

In the Privy Council.

UNIVERSITY OF LONDON
No. 22 of 1951. W.C.1.

12 NOV 1956

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL

INSTITUTE OF ADVANCED
LEGAL STUDIES

15257

BETWEEN

SOCKNA MORMORDU ALLIE AND OTHERS (*Plaintiffs*) *Appellants*

AND

AHMED ALHADI (Official Administrator) *Respondent.*

RECORD OF PROCEEDINGS

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In the Privy Council.

No. 22 of 1951.

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL

BETWEEN

SOCKNA MORMORDU ALLIE AND OTHERS (*Plaintiffs*) *Appellants*

AND

AHMED ALHADI (Official Administrator) *Respondent.*

RECORD OF PROCEEDINGS

No. 1.

Writ of Summons.

No. C. C. 222/48.

IN THE SUPREME COURT OF SIERRA LEONE.

In the
Supreme
Court of
Sierra
Leone.

In the Estate of MORMORDU ALLIE (Deceased).

No. 1.
Writ of
Summons.
16th July,
1948.

Between

SOCK-NA MORMORDU ALLIE, ALHAJ BABA ALLIE and KEMOH
ALLIE *Plaintiffs.*

and

10 AHMED ALHADI, Official Administrator *Defendant.*

GEORGE THE SIXTH, by the Grace of God, of Great Britain, Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, etc. To Ahmed Alhadi, Official Administrator of the Colony of Sierra Leone.

We command you that within eight days after 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 the Colony of Sierra Leone in an Action at the Suit of Sock-Na Mormordu Allie, Alhaj Baba Allie and Kemok Allie and to take notice that in default of your so doing the Plaintiff
20 may proceed therein, and judgment may be given in your absence.

In the
Supreme
Court of
Sierra
Leone.

Witness His Honour Mr. Justice Hyman Herbert Kingsley Acting
Chief Justice of Sierra Leone, at Freetown, the 16th day of July, in the year
of Our Lord 1948.

A. ALHADI,
Master and Registrar.

No. 1.
Writ of
Summons,
16th July,
1948—
continued.

The Plaintiffs claim to be the executors of the last Will dated 1939 of
Mormordu Allie late of 8 Magazine Street, Freetown, deceased, who died
on the 22nd day of January, 1948, and to have the grant with the pretended
will and codicil of the said deceased dated the 30th August, 1946, and
19th July, 1947, revoked. This writ is issued against you as the adminis- 10
trator with the pretended will and codicil annexed.

A sufficient affidavit in verification of the indorsement on this Writ to
authorise the sealing thereof has been produced to me this day of July, 1948.

This Writ was issued by Cyril Bunting Rogers Wright, of 27 Liverpool
Street, Freetown, Solicitor for the above Plaintiffs, Sock-Na Mormordu
Allie and Kemok Allie who reside at 17 Guard Street, and Alhaj Baba Allie
who resides at 7 Guard Street, Freetown.

No. 2.
Affidavit to
Citation to
bring in
Grant,
16th July,
1948.

No. 2.
Affidavit to Citation to bring in Grant.

We Sock-Na Mormordu Allie of 17 Martin Street Alhaj Baba Allie of
7 Guard Street and Kemocko Allie of 17 Martin Street all of Freetown in the 20
Colony of Sierra Leone, jointly and severally make oath and say as
follows :—

1.—Administration with the will and codicil annexed of the estate of
Mormordu Allie of 8 Magazine Street, Freetown, in the Colony of Sierra
Leone, deceased, who died on the 22nd day of January, 1948, was on the
10th day of March 1948 granted to Ahmed Alhadi, Official Administrator
out of the Probate Registry of this Honourable Court.

2.—The alleged last will and testament and codicil of the said Mormordu
Allie (deceased) which are dated 30th August, 1946 and 19th July, 1947
are the annexures to the said grant. 30

3.—That the said deceased made and duly executed his last will and
testament in 1939 and appointed us and Ajah Fatmatta Kata and Alhadi
Antumanni executors thereof.

4.—That the said grant with the will and codicil annexed ought to be revoked.

In the Supreme Court of Sierra Leone.

her
SOCK-NA X MORMORDU ALLIE.
mark
ALHAJI BABA ALLIE.
KEMOKO ALLIE.

No. 2.
Affidavit to Citation to bring in Grant, 16th July, 1948—
continued.

Sworn by all the above-named deponents at Freetown this 16th day of July, 1948 at 9.5 o'clock in the forenoon before me I having first truly
10 distinctly and audibly read over the contents of this affidavit to the said Sock-Na Mormordu Allie, Alhaj Baba Allie and Kemokoh Allie who appeared perfectly to understand the same and signed thereto in my presence :—

CLAUDE WRIGHT,
A Commissioner for Oaths.

No. 3.

Præcipe to Citation.

No. 3.
Præcipe to Citation, 16th July, 1948.

Citation for Sock-Na Mormordu Allie, Alhaj Baba Allie and Kemocko Allie against Ahmed Alhadi Official Administrator calling upon Ahmed Alhadi Official Administrator to bring in grant with will and codicil annexed
20 of the estate of Mormordu Allie of 8 Magazine Street, Freetown who died on the 22nd of January, 1948 at Freetown aforesaid.

Dated this 16th day of July, 1948.

C. B. R. WRIGHT,
of 27, Liverpool Street, Freetown.
Solicitor for SOCK-NA MORMORDU ALLIE ALHAJ BABA ALLIE and KEMOCKO ALLIE.

No. 4.

Citation to bring in Grant.

No. 4.
Citation to bring in Grant, 16th July, 1948.

30 To AHMED ALHADI, Official Administrator, of Sierra Leone, Law Courts Buildings, Freetown.

WHEREAS it appears by the joint and several affidavit of Sock-Na Mormordu Allie, Alhaj Baba Allie and Kemocko Allie sworn the 16th day of July, 1948 that Administration with the will and codicil annexed of the estate of Mormordu Allie of 8 Magazine Street, Freetown, deceased, was on the 10th day of March, 1948 granted to you by our Supreme Court at the Probate Registry. AND WHEREAS it is alleged in the said affidavit that the

In the
Supreme
Court of
Sierra
Leone.

No. 4.
Citation to
bring in
Grant,
16th July,
1948—
continued.

said deceased made and executed his last will and testament dated 1939 (now remaining in your possession) and thereof appointed the said Sock-Na Mormordu Allie Alhaj Baba Allie and Kemocko Allie (therein called Jai Kemok Allie) Ajah Fatmatta Kata and Alhadi Antumanni Executors and that the said grant with the will and codicil annexed ought to be called in, revoked, and declared null and void in law :

Now this is to command you and the said Ahmed Alhadi, Official Administrator that within eight days after service hereof on you inclusive of the day of such service, you do bring into and leave in the Probate Registry of our said Court, Law Courts Buildings, Westmoreland Street, 10 Freetown, the aforesaid grant in order that the said Sock-Na Mormordu Allie Alhaj Baba Allie and Kemocko Allie may proceed in due course of law for the revocation of the same.

A. ALHADI,
Registrar.

No. 5.
Affidavit
of Scripts.
7th
September,
1948.

No. 5.
Affidavit of Scripts.

WE Sock-Na Mormordu Allie of 17 Martin Street, Alhaj Baba Allie of 7 Guard Street and Kemocko Allie of 17 Martin Street, all of Freetown in the Colony of Sierra Leone the Plaintiffs in this action, jointly and 20 severally make oath and say, that no paper writing or parchment being or purporting to be, or having the form or effect of a Will or Codicil or other testamentary disposition of Mormordu Allie late of 8 Magazine Street, Freetown in the Colony aforesaid, deceased, the deceased in this action, or being or purporting to be instructions for, or the draft of any Will, Codicil, or other testamentary disposition of the said Mormordu Allie has at any time, either before or since his death come to the hands possession, or knowledge of us, these deponents or any of us, or to the hands, possession or knowledge of our Solicitor in this action so far as is known to us, these 30 deponents.

ALHAJI BABA ALLIE.
KEMOKO ALLIE.
her
SOCKNA X MORMORDU ALLIE.
mark

SWORN by all the above-named deponents at Freetown this 7th day of September, 1948 at 9.51 o'clock in the forenoon before me I having first truly distinctly and audibly read over the contents of this affidavit to the said Sock-Na Mormordu Allie, Alhaj Baba Allie, and Kemocko Allie who appeared perfectly to understand the same and signed thereto in my 40 presence.

CLAUDE E. WRIGHT,
A Commissioner for Oaths.

This affidavit is filed on behalf of the Plaintiffs.

No. 6.

Affidavit in support of Summons to dismiss the Action.

In the
Supreme
Court of
Sierra
Leone.

I, CARTERET JOHN KEMPSON, of 26 Percival Street Freetown Barrister-at-Law make oath and say as follows :—

1.—I am Solicitor for the Defendant.

2.—The Writ of Summons herein was issued on the 16th day of July 1948.

3.—Appearance was entered by me on behalf of the Defendant on the 22nd day of July, 1948.

10 4.—Plaintiffs' affidavit of Scripts was filed herein on the 7th day of September 1948.

5.—Defendant's affidavit of Scripts was filed herein on the 10th day of September, 1948.

6.—Since the 10th day of September no step has been taken by the Plaintiffs to proceed with the prosecution of this action.

C. J. KEMPSON.

Sworn at Freetown this 7th day of January, 1949, at 10.30 o'clock in the forenoon.

20 Before me,

E. CUMMINGS-JOHN,
A Commissioner for Oaths.

This affidavit is filed on behalf of the Defendant.

No. 6.
Affidavit in
support of
Summons
to dismiss
the Action,
7th
January,
1949.

No. 7.

Summons to set aside Plaintiff's Affidavit of Scripts.

LET ALL PARTIES CONCERNED attend the Chief Justice in Chambers on the 12th day of January, 1949 at 8.30 o'clock in the forenoon on the hearing of an application on the part of the Defendant for an order that this action be dismissed for want of prosecution.

30 Dated the 7th day of January 1949.

This Summons was taken out by Carteret John Kempson of 26 Percival Street, Freetown, Solicitor for the Defendant.

To the above-named Plaintiffs and
to C. B. Rogers Wright, Esq., 27
Liverpool Street, Freetown,
Solicitor for Plaintiffs.

No. 7.
Summons
to set aside
Plaintiff's
Affidavit
of Scripts,
7th
January,
1949.

In the
Supreme
Court of
Sierra
Leone.

—
No. 8.
Statement
of Claim,
7th
January,
1949.

No. 8.
Statement of Claim.

The Plaintiffs say :—

1.—That the said Mormordu Allie late of 8 Magazine Street, Freetown who died on the 22nd day of January, 1948 made and duly executed his true last will on the 20th August, 1939, whereof he appointed the Plaintiffs and Ajah Fatmatta Kata and Alhadi Antumani executors.

2.—On the 10th day of March, 1948 administration of the estate of the said Mormordu Allie with an alleged will and codicil bearing date the 30th August, 1946 and 19th July, 1947 annexed was granted to the Defendant as Official Administrator. 10

3.—The said alleged Will was not duly executed in accordance with the provisions of Statute 7 Will 4 and 1 Vict. C. 26.

4.—The said deceased at the time the said alleged Will or Codicil purports to have been executed did not know or approve of the contents thereof.

5.—The deceased did not make or acknowledge his signature to the said alleged Will and Codicil in the presence of the witnesses.

The Plaintiffs claim :—

- (1) Revocation of the said grant.
- (2) That the court will pronounce against the validity of the said alleged Will dated the 30th August, 1946 and codicil dated 19th July, 1947. 20
- (3) That the Court shall pronounce in solemn form for the true last Will of the said deceased dated 20th August, 1939.

C. B. R. WRIGHT,
Counsel.

Delivered and Filed this 7th day of January, 1949 by Cyril Bunting Rogers-Wright of 27 Liverpool Street, Freetown, Solicitor for the Plaintiffs.

No. 9.
Amend-
ment to
Statement
of Claim,
13th July,
1949.

No. 9.
Amendment to Statement of Claim.

30

6.—That if at all the Deceased executed a Will on the 30th August 1946 the Will propounded is not the Will executed by the Deceased. That the Will propounded although dated 30th August 1946 was only made after the 5th February, 1948 after the Deceased's death and substituted for the true Will made by the Testator.

Amended this 13th day of July by leave of the Court.

C. B. R. WRIGHT,
Counsel.

No. 10.
Defence.

In the
Supreme
Court of
Sierra
Leone.

1.—The Defendant says that the testator, by his will dated the 30th day of August 1946, revoked the will dated the 20th day of August 1939 which is set up by the Plaintiffs in paragraph 1 of the Statement of Claim.

2.—The Defendant denies each and every allegation contained in paragraphs 3, 4 and 5 of the Statement of Claim and says that the Will and Codicil dated respectively the 30th August 1946 and 19th July 1947 were executed in complete accordance with the provisions of Statute 7 Will 4 and 1 Vict. c. 26 and with the full knowledge and approval of the testator as to the contents thereof.

No. 10,
Defence.
17th
January,
1949.

COUNTERCLAIM.

The Defendant counterclaims that the Court shall pronounce in solemn form for the last Will and Codicil of the testator dated respectively the 30th August 1946 and 19th July 1947.

C. J. KEMPSON,
Counsel.

Delivered and filed this 17th day of January 1949 by Carteret John Kempson of 26 Percival Street, Freetown, Defendant's Solicitor pursuant to rules of Supreme Court.

No. 11.

Summons for Interrogatories.

No. 11.
Summons
for Inter-
rogatories.
3rd
February,
1949

LET ALL parties concerned attend His Honour Mr. Justice Ernest Samuel Beoku Betts, Acting Chief Justice in Chambers, Law Courts Buildings, Westmoreland Street, Freetown on Wednesday the 9th day of February, 1949 at 8.30 o'clock in the forenoon on the hearing of an application on the part of the Plaintiffs for an order that the Plaintiffs be at liberty to deliver to the Defendant interrogatories in writing a copy whereof is delivered herewith and that the Defendant do answer the said interrogatories within 10 days from delivery of the said interrogatories as prescribed by Order XXXI rule 8 of the Rules of Supreme Court and that the costs of and incident to this application be costs in the cause.

Dated this 3rd day of February, 1949.

This Summons was taken out by Cyril Bunting Rogers-Wright of 27 Liverpool Street, Freetown, Solicitor for the Plaintiffs.

To the Defendant and to C. J.
Kempson, Esq., his Solicitor.

In the
Supreme
Court of
Sierra
Leone.

No. 12.
Plaintiff's
Inter-
rogatories.

No. 12.

Plaintiff's Interrogatories.

Interrogatories on behalf of the above-named Plaintiffs for the examination of the above-named Defendant.

- 1.—Where was the Will of the 30th day of August, 1946 executed ?
- 2.—At what time of the day was it executed ?
- 3.—Was it signed by the Testator ?
- 4.—Was anyone present other than the 2 attesting witnesses ? If so, state names and addresses.
- 5.—Where was the codicil of the 19th July, 1947 executed ? 10
- 6.—At what time of the day was it executed ?
- 7.—Was it signed by the Testator ?
- 8.—Were there any persons present besides the attesting witnesses ? If there were state names and addresses.

No. 13.
Order on
Summons
to dismiss
for want of
prosecution,
15th
February,
1949.

No. 13.

Order on Summons to dismiss for want of prosecution.

BEFORE HIS HONOUR THE CHIEF JUSTICE IN CHAMBERS.

UPON hearing the Solicitors on both sides and upon reading the Affidavit of Defendant's Solicitor filed the 7th day of January 1949.

It is ordered that this application be dismissed that the statement of claim filed the 7th day of January 1949 do stand that defence be delivered within 7 days and that the costs of this application be taxed and paid by the Plaintiffs to the Defendant. 20

No. 14.
Order on
Summons
for Inter-
rogatories,
15th
February,
1949.

No. 14.

Order on Summons for Interrogatories.

UPON hearing the Solicitors on both sides and upon reading the interrogatories filed on behalf of the Plaintiffs the 3rd day of February 1949.

It is ordered that this application be dismissed with costs to be taxed and paid by the Plaintiffs to the Defendant.

No. 15.
Opening of Trial.

In the
Supreme
Court of
Sierra
Leone.

ROGERS-WRIGHT for Plaintiffs.

C. J. KEMPSON (with him R. B. MARKE) for Defendant.

ROGERS WRIGHT states that the Defendant should begin. A grant with will has been made to Defendant in this estate. Grant has now been filed.

Tristram & Cootes—17th Edition, page 575.

KEMPSON agrees.

No. 15.
Opening of
Trial,
13th July,
1949.

10 RULING—

The Defendant to begin as they are in fact propounding Will. (Tristram & Cootes 17th Ed. p. 588.)

Official Administrator agrees.

MARKE opens case :—

Mormodu Allie made Will dated 30th August 1946 and probate of will with codicil (dated 19th July 1947) was granted to the Official Administrator. The Plaintiffs allege will not duly executed according to law and by paragraph 4 of statement of Claim allege that the testator did not know or approve of contents of will and codicil. Plaintiffs ask for revocation.

20 Official Administrator asks that will of 1946 should stand. With respect to paragraph 4 of statement of claim. (Tristram & Cootes—17th Ed. pp. 870–871. 19th Ed. p. 970.) Particulars of substance of case not filed as required by Tristram & Cootes—17th Edition. P. 871 or 19th Edition. P. 971. Marks states if substance of particulars given then there should be no adjournment.

WRIGHT states requirement of rule does not apply to Plaintiff but to Defendant. Wright agrees that paragraph 4 of Statement of Claim unnecessary and should be struck out—Paragraph 4 struck out. Consequential amendment follow.

30

No. 16.
Defendant's Evidence.

No. 16.
Defendant's
Evidence.

AHMED ALHADI—sworn on Koran examined by MARKE :—

I am Official Administrator and Master and Registrar Supreme Court. I produce 2 affidavits of Scripts filed in this action. I produce the original 1946 Will of the late Mormodu Allie. Probate of Will has been granted. I have sealed probate copy. I produce it as Master and Registrar. (Probate dated 10th March 1948 tendered admitted "A".) I have been administering the estate and in the course of the administration I have sold some of the houses in the estate.

Ahmed
Alhadi.
Examina-
tion.

In the
Supreme
Court of
Sierra
Leone.

No. 16.
Defendant's
Evidence.

John Coni
Dougan.
Examina-
tion.

CROSS-EXAMINED BY WRIGHT—

In the Will Executors are named. The Will and Codicil were handed to me in two envelopes by Mr. A. S. Wurie of C. F. A. O. and saying that one of the executors authorised him to collect them from the Registrar-General and to hand them to me. The envelopes had been open at the time. I have the envelopes in Court. Here are the two envelopes (2 envelopes tendered admitted B1 & 2).

JOHN CONI DOUGAN.—Sworn on Bible examined by MARKE saith—

My name is John Coni Dougan. I reside at 16 Skelton St. Wilberforce. I am Solicitor's Clerk. Clerk to Hon. C. E. Wright. I knew Mormodu Allie. He lived at Magazine St. in Freetown. He is now dead. I made a will for Mormodu Allie. I remember making a Will for him in 1942 in 1946 and a Codicil in 1947. Mormodu Allie gave me instructions to make the 1946 will. He gave instructions to me orally. He gave me a copy of his 1942 will and from that I was able to make the 1946 Will. He gave me the 1942 will and I suggested that to facilitate my work I would read out 1942 will paragraph by paragraph and he should tell me what to omit and what to insert. This is the 1942 will that I made. The witnesses are myself and M. S. Macauley —clerk of testator. The testator made suggestions about alterations in 1942 will and from them I made the 1946 will. (Document dated 28th July 1942 tendered admitted " C ".)

I made two copies of the 1942 Will. This is a duplicate. Both were signed. The testator said he had bought some more properties which he wished to include in a later will. The instructions about the 1946 were given to me in his house in Magazine St. After I had obtained the instructions I prepared the Will. I told Mormodu Allie to arrange a day when I would take it to his house at Magazine St. for execution. I went to him for execution about 4 p.m. in August 1946. When I went I met Mr. Macauley there. I produced original and duplicate of the Will.

I read the original paragraph after paragraph to him. I read it in English but explained it to him in broken English. As I explained he said "That's right." "All right." "So I want it." Macauley was present right through when I read and explained the Will. The testator signed will in Arabic and I took his mark. He signed the last page and each page of the Will. After he had signed Macauley and I signed the will. We all signed in the presence of each other. After that I made a Codicil for Mormodu Allie in 1947. He asked me to see him. I went to his house in Magazine St. He said he wanted to make another will as he was disgraced by one of his children at Mecca. He said he wanted to omit the child's name from the will. I said if that is the case you need not change the whole will but you can make a codicil. Mormodu Allie agreed. I made the codicil in original and duplicate. I arranged for the execution of the codicil. It was signed in his house at Magazine St. Macauley and I were also present. I read over the codicil to Mormodu Allie and explained it in patois. The testator said "Yes that was how he wanted it." Mormodu Allie signed in Arabic and I

took his Mark. Macauley and I were present when he signed. Macauley and I signed as witnesses in the presence of Mormodu Allie and in the presence of each other. No other person was present when the will or codicil was signed. When I was given the instructions only Mormodu Allie and I were present on each occasion. This is the will I witnessed and saw him sign. The other document shown to me is the codicil I saw signed by Mormodu Allie as I have stated. The will is dated 30th August, 1946 (Will tendered admitted " D "). The codicil is dated 19th July 1947. (Codicil tendered admitted " E ").

In the
Supreme
Court of
Sierra
Leone.

No. 16.
Defendant's
Evidence.

John Coni
Dougan.
Examina-
tion—
continued.
Cross-exam-
ination.

10 CROSS-EXAMINED BY WRIGHT.

As far as my memory goes Exhibit " D " is Will executed in 1946. (Question—The document executed " D " was only made subsequent to February 1948 ?)

MARKE—

Objects that the question suggests forgery which has not been pleaded and no evidence tendering to show fraud would be admissible. Tristram and Cootes—Probate—17th Edition p. 529.

WRIGHT—

Plea of fraud raised by paragraph 5 of Statement of Claim. Tristram & Cootes—17th Ed. p. 521.

RULING—

Particulars of fraud to be given. Parties agree to accept and to proceed with case to avoid delay. NOTE : New paragraph 6 added to the Statement of Claim. Counsel for Official Administrator accept this and does not object.

CROSS-EXAMINATION—continued—

Answer—I am perfectly sure Exhibit " D " was executed in August 1946 while the testator was alive. It is signed by the testator on every page.

30 Question—The will signed by Mormodu Allie on the 30th August 1946 was signed only on the last page ?

Answer—No. He signed each page. I was present when Mormodu Allie signed each page of the Will. The testator told me the new properties he had bought which he wished to insert in the new Will. Among the properties were 6 Magazine Court. I think 30-30b Garrison St. is one of the new properties. He told me several but I do not remember them. I do not know which is 30-30b Garrison St. I do not remember what 40 the new properties are. I see the residuary clause in Exhibit " C," marked paragraph 30. The residuary clause in Exhibit " D " is not in the same words as in Exhibit " C." The 1946 Will was placed in an envelope in my presence and sealed. I am not sure I deposited it in the registry but I remember depositing the 1942 will and codicil of 1947 in the registry. I never visited Mormodu Allie during his last illness. I went to the house in connection with banking business but I do not remember the date.

In the
Supreme
Court of
Sierra
Leone.

No. 16.
Defendant's
Evidence.

John Coni
Dougan.
Cross-exam-
ination—
continued.

Michael
Selexicus
Macauley.
Examina-
tion.

I represented Mr. Wright and a clerk represented Barclays Banks. That had nothing to do with a will. The clerk who represented Barclays Bank was a Mr. Jimmy Cole. I never visited the house of Mormodu Allie after his death.

BY COURT—

As regards the 1942 will I was given instructions in the house of Mormodu Allie and what he told me I wrote down on paper. I am not sure if he gave me copy of an old will. For the making of the 1946 I was given the 1942 will, that is Exhibit "C." I made notes on a scrap of paper especially of the new properties but I have mislaid notes. The inter-
lineations and writings on Exhibit "C" were made by me. I struck out
paragraphs in Exhibit "C" shown as struck out. I made them when
instructions were given. 10

MICHAEL SELEXICUS MACAULEY—sworn on Bible examined by
MARKE saith—

I reside at 13 Regent Road, Freetown. Retired Civil Servant. I knew the late Mormodu Allie. He is now dead. I knew him about 13 years before he died. I was his clerk. I see Exhibit "D." I see my signature on the paper. It is the will of the late Mormodu Allie. It is dated 30th August 1946. Dougan (last Witness) also signed as a witness. I was
present when Dougan came with will. Dougan went to 8 Magazine St.
the house of late Mormodu Allie. Mormodu Allie was there. When
Dougan went he told Mormodu Allie that he had brought the will to be
signed. This was in a room upstairs where Mormodu Allie has his clerical
work done. It was on the south of house. Dougan took out will from
a foolscap envelope and he read it before Mormodu Allie and myself. As
Dougan read it he explained it Mormodu Allie used to answer "Yes."
After Dougan had read and explained will he asked Mormodu Allie to sign
in Arabic. Mormodu Allie signed in Arabic. Mormodu Allie touched
pen and Dougan made his mark. I signed as a witness. Dougan and
Mormodu Allie were present when I signed. I see page 6 of will. 20
I see marks on margin. They are the signature of Mormodu Allie and the
initials of Dougan and me. That was done throughout the will on every
page. Dougan brought two copies of will. The other copy was signed as
well in the same way. I see Exhibit "E." I see my signature on it. It
is a codicil dated 19th July 1947. Dougan signed on it. Mormodu Allie
signed in Arabic on the paper. His mark was also taken. Those present
when Mormodu Allie signed were Dougan and I. When I signed Dougan
and Mormodu Allie were present and when Dougan signed, Mormodu Allie
and I were present. Before Mormodu Allie signed the codicil Dougan said
that as Mormodu Allie had told him to take out name of Sock-na Allie
from the will, this is the paper he had made to do that. Mormodu Allie
said "Yes." Before Dougan came to sign the will or codicil I did not
know Mormodu Allie had given instructions. He only told me to come
to the house to sign paper. I never knew it was a will. 30 40

CROSS-EXAMINED by WRIGHT—

Dougan met me at the house when I witnessed the Will. He met me upstairs. I was in the parlour. Haja Fatmatta was in the house but downstairs and not in the parlour. I cannot remember whether I got to the house before Dougan as regard codicil. I was every day with the late man. The codicil was executed in the same room. I do not remember Dougan meeting me in the house after the signing of the codicil. He might have met me there but I do not remember it. It is not true that it was in February 1948 I affixed my signature to the will. I signed it 10 long before he died. The will was made before Mormodu Allie left for Mecca. I know Mr. D. N. Mason (known as Tunde Mason). I remember signing on behalf of Mormodu Allie to D. N. Mason as I used to do. In the letter I took his mark and signed as witness to the mark. It was not written in April 1948. Previous to 1946 I witnessed a will for Mormodu Allie in 1942.

In the Supreme Court of Sierra Leone.

No. 16. Defendant's Evidence.

Michael Selexicus Macauley. Cross-examination—

COURT—

As the allegations are that will is a forgery, it seems the felony must first be prosecuted before the action can continue.

KEMPSON—

20 If there is a genuine charge of forgery it should have been prosecuted before.

WRIGHT—

The matter of forgery was only known to us now that we raise it.

Adjourned to 14th instant.

DISCUSSION.

Discussion.

WRIGHT—

That action is only to be stayed if felony is by one of the parties.

KEMPSON—

30 States that if in the course of the proceedings evidence is produced which tends to show fraud case should be stopped.

RULING—

Action to proceed and if in course of hearing facts produced to show forgery action will be stopped and matter and papers referred for enquiry by the Attorney-General.

MICHAEL SELEXICUS MACAULEY. Cross-Examination continued.

Michael Selexicus Macauley. Cross-examination—continued.

CROSS-EXAMINED by WRIGHT

I cannot remember whether it was fountain pen or ordinary pen Mormodu Allie used to sign the will or which I used or Dougan used. I cannot remember if we all used the same pen. I cannot remember any 40 other circumstances except that I was there, Mormodu Allie was there and Dougan was there and we signed and witnessed will respectively.

In the
Supreme
Court of
Sierra
Leone.

No. 16.
Defendant's
Evidence.

Michael
Selexicus
Macauley.
Cross-exam-
ination—
continued.

When Mormodu Allie was ill I was a daily visitor to his house. For some time after his death I was a daily visitor to the house. After the execution of the 1946 will I saw it after the death of Mormodu Allie in his house. I think it was shown to me by the wife of Mormodu Allie.—Haja Fatmatta. After the execution was done, as far as I can remember, Mormodu Allie gave Dougan to see after registration. He first enclosed it in a foolscap envelope. I cannot remember if it was sealed in my presence. I cannot say if Mormodu Allie did anything to the envelope. After I had witnessed will I did not concern myself again about the will. I cannot remember if I did anything to the envelope. I cannot remember if Mormodu Allie signed the envelope. I cannot remember if I signed on the envelope. When Haja showed me it was out of the envelope. So far as I can remember I think I was the only one present with Haja Fatmatta. Haja Fatmatta showed me the will to look the contents. I cannot remember if it was in February 1948 the month after Mormodu Allie died. I do not think she showed me the codicil. I was not shown the will in order to get me to sign a substituted will. So far as I know the will was never openly read to Mormodu Allie's children and relatives. I know Sockna Mormodu Allie. She was living in the house after the death of Mormodu Allie for 40 days after. Sockna Mormodu Allie was one of the wives of the late Mormodu Allie. Haja did not call her when she want to show me the will although she was living in the house at the time. Haja called me to her bedroom to show me the will.

AHMED ALHADI recalled.

Ahmed
Alhadi.
Further
Cross-exam-
ination.

CROSS-EXAMINED by WRIGHT (by Leave)—

I did not say in the former hearing that the will and codicil were handed to me by Wurie in two envelopes but were handed to out of the envelopes and with the two envelopes in my office in the Law Courts Building Westmoreland Street. I do not think anyone was present at the time. I had not been to 8 Magazine St. before that date after death of Mormodu Allie. The will was not handed to me in 8 Magazine St. It is not true Haja Fatmatta had requested Wurie and I to meet at 8 Magazine St. It was not in the presence of Haja Fatmatta that will and codicil were handed to me. It was not in my presence that Haja Fatmatta handed will to Wurie to hand to me.

MICHAEL SELEXICUS MACAULEY recalled.

Michael
Selexicus
Macauley.
Cross-exam-
ination—
continued.

CROSS-EXAMINATION by WRIGHT continued—

I was not present when the will was handed over to Mr. Alhadi. I wrote to one D. N. Mason with reference to Mason's house at the instruction of Mormodu Allie. It was only a letter and receipt that I wrote out. the receipt was for the deed of conveyance for house. Mormodu Allie intended me to make one receipt. I think they were two receipts. I cannot say why it was necessary to make two receipts. I cannot remember if I made both receipts the same day. This document shown to me is in my hand-

writing. I signed the name Mormodu Allie with his mark. I signed my name and address. It is dated 12th November 1947. (Receipt tendered.)

In the
Supreme
Court of
Sierra
Leone.

MARKE—

Objects as not relevant to case.

WRIGHT—

States the suggestion is that document though dated before death of Mormodu Allie was made after his death.

No. 16.
Defendant's
Evidence.

RULING—

Document not relevant.

Michael
Selexicus
Macauley.
Cross-exam-
ination—
continued.

- 10 Witness continuing saith—one of the receipts is a connection of the other. One was dated 12th November 1947 and the other 13th November 1947. The two receipts are the same. I must have forgotten I had given receipt and sent another. Mormodu Allie was present when I made the first one. He touched pen. On the next day I thought I had not written the receipt so he said I should write it and he touched pen again. I see this document. It was written by me on behalf of Mormodu Allie to Mr. D. N. Mason. It is not true it was written in April 1948. It was not written at the same time as the receipt dated 13th November 1948. I do remember going to Mr. J. S. Wright with Haja Fatmatta Kata and
- 20 Ibrahim Allie in January 1948. I did not write or sign instructions for Mr. J. S. Wright to sell properties of Mormodu Allie. Haja Fatmatta Kata signed instructions on behalf of Mormodu Allie. Mormodu Allie sent her to Mr. Wright. I think Haja signed for Mormodu Allie. She signed in English. I cannot remember what she signed. I see Exhibit "D." The ink of my signature is different from that of Dougan. Dougan and Mormodu Allie appear to be the same.

BY COURT—

I am 73 years old.

JOHN CONI DOUGAN recalled.

30 **BY COURT—**

My name is John Coni Dougan. I used my fountain pen on execution of will. I think he used my pen. I took his mark with my pen and wrote. I think Macauley had another pen which he used. As regard the codicil I think the same thing happened. The will was executed in a room on the first floor. The codicil was executed in the same room.

John Coni
Dougan,
recalled.

BY MARKE—

The place where will was signed was a continuation of the parlour but it joins it at a point which makes a "T" with the parlour. The portion would be facing Fourah Bay Road.

40 **BY WRIGHT—**

The will of 1942 was executed at Magazine Cut in the same room. I think it is Mormodu Allie's office. I took my instructions in the same room.

In the
Supreme
Court of
Sierra
Leone.

JIMMY ANEYEAR BUXTON COLE sworn on bible—Examined by
MARKE saith—

I reside at 6 Meheux St. Freetown. Sub-Accountant Barclays Bank, Freetown. I knew Mormodu Allie. I know his house in Magazine St. the number is 8 but I am not too sure. During his life he did business with my bank. I know John Coni Dougan. I did not go with Dougan last year 1948 to Mormodu Allie's house. I went to house of Mormodu Allie in 1947 with Dougan on one occasion.

Case for Official Administrator closed.
Case for Plaintiffs open.

10

No. 16.
Defendant's
Evidence.

Jimmy
Aneyear
Buxton
Cole.
Examina-
tion.

No. 17.

Plaintiff's Evidence.

No. 17.
Plaintiff's
Evidence.

William
Sylvester
Young.
Examina-
tion.

WILLIAM SYLVESTER YOUNG—Sworn on bible—examined by WRIGHT saith—

I reside at 6 Rush St. Freetown. Deputy Registrar General. I have the custody of will deposited in the Registrar General's Office. The will and Codicil of Mormodu Allie were deposited in the Registrar General's Office. They have been delivered out. I mean will for 1946 and codicil of 1947. I delivered them to Mr. A. S. Wurie on behalf of Haja Fatmatta Kata on 5th February 1948. They were in sealed envelopes. I delivered them sealed. I did not see the will or codicil. 20

Ahmed
Seray
Wurie.
Examina-
tion.

AHMED SERAY WURIE—sworn on Koran—examined by Wright saith—

I reside at 34 Wilkison Road. Accountant (C. F. O. A. I knew the late Mormodu Allie. I know Haja Fatmatta Lata. After the death of Mormodu Allie Haja gave me a receipt to receive will from the registrar general's office. I received the will and codicil. They were in two envelopes sealed I sent them on to Haja Fatmatta Kata. I saw them in the afternoon after work. I went to house of Haja Fatmatta Kata. I saw the envelopes intact and in the presence of Ibrahim Allie we went to the second floor of house and she asked me to open and read them. I did so and read will and codicil out to both of them. I then passed them to Ibrahim Allie. He looked at them and gave them to Fatmatta Kata. I next saw them on the 11th of this month in the C.I.D. office. I did not read them in the C.I.D. office. I know the document shown to me at the C.I.D. office. This is the document shown to me at the C.I.D. office (Ex. "D"). This is not the will that I took out of the envelope at Haja Fatmatta Kata's house and read in the house. What I read was that the signature of Mormodu Allie was on the last page only. This one has signature on all the pages except one. If the 30

will I read at Haja Fatmatta's house had had signature on every page I would have witnessed it. I see Exhibit " E ". It is the document I saw at C.I.D. on the 11th instant. It is the codicil I read at Haja Fatmatta Kata's house. I know Ahmed Alhadi the official Administrator. Haja Fatmatta sent for Ahmed Alhadi as administrator and myself. We went to the house together. We met at Mountain Cut. In the house of Haja, she handed me the two envelopes containing will and codicil which I passed on to Alhadi. I handed them to Alhadi in the house of Haja Fatmatta in her presence.

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Court of
Sierra
Leone.

—
No. 17.
Plaintiff's
Evidence.

CROSS-EXAMINED BY MARKE—

- 10 The signature of Mormodu Allie does not appear in page 8 of the will (Ex. " D "). The document I read at Haja's house had the signature on the last page. This was not the one I read. The will I read in house of Haja Fatmatta was typed on a thick paper like the codicil.

Ahmed
Seray
Wurie.
Examina-
tion—
continued.

BY COURT—

I do not remember contents of will I read.

CROSS-EXAMINATION continued—

- I remember the witnesses in the will I read. I cannot say what benefits Haja of Sockna had under will I read. I read the codicil. Sockna's name is mentioned in will. I read the will in English. I did not explain it in broken
20 English. I know Haja is literate. I did not ask Haja and Ibrahim Allie if they understood the will. I did not take the will or the codicil to the office of the Official Administrator. I am certain they were handed to him in Haja's house. It would be in early March. I took the will to Haja and left it with her. She sent for Alhadi within a month they met and handed will and codicil to him. Haja Fatmatta sent to say that Alhadi and I should meet in her house. Alhadi and I met just opposite my house in Mountain Cut. When I was arranging to buy a house from the estate Alhadi and I went to the house of Haja together. When Alhadi and I went to the house Haja Fatmatta was in mourning. We met some people who were asked out.
30 Alhadi and I remained in the parlour. I was the middle man between Haja and Alhadi at that time. I am not now the middle man. I ceased just before I left for Europe on leave in September 1948. I left of myself because everything was nearly over. It is true that Haja Fatmatta handed the will to Alhadi. When I say the will I read is different from Exhibit " D " is certainly true.

Cross-exam-
ination.

RE-EXAMINED BY WRIGHT—

At the time I ceased to be a middleman Haja Fatmatta Kata had told me she was then married to Alhadi and there was no necessity for me to be a middleman.

Re-exam-
ination.

40 BY COURT—

The witnesses of the will I read in house of Haja Fatmatta were Dougan and Macauley. I did not examine the documents before they were handed to Alhadi. I know arabic. I would not call myself handwriting expert in arabic. I can read arabic. I see the signature of Mormodu Allie in Exhibit

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Leone.

No. 17.
Plaintiff's
Evidence.

—
Sockna
Mormodu
Allie.
Examina-
tion.

“ D ”. It is Alhaji Mohamed “ Lee ”. I see the signature. The name is the same. I do not know the handwriting of Mormodu Allie. The signatures on the pages are all written Alhaji Mohamed “ Lee ”

SOCKNA MORMODU ALLIE—sworn on Koran—examined by WRIGHT saith—

I reside at 17 Martin St. Freetown. I am one of the widows of the late Mormodu Allie. I was married to Mormodu Allie long before he married to Haja Fatmatta Kata. I had seven children for Mormodu Allie. When Mormodu Allie took ill I was in my house. When he became serious Haja Fatmatta sent for me and I stopped in his house until he died. After he died I remain in the house for 40 days before I removed to my house. Haja Fatmatta shared the same room. We were in mourning. I was a wife of Mormodu Allie until his death. No one has read will to me. I know Mr. Macauley. He used to go to the house of Mormodu Allie after his death frequently. I was called to be identified by a witness (Dougan). A month after the death of Mormodu Allie Macauley and the man went to the house. They went to Haja Fatmatta Kata. They went upstairs. The man (Dougan) and Macauley went to the house three times after the death of Mormodu Allie and they went upstairs. 10

Cross-exam-
ination—

CROSS-EXAMINED BY KEMPSON—

20

From my house I can see 8 Magazine St. From my house I can see the back of 8 Magazine St., but not front of 8 Magazine St. I never saw Dougan at 8 Magazine St. before Mormodu-Allie died. Mormodu Allie went to Mecca once. When Mormodu Allie went to Mecca the occasion before the last Tarawallie was in charge of business. Tarawallie was his brother-in-law.

BY COURT—

The names of my children are Abu Bakar, Kemor, Nenneh, Kadia, Isata, Ibrima not Ibrahim Allie, and Asmiyu. Those alive are Kemor, Nenneh, Isata and Ibrahim. 30

BY KEMPSON (Leave)—

I do not know if Mormodu Allie made provision for my children in the will.

Adjourned to 15th instant at 10 a.m.

Ibrahim
Allie.
Examina-
tion.

IBRAHIM ALLIE—sworn on Koran—examined by WRIGHT saith—

I reside at 7 Guard St., Freetown. Butcher. The late Mormodu Allie was my father. He died in January 1948. After his death a will was read to me by Mr. A. S. Wurie at 8 Magazine St. There was also present Haja Fatmatta Kata. Wurie came to the house in the evening of a day. I was asked by Haja Fatmatta Kata to take Wurie up. I did so. Fatmatta Kata came and delivered two envelopes to Wurie and asked him to read the documents in the envelopes. Wurie opened the larger of the two envelopes, took the paper from inside and read it to us. Wurie then handed the document to me. He tore the other envelope. He read the contents. I 40

looked at both documents and gave them back to Wurie who put them in an envelope and gave to Haja Fatmatta Kata. After that I was not present when the will was read again. The next time I saw a will purporting to be my father's was after I consulted a lawyer and he and I came to the Master's Office, Supreme Court. Exhibit "D" resembles the document I saw in the Master's Office. This is not the same document I saw when Wurie read it out. I see Exhibit "E." I saw it in the Master's Office. It is the same as the document I saw with Wurie.

BY COURT—

10 I can read some arabic. I learnt arabic in French Guinea.

EXAMINATION IN CHIEF—continued—

I knew my father's signature in arabic. I see the signature of my father in arabic on Exhibit "E." It resembles my father's signature, although sometimes he writes in bolder characters. I see Exhibit "D." I see the arabic signature on Exhibit "D." It is similar to my father's signature and it is not like his signature. I see the arabic signatures in the first page of will. It is not the same handwriting as that on the second to last page of the will. In page 2 some of the letters resemble the signature in the second to last page and some do not. In page 7 the wording is "Alwas Lobaba Mahmed Allie." In page 2 it is "Alwah Lababa Mohamed Allie." In page 3 the wording is as page 7 but the writing is different. In page 4 the writing is different from the others. I cannot translate this. The signature on page 5 is different from page 7. In page 6 the writing is "Alwah Allaha Mohammed Ali." I knew my father's properties when he was alive. He had at Jenkins Street numbers 5 and 10 and 10a for which I use to collect rent during his lifetime. I know property No. 4 Jenkins St. Mammy Oku lives in it but I do not know who is the owner. I know Dougan. I never saw him go to the house of my father when he was alive as I did not live in the same house as my father. I saw him in the house after the death of my father. I saw him in the house about two or three times. He was not alone when I saw him. He was with Macauley on the two or three occasions.

CROSS-EXAMINED BY MARKE—

I know some arabic. I can sign my name in arabic. (Witness asked to sign his name in arabic. Done.) I can sign my name in English. (Witness asked to write name in English. Done.) (Document with name of witness in arabic and English tendered admitted "F.") I can write letters in arabic and other people's names in arabic. (Witness asked to write name Alhaji Mohamed Allie in arabic. Done.) (Document tendered admitted F1.) I understood will read by Wurie. It was read in English. I understood Haja had benefit under will. I heard her name read out. Her name was only mentioned once in the will. She was not the largest beneficiary under the will. I do not remember what was given to her. I heard my name but I do not remember how many times. I remember the last part of will that

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—
No. 17.
Plaintiff's
Evidence.

—
Ibrahim
Allie.
Examina-
tion—
continued.

Cross-exam-
ination.

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Supreme
Court of
Sierra
Leone.

No. 17.
Plaintiff's
Evidence.

Ibrahim
Allie.
Cross-exam-
ination—
continued.

the testator gave me his cattle and farms at "Devil Hole." I remained with Haja after will was read and Wurie went away. I took Wurie down when I went back Haja had gone back to the "mourning" room. When Wurie read the will he said "Haja you are an executor." Haja did not ask what that meant. There was no palaver between Haja and me after Wurie left. I did not tell Haja that all the estate had been left to her and she would see what I would do. I was living at 8 Magazine St. on the day the will was read. I slept there the night. I was in the house for 40 days. Wurie called three Executors including Alhaji Baber and Alhaji Antumani. I know the months of the year. I remember the last part of the will. It provided that all the rest of the property should be distributed among the children. The names were mentioned. I saw the will after Wurie read it 4 months and 10 days after death of Mormodu Allie. I cannot read English. I had told my solicitor that my father had not left a will. After Wurie read will Haja promised that 40 days after the will would be read. After 40 days we all gathered in the house and asked her to read the will. Haja said we should wait for 4 months and 10 days. After the period I saw her again and spoke to Haja again about reading the will. She then held my hand said "Boy come here." We went up the garet. She said "I have been advised not to read the will." She said she was told the will was not good. I said all this time you did not tell me this. Then we quarrelled on this day. What I have said about Haja is true. I received £200 from my father's estate. About 2 or 3 weeks after the death of my father Dougan first went to the house of my father. I do not remember whether it was before or after Wurie had read the will. I do not remember when Wurie read the will but it would be about the same time. I saw Dougan in house about two or three times. There was an interval of some weeks before Dougan went to house again. I do not remember the interval between second and third visits. The visits were between 4.30 and 5 p.m. Exhibit "D" has been read to me and explained. My name is in it but I do not remember in how many times. My father had an account in Barclays Bank. Sometimes he used to sign cheques in arabic. I see the signature in page 7 of will. It is "Aluba Lababa Mohamed Allie."

Re-exam-
ination.

RE-EXAMINED BY WRIGHT—

After Wurie read the will and before he left I asked my step mother when we would be called together. Wurie said that is a good question. Haja said we should wait until 40 days after death of Mormodu Allie. I remember the names of two of the wives of Mormodu Allie in the will read out by Wurie. They were Haja Fatmatta Kata and Sockna Mormodu Allie.

Bankole
Emanuel
Cole.
Examina-
tion.

BANKOLE EMANUEL COLE—sworn on bible—examined by WRIGHT
saith— 40

I reside at 31 Circular Road. Valuer City Council. I assess premises for rate for city Council. I have been doing it for 9 years. Garrison St. is numbered from north-east to south-west. It is numbered from the bottom

to the top. Even numbers are on the left upwards and odd numbers on the right. There is no number 30—30b Garrison Street. The highest even number is 28 Garrison St. It is the house at the angle of Garrison St. and Howe Street on the left. No. 30—30b Garrison St. would be in the Victoria Park.

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Leone.

BY COURT—

There has been no change of numbers of houses for the last 9 years since I took over.

No. 17.
Plaintiff's
Evidence.

10 WILLIAM