AND OTHERS
Defendants

DEFENCE

1. The Defendants are not in a position to admit or deny the allegations contained in paragraph 1 of the Statement of Claim, and put the Plaintiffs to the strict proof thereof.

20

2. Save that it is admitted that Jacob Williamson Sawyerr (deceased) died on the 15th day of August, 1916, the other allegations contained in paragraph 2 of the Statement of Claim are not admitted.

3. The Statements contained in paragraphs 10 and 15 of the Statement of Claim are admitted.

30

4. Save that the late Ransolina Patience Cromanty during her lifetime received the rents and profits of the Freehold lands with the buildings thereon situate at Fourah Bay Road, Malta Street, Lucas Street and Farm land at Fourah Bay Road, in Freetown, all other allegations contained in paragraph 13 of the Statement of Claim are denied.

5. The Defendants say that the late Ransolina Patience Cromanty did not obtain in

Exhibit B

No. 3
Defence
26th
April
1958
(Cont.)

Sierra Leone, any Grant of Probate of the Will of Jacob Williamson Sawyerr (deceased) or any Grant of Letters of Administration of the estate of the said Jacob Williamson Sawyerr (deceased).

6. The Defendants say that the late Ransolina Patience Cromanty was NOT in possession of any Realty of the said Jacob Williamson Sawyerr (deceased) in Sierra Leone either as Executrix of, or as Trustee under, the Will of the said Jacob William Sawyerr (deceased).

10

7. The Defendants say that no one of the Plaintiffs herein, either by himself or by his ancestor, has ever been in possession of any of the Realty mentioned in paragraph 3 of the Statement of Claim, or in receipt of the rents and profits thereof, or any part thereof.

8. The Defendants say that Jacob Williamson Sawyerr (decd) was entitled at no time to any Freehold property in Lucas Street, Freetown, or to any Farm land at Fourah Bay Road in Freetown.

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9. The Defendants say further that Jacob Williamson Sawyerr (deceased) left the Colony of Sierra Leone very many years ago and from that time was never in possession of any of the Realty mentioned in paragraph 3 of the Statement of Claim, or in receipt of the rents and profits thereof, or any part thereof.

30

10. Save as is expressly admitted hereinbefore, the Defendants deny each and every allegation contained in the Statement of Claim.

(Sgd.) E.J. McCormack.

Counsel.

DELIVERED and FILED this 26th day of April, 1958 by Edward Jackson McCormack, of 11, Regent Road, Freetown, Solicitor for the Defendants herein, Pursuant to the Rules of the Supreme Court, 1947.

EXHIBIT B

No. 4

ADDITIONAL DEFENCE

C.C.85/58. 1958. S. No. 10.

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN:-

JACOB WILLIAMSON SAWYERR AND OTHERS -
PLAINTIFFS

AND

10 GEORGIANA LUCRETIA ROSE AND OTHERS -
DEFENDANTS

ADDITIONAL DEFENCE.

(A) The Defendants say that the Plaintiffs' Claim is barred by the Statute of Limitations, and their rights (if any) to the said lands were extinguished by virtue of that Act.

20 (B) The Defendants further say that they will rely on the provisions of the Civil Procedure Act, 1833; 3 & 4 Will. 4, C. 42 S. 2.

(Sgd.) E.J. McCormack.
Counsel

DELIVERED and FILED this 10th day of May, 1958 by Edward Jackson McCormack, of No. 11, Regent Road, Freetown, Solicitor for the Defendants herein, Pursuant to Rules of Court.

Exhibit B

No. 4

Additional
Defence

10th
May
1958

Exhibit B

No. 5

Reply

8th

July

1958

EXHIBIT B

No. 5

REPLY

C.C.85/58.

1958.

S.

No. 10.

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN:-

JACOB WILLIAMSON SAWYERR AND OTHERS -
PLAINTIFFS

AND

GEORGIANA LUCRETIA ROSE AND OTHERS -
DEFENDANTS

10

REPLY

The Plaintiffs join issue with the
defendants upon their defence herein.

(Sgd.) J.E. Mackay.

James E. Mackay.

COUNSEL.

DELIVERED and FILED this 8th day of July, 1958
by James Ernest Mackay, Solicitor for the
Plaintiff's, Pursuant to the Rules of the
Supreme Court.

20

EXHIBIT B

No. 6

JUDGMENT

Exhibit B

No. 6

Judgment

5th
September
1961

C.C.85B/58

1958 S. No. 10

IN THE SUPREME COURT OF SIERRA LEONE

JACOB WILLIAMSON SAWYERR & 6 ORS -
PLAINTIFFS

Vs.

GEORGIANA LUCRETIA ROSE & 3 ORS.)
AS EXECUTORS OF ESTATE OF R.P.)
CROMANTY (DECEASED))
DEFENDANTS

10

Mr. M.C. Marke for Plaintiffs.

Mr. E.J. McCormack for Defendants.

J U D G M E N T

5th September, 1961

LUKE: Ag. J. - This is an action in which plaintiffs are claiming against the defendants as executors and trustees of the estate of Ransolina Patience Cromanty (deceased) for (a) A declaration that the plaintiffs are beneficially interested in the hereditaments and premises situate at Fourah Bay Road, Malta Street and Lucas Street all in Freetown in the Colony of Sierra Leone and devised by the Will of Jacob Williamson Sawyerr deceased to his brothers Richard Williamson Sawyerr, James Beresford Sawyerr, his sisters Ransolina Patience Cromanty and his daughters Georgiana Lucretia Sawyerr and Jane Alice Sawyerr in equal shares and (b) An account of mesne profits received by the late Ransolina Patience Cromanty in respect of the above premises.

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Exhibit B

No. 6
Judgment
5th
September
1961
(Cont.)

Pleadings were delivered where the plaintiffs described in details the nature of their claim and how they became entitled to those properties in question and how defendants became liable.

The facts of the case in brief were that the Testator who was native of Sierra Leone went to the Gold Coast now Ghana to trade and died there. He made a Will dated the 30th day of May, 1908 and probate whereof was on the 14th day of October, 1918 committed and granted by the Supreme Court of the former Gold Coast now Ghana to Ransolina Patience Cromanty the then sole surviving executor and trustee under the said Will. On Mrs. Cromanty returning to Freetown she registered the said Will with the Gold Coast grant in Freetown Sierra Leone but neither re-sealed the said Will nor took out Probate of it. She however started dealing with the properties as if they were her personal properties by collecting the rents and not accounting to anyone and disposing of some of them. Some unsuccessful attempts were made by some of the beneficiaries of which 1st plaintiff is the only one surviving. Mrs. Cromanty died on the 7th day of March, 1957 leaving a Will probate whereof was on the 13th August, 1957 granted to the defendants herein. By her said Will she inter alia devised properties at Malta Street, Sawyerr's Farm comprising Nos. 18 and 20 York Street and 98 Fourah Bay Road to different devisees some of whom where 1st plaintiff and the mother of 2nd, 3rd and 4th plaintiffs.

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20

30

This writ was issued on the 18th of February, 1958 after the death of Mrs. Cromanty.

The defendants in their defence inter alia admitted that the Testator Jacob Williamson Sawyerr (deceased) died on the 15th August, 1916 and that whilst Mrs. Cromanty was alive she received the rents and profits of the properties at Fourah Bay Road, Malta Street, Lucas Street and farm land at Fourah Bay Road. They said that she (R.P. Cromanty) did not obtain in Sierra Leone any grant of Probate of the Will of the

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Testator or any grant of Letters of Administration of the estate of J.W. Sawyerr deceased. They alleged that Jacob Williamson was entitled at no time to any freehold property in Lucas Street, Freetown or to any farm land at Fourah Bay Road and also pleaded the Statute of Limitation and the Court Procedure Act.

Exhibit B

No. 6

Judgment

5th
September
1961

(Cont.)

10 They did not elect to give any evidence in support of their defence but relied on legal submissions put forward by their Counsel which were grouped under 3 main heads.

- (1) Void in law as it is uncertain, and infringes the Rules against, Inalienability and Perpetuity.
- (2) Lapse of time
- (3) Plaintiff have failed to prove facts stated in Statement of Claim.

20 Developing his argument Counsel said gifts are void because they are uncertain. This is not quite correct for the evidence which plaintiffs led showed that these properties were still existing and as their Counsel rightly called Court's attention the late Ransolina P. Cromanty until the date of her death was in receipt of the rents and profits of these properties as stated in paragraph 4 of their Statement of Defence and also acknowledged that the Testator had properties in Freetown by
30 Ex. 'G'

In order to be able to appreciate the other defences of Inalienability and Perpetuity which defendants Counsel has so strenuously argued it will be necessary to consider the devise which was contained in paragraph 3 of the Statement of Claim which reads:

40 "I devise and bequeath my freehold lands with the buildings thereon situate at Fourah Bay Road, Malta Street, Lucas Street and Farm land at Fourah Bay Road all in Freetown Sierra Leone to my

Exhibit B

No. 6

Judgment

5th

September

1961

(Cont.)

brothers Richard William, James Beresford and my sister Ransolina Patience Cromanty, and to my daughters Georgiana Lucretia and Jane Alice all in equal share and it is my express desire that those lands be not sold but that they must descend from children to children."

Defendants' Counsel argued that by the use of the words it is my express desire that these lands be not sold but that they must descend from children to children the Testator created a perpetual trust and so contravenes the Rule against Inalienability and incidentally the Rule against Perpetuities. Counsel for the plaintiffs said the devise is governed by Wild's case and should be read as a devise to the devisees in equal shares and their children in which case the devise will create an estate tail. It will be necessary to bear in mind that the 2 devisees Richard William and James Beresford had pre-deceased the Testator as disclosed in paragraph 4 of Statement of Claim whereas Richard Williamson had no issue or children James Beresford had 2 sons one of whom is 1st plaintiff. The daughters Georgiana Lucretia and Jane Alice also survived the Testator and at the time of the Testator's death had children surviving.

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20

On page 243 of Hawkins on Wills appears an illustration which reads:- "A devise to A and his children forever" or to A and his children in succession" will create an estate tail. In the Rule against Perpetuities as stated by Topham's New Law of Property 4th Edition it reads:-

30

"That you cannot at this moment tie up property for longer than the lives of persons now living and 21 years after their deaths."

The date on which the gift takes effect if in a Will as in this case commences from the death of Testator. We have been told Testator died on the 15th of August, 1916 and on that date 2 of the devisees Jane Alice and Georgiana

40

Rose one of the defendants in this case were alive and have children who in turn have children on whom property could vest the possibility of gift failing will not arise. If, as I hold, the property is entitled despite the words that property should not be sold the beneficiaries could by barring the entail sell it. Having shown that the beneficiaries can by barring the entail sell the properties inalienability will not arise as such an occasion only arises when the devise is to Trustees on trusts which we called perpetual trusts. As a matter of fact property was devised to the devisees without creating a trust.

Exhibit B

No. 6

Judgment

5th
September
1961

(Cont.)

10

20

30

The defendants Counsel raised the plea of lapse of time in support of their defence of Statute of Limitation and quoted inter alia Vol. 1 Cap. 1952 sub-section 3 of the Laws of Sierra Leone. He had argued that the claim is one in tort and not as plaintiffs in their Statement of Claim have alleged - i.e. Breach of Trust and A/Cs. At the time of the hearing Counsel for the defendants overlooked the fact that even if as he has stated this is a claim in tort lapse of time will not avail him as the Legislature on the 8th of March this year by Ordinance No. 33 11(b) amended that section on which he relies from 6 months to read 3 years from the date of death. R.P. Cromanty died on 7th March, 1957 and Writ of Summons was issued on the 18th of February, 1958.

40

Ransolina P. Cromanty having taken out Probate of the Will of this estate in Accra, Gold Coast, now Ghana and on returning to Sierra Leone registered the Will with the grant in Ghana as produced in evidence cannot divest herself of being a Trustee as created in the Will of the Testator. The authority for that is the case of - "In re Lord and Fullertons Contract reported in 1896 1 Chancery 228. I shall read a short passage from the judgment of A.L. Smith - Lord Justice.

"Mr. Lord's disclaimer shews that it was his intention, even if he had not done so already, to intermeddle as trustee in

Exhibit B

No. 6

Judgment

5th
September
1961

(Cont.)

Testator's affairs in America, though it was not his intention to intermeddle in the English affairs. Can a Trustee do that? The authorities which have been cited are all on one side. A trustee cannot accept a portion of the trust and disclaim the other portion. He must disclaim in toto, or he remains a trustee as to all. Upon the true construction of this disclaimer, Mr. Lord did not disclaim the whole of the trust which was left to him in conjunction with the four other trustees."

10

In this case the late Ransolina P. Cromanty was the only executor and trustee who took Probate of the Will in Accra, Ghana and dealt with Testator's properties at Ghana and when she came to Freetown she registered the Will and started dealing with them as her property. She was a Trustee and therefore liable as a Trustee under Sec. 8(1) of the Trustees Act, 1888 - 51 and 52 Victoria Cap. 59 to account for the proceeds of the said properties and the statute of limitation will not avail her. It will be necessary for me to examine some of the points raised during the legal arguments e.g. whether property 98, Fourah Bay Road which was a mortgage one became the Testator to enable him to devise it as such and if the plaintiffs can recover it from the devisees to whom Ransolina P. Cromanty during her lifetime had conveyed by a Deed of Gift which she confirmed in paragraph 20 of her said Will.

20

30

Exh. 'H' the mortgage deed of property 98, Fourah Bay Road was produced but no other deed was produced to show whether property was foreclosed or sold. Ex. 'A' the Will mentioned this property as being one of Testator's properties and Counsel for the plaintiffs argued that reading the mortgage deed it will be discovered that legal estate was conveyed to the Mortgagee subject to Mortgagor's right to redeem and that when once mortgagee has exercised his power of sale the mortgagors equity of redemption is destroyed and lost, and Mortgagee

40

takes property in fee simple. His authority for that proposition is found in Halsbury Laws of England 1st Edition Vol. 21 - page 156 paragraph 229. I may also say that a Mortgagor's right of redemption may also be lost by lapse of time.

Exhibit B

No. 6

Judgment

5th
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(Cont.)

10 Ransolina P. Cromanty as the only surviving sister and Executor and Trustee of the Testator took upon herself to deal with all the properties in Freetown which the Testator had devised as if they were her own and when she made Ex. 'C' Deed of Gift to the donees for, apart from other considerations, the sum of £2. she did not hand over possession to them as she continued to receive the rents and profits accruing from the said property as was shown by her devising of the said property to the two devisees. Counsel for the defendants has argued that property could not be touched by
20 plaintiffs as the deed was for valuable consideration. What are the real facts relating to this property? 1st plaintiff gave evidence that as a result of some pressure Rosemond P. Cromanty allowed him to collect the rents of 98, Fourah Bay Road and by paragraph 20 of Mrs. Cromanty's Will she devised it to 2 of her nieces. In the consideration shown in Ex. 'C', the Deed of Gift which was supposed to be made
30 in 1953 for valuable consideration sufficient thereby making it unassailable?

Plaintiff's Counsel has submitted that it is not and cites in support of his contention Norton's on Deed 2nd Edition - page 220 where the following appears -

40 "Where the consideration expressed in the conveyance was five shillings and other valuable considerations" the Court was not bound to hold it, at all events, to be a valuable consideration, but could at most only let the defendant into proof that there were other valuable considerations: Walker v. Burrows (1745) 1 Atk. 93."

In the case before Court the consideration

Exhibit B

No. 6

Judgment

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(Cont.)

is £2. with other valuable considerations. The donees have not elected to give evidence on the issue nor, as a matter of fact, have the defendants given any evidence to show why, if this property had passed on the date stated therein, should Ransolina P. Cromanty have continued to be drawing the rents and have included it in her Will dated 5th October, 1953. The only answer is that despite deed was made the Donor continued to exercise all the former rights which she had been exercising. Evidence has been given that 98, Fourah Bay Road was part of properties belonging to the Testator and I so declare.

10

Having found that the Testator Jacob Williamson Sawyerr died seised of properties in Freetown in Sierra Leone and that he made a Will in which he appointed Ransolina P. Cromanty one of his Executors and Trustees and she dealt with the properties in Freetown. I make the declaration which the plaintiffs have asked for and that plaintiffs do have the costs of this action.

20

(Sgd.) Emile F. Luke.

Ag. Puisne Judge.

5th Sept. 1961

EXHIBIT B

No. 7

NOTICE AND GROUNDS OF APPEAL

Civ.App.

IN THE SIERRA LEONE COURT OF APPEAL
(Civil Appeal)

NOTICE OF APPEAL
(Rule 12)

BETWEEN :-

10

JACOB WILLIAMSON SAWYERR and Others
Plaintiffs/Respondents

and

GEORGIANA LUCRETIA ROSE and OTHERS
Defendants/Appellants.

20

TAKE NOTICE that the defendants being dissatisfied with the decision of the Supreme Court of Sierra Leone contained in the Judgment of Mr. Justice E.F. Luke dated the 5th day of September, 1961 do hereby appeal to the Sierra Leone 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 para. 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. Part of the decision of the lower court complained of:

The Whole.

30

3. Grounds of Appeal:

1. The learned trial judge having found as a fact that the property in the Will of J.W. Sawyerr

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No. 7

Notice and
Grounds of
Appeal

10th
November
1961

Exhibit B

No. 7

Notice and
Grounds of
Appeal

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(Cont.)

(deceased) was devised to the devisees therein named without creating a trust, erred in holding that Ransolina Patience Cromanty was a trustee in respect of the property so devised.

2. The learned trial judge erred in law by holding that the said devise in the said Will created an entailed estate.

10

3. The learned trial judge erred in law by holding that the claim of the Plaintiffs/Respondents herein is not barred by the Statutes of Limitation.

4. The learned judge erred by receiving in evidence "Exhibit C" relating to the property at No. 98, Fourah Bay Road, Freetown, when the donees, as beneficial owners thereof were not a party to the Action before the Court.

20

5. The learned judge erred in law by accepting from interested persons extrinsic evidence in proof of the identity of the property devised in the Will of J.W. Sawyerr - (deceased).

6. The Judgment is unreasonable in all the circumstances having regard to the evidence before the Court.

30

4. Relief sought from the Sierra Leone Court of Appeal:

That the Judgment be set aside and that the declaration made therein be pronounced null and void.

5. Persons directly affected by the Appeal:

	<u>Name</u>	<u>Address</u>	<u>Exhibit B</u>
	Jacob Williamson Sawyerr	50, Malta Street	No. 7
	Ernest Onesimus Smith	8, Easton Street	Notice and
	Joseph Allen Smith	7, Lucas Street	Grounds of
	Edgar Oluwole Smith	7, Lucas Street	Appeal
	Archibald Campbell	Pademba Road	10th
	Walter Campbell	Pademba Road	November
	Mary Melvina Metzger	8, Easton Street	1961
	Georgiana Lucretia Rose	14, Crook Street	(Cont.)
10	Albert Onesimus Walker	17, Mammy Yoko Street	
	Crispin Kenneth Edwards	24, Pownall Street	

All of Freetown in the Western Area of
Sierra Leone.

Dated the 10th day of November, 1961.

(Sgd.) G. Rose

(Sgd.) A. Ones. Walker

(Sgd.) Crispin K. Edwards

As Executors of the Estate of
Ransolina P. Cromanty (deceased).

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No. 8
Judgment
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EXHIBIT B
No. 8
JUDGMENT

IN THE SIERRA LEONE COURT OF APPEAL

General Sittings held at Freetown
In the Western Area of Sierra Leone
on Friday, 9th March, 1962.

Coram: Cecil Geraint Ames, Ag. P.,
George Frederick Dove-Edwin J.A. 10
Jeremiah Bankole
Marcus-Jones Ag. J.,
Sierra Leone

JACOB WILLIAMSON SAWYERR
and ORS. Respondents

vs.

GEORGIANA LUCRETIA ROSE
and OTHERS Appellants

Melville C. Marke for Respondents.

Edward Jackson McCormack for Appellants. 20

J U D G M E N T

Ames, Ag. P., The Plaintiffs/respondents sued the defendants/appellants "as executors and trustees of the estate of Ransolina Patience Cromanty, deceased", and they claimed -

(a) A declaration that the Plaintiffs are beneficially interested in the hereditaments and premises situate at Fourah Bay Road, Malta Street and Lucas Street all in Freetown in the Colony of Sierra Leone and devised by the Will of Jacob Williamson Sawyerr 30

(deceased) to his brothers Richard Williamson Sawyerr, James Beresford Sawyerr, his sister Ransolina Patience Cromanty and his daughters Georgiana Lucretia Sawyerr, and Jane Alice Sawyerr in equal shares.

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(Cont.)

- (b) An account of Mesne profits received by the late Ransolina Patience Cromanty in respect of the above premises.

10

The judgment of the Court made a declaratory judgment in accordance, exactly, with item (a) of the claim, and awarded the respondents "the costs of this action," and this appeal is against that judgment. No order was made as to item (b). Mr. Marke, who represented the respondents before us (and also in the Court below), attempted to address us as to why an order ought to have been made. There is no cross-appeal and we refused to hear argument about it. So item (b) of the claim need not be considered any more.

20

The claim sought the exercise of the equitable jurisdiction and powers, which the Court below possesses by virtue of section 11 of the Courts Ordinance (Cap. 7). This disposes of the argument, as to whether the claim is one in tort or not. The learned judge held that it was not, and I am of the same opinion.

30

There is one other matter which I will refer to before coming to the main part of the appeal. It was much argued but does not seem to me to be of present importance. Jacob Williamson Sawyerr, deceased, whom I will refer to in this judgment as the Testator (the 1st plaintiff in his namesake and j. nephew) included in his Will the following devise:-

40

"I devise and bequeath my freehold lands with the buildings thereon situated at Fourah Bay Road, Malta Street, Lucas Street, and Farm land at Fourah Bay Road, all in Freetown Sierra Leone to my brothers Richard William, James Beresford,

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(Cont.)

and my sister Ransolina Patience Cromanty, and to my daughters Georgiana Lucretia and Jane Alice all in equal share and it is my express desire that these lands be not sold but that they must descend from children to children.

Mr. Marke argued that this gave the five named persons an entailed estate as tenants in common which descended to the children in tail general. Mr. McCormack argued, for the appellants, that it gave them an estate in fee absolute as tenants in common. The learned judge held that it created an entailed estate. With all respect I disagree. But it seems to me not to matter. The Will was proved in Ghana (when it was the Gold Coast). Probate has not been resealed here. No one here has summoned anyone to come in and reseal it, (although the defendants are the executors of the testator's executrix). No one has applied for letters of administration here, with Will annexed or in any form. This not a suit for the construction of the Will, or to determine what interest anyone has in the property. It is merely a suit seeking a declaratory judgment, and the declaration asked for, if it was proper to make, would apply equally aptly whether the devise created a tenancy in common or in tail general. Indeed the declaration seems so indefinite that I do not know how it will assist the plaintiffs.

10

20

30

I will now come to the main part of the appeal, and will set out the facts which are the back ground to the argument.

The dispute concerns the testator's "freehold lands with the buildings thereon at Fourah Bay Road, Malta Street, Lucas Street and farm land at Fourah Bay Road." The first mentioned is now No. 98, Fourah Bay Road, the second is 10, Malta Street, the third is 28, Lucas Street, and the last is 18 and 20 York Street.

40

The testator had two brothers, Richard William, and James Beresford, both deceased, and

a sister Ransolina Patience Cromanty, whom I will call Mrs. Cromanty. The defendants are sued as the executors of her Will.

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(Cont.)

The testator had two children, both girls, both deceased; one left no issue, the other Jane Alice left issue. One of the testator's brothers died without issue; the other had four children; three died without issue, and the fourth is the 1st plaintiff, James Williamson Sawyerr. Mrs. Cromanty left no issue.

10

Jane Alice married a Smith, and had five children; four of them are the second, third, fourth and fifth plaintiffs, and the other who was a girl married a Campbell and died leaving two sons (great-grandsons of the testator) who are the sixth and seventh plaintiffs.

The mother of the testator and his two brothers and Mrs. Cromanty had been one Ann Johnson, long since deceased of course. She made a Will, which was registered, but it seems doubtful if any one obtained probate of it. In it she left the property at Malta Street to the testator, that at Lucas Street to the testator, his brothers and Mrs. Cromanty, and the farmland to the same four, or else to them and two other persons. I do not find the evidence clear on this point. The other property, 98, Fourah Bay Road, came to the Testator by mortgage from the brother who died without issue, and without having redeemed the property.

20

30

The testator left Sierra Leone long ago and went to the Gold Coast and died there in 1916 (Aug. 15) testate, and the Will dated 30th May, 1938, included the devise which I have already set out. Mrs. Cromanty, who was the only surviving executor and trustee obtained probate in the Gold Coast, on 14th October, 1916.

Mrs. Cromanty returned to Sierra Leone, on some unknown date, but was here before 11th July, 1918. On that date she registered the testator's Will here. But at no time did she reseal the Gold Coast grant of probate or obtain any grant here. Nevertheless she went into

40

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(Cont.)

possession of all the four properties by collection of the rents. (I do not know who had been collecting them before). She did not account for the rents to anyone.

In 1933 the 1st plaintiff and "my brother" instituted an action against Mrs. Cromanty in "respect of the Will" of the testator, but withdrew it because Mrs. Cromanty begged them to. I presume "brother" was sued in the West African meaning of the term.

10

There were more protests by the family at her conduct, and a family meeting was held in 1936, at which she promised to share the rents with the other members of the family. However, she did not. And in 1948 another meeting was held with more result. It was agreed that the 1st plaintiff should collect the rents of the four properties and distribute them to each beneficiary monthly. There were at this meeting others as well as members of the family, including a lawyer of distinction who read the testator's Will and explained the position to Mrs. Cromanty. The 1st plaintiff collected the rent of 98, Fourah Bay Road until 1952; but Mrs. Cromanty continued to collect the other rents, and in 1952 the 1st plaintiff returned the rents collected by him, less expenses incurred, to the payers, who handed over the amount to Mrs. Cromanty. This was done in spite of the 1st plaintiff, and one can but conclude that Mrs. Cromanty caused it to be done.

20

30

By a deed dated 16th November, 1932, Mrs. Cromanty conveyed a portion of 98, Fourah Bay Road to one Joseph E. Metzger for valuable consideration. The deed recites that she was the executor and trustee and residuary legatee of the estate of the testator and that the testator was seised in fee simple of the property from the date of his Will to the date of his death, and that the Testator had agreed with Metzger to sell him the land before his death, and that the purchaser price was paid to her "as executor as aforesaid".

40

She continued in occupation of the rest of 98, Fourah Bay Road and of the other three properties until her death, notwithstanding that on the 6th October, 1953, she had by a deed of gift conveyed part of 98, Fourah Bay Road to Fatula Walker and Taiwo Edwards, two grand nieces.

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(Cont.)

10 Mrs. Cromanty died on 7th March, 1957, leaving a Will dated the 5th October, 1953. The Will had been registered on 24th July, 1957, and probate thereof was granted to the defendants, the executors and trustees named therein, on the 14th August, 1957. The defendants have been in possession and collected rents, except perhaps as to the parts of 98, Fourah Bay Road, which was conveyed to the two grand nieces.

20 Mrs. Cromanty's Will devised 10, Malta Street to Jane Alice Smith (now deceased) a quarter share, and Georgiana Lucretia Smith (now deceased) a three quarter share; 28, Lucas Street to Jane Alice Smith, Jacob William Sawyerr and Simeon Crispin Edwards; Sawyerr's farm to trustees in trust for the same (excepting Simeon Crispin Edwards) and 98, Fourah Bay Road to the two grand nieces, (as mentioned above, it had already been conveyed to them).

30 The defendants averred that the testator was at no time entitled to the Lucas Street Property or to the farmland at Fourah Bay Road, that he was never in possession of any of the property or in receipt of the rents after he left this country for the Gold Coast and that none of the plaintiffs had ever been in possession of any of the properties or of the rents either by himself (or herself) or by any ancestor.

40 The learned judge found it to be a fact that the testator died seised of all the properties, which of-course he could have been, although residing in another country. The judge does not set out the evidence on which he based his findings. The first plaintiff gave evidence that the testator became possessed of three of the properties under his mother's Will; that the

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(Cont.)

testator visited Freetown in 1906 and lived for two months at 98, Fourah Bay Road. (The witness was then 20 years old); that he (the witness) had lived there as a little boy for 4 years with the uncle who mortgaged it to the testator, until the uncle went to Fernando Po; that the property was then rented to a Doctor (who by and who collected the rents?); that the witness then lived at the Malta Street property; that the testator "came into possession of" the farmland in the same road.

10

This is little evidence, but it was not contradicted by any other evidence. There was no evidence about possession of the other properties before the testator's death. There is the evidence already set out about the family meetings and the institution of an action.

It is against this background that the arguments have to be considered.

Mr. McCormack's main argument as I understand it is this. In this country the devisee of land can, and should, enter into possession thereof upon the death of the maker of the Will. The Land Transfer Act, 1897, is not law here, for which argument he relies on *Gooding v. Allen* - (S.L. Law Recorder Vol. III - 69), where the Supreme Court so decided. Consequently no assent from an executor is needed. Mrs. Cromanty did not reseal the grant of probate. She went into possession not qua executrix but as a squatter, except of-course as to any shares in any of the properties which she had in her own right. She was not a trustee. Time ran in her favour, and every other member of the family was statute barred long before her death. In the deed of gift to the grand nieces she recites her long and quiet possession as her title.

20

30

I cannot believe that such a cynical argument can be sound. I prefer Mr. Marke's argument.

40

There was argument by both Counsel about the decision in re Lord and Fullerton's contract

(1896 1 Ch. 228) that an executor cannot accept probate in one country and disclaim in another. I do not think that case helps. Mrs. Cromanty did not disclaim here or accept. One can be an executor or an executor de son tort. There is no middle kind for those who, like her, were appointed by will but did not obtain probate. She very clearly inter meddled and was an executrix da sa tort, and no one knew better than she the terms of the Will of the testator.

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(Cont.)

10

There was argument before us about the Imperial Statutes (Law of Property) Adoption Ordinance (Cap. 18) which adopted the Trustee Act, 1888, on the 1st January, 1933, and whether that Act had retrospective application, and the effect of section 3 of the Execution Against Real Property Ordinance Cap. 22). I do not think these arguments of importance. I think the matter falls to be decided on general principles or equity and largely in accordance with the argument of Mr. Marke.

20

Here was Mrs. Cromanty, an executrix de sa tort (who could, and should, have been a legally authorised executrix) and with full knowledge of the testator's devisees, entering into possession of all four properties, and remaining in possession until her death. She, must be regarded as trustee for We devisees (including herself) and time does not run in favour of executor de son tort with notice of a trust. I think the learned judge was right to make the declaration asked for subject to one reservation.

30

It came to light during the hearing (it was not disclosed by the pleadings) that Mrs. Cromanty had conveyed, rightly or wrongly, some of the property to Joseph E. Metzger and some to her two grand nieces. In my opinion these persons should have been joined as defendants, when that matter came to light. As they were not, I think that the declaration should not have extended to these properties. I would amend the declaration accordingly but otherwise I would dismiss the appeal.

40

(Sgd.) C.G. Ames

Acting President

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(Cont.)

Dove-Edwin. J.A. I have had an opportunity of reading my brother Ames' judgment in this case and I entirely agree that the appeal be dismissed.

I do not agree however, and I do so with reluctance and with respect, to the addition that the declaration granted to the plaintiffs should not extend to the two properties transferred by the late Ransolina Patience Cromanty.

10

In my view as the case was presented and argued the persons concerned in the transfer do not come into this picture yet they may do so at a later date in another action.

Except for this short observation, I agree that the appeal be dismissed and the declaration as granted remain.

(Sgd.) G.F. Dove-Edwin.

Justice of Appeal.

20

Marcus-Jones - Ag. I also share the opinion expressed by my learned brother Dove-Edwin that the property conveyed to Joseph E. Metzger as well as the property conveyed to Mrs. Cromanty's two grand nieces do not enter into the picture now and consequently the declaration should not be amended to exclude them.

In all other respects, I agree with the judgment that the appeal be dismissed.

(Sgd) J.B. Marcus-Jones.

Acting Judge - Sierra Leone.

30

Freetown,

9th March, 1962

O N A P P E A L
FROM THE SIERRA LEONE COURT OF APPEAL

B E T W E E N :

JOSEPH ALLEN SMITH (Plaintiff) Appellant

- and -

1. FATULA CHRISTIANA WALKER (Defendants) Respondents
2. TAIWO VICTORIA EDWARDS

SUPPLEMENTAL RECORD OF PROCEEDINGS
(EXHIBITS)

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Solicitors for the
Respondents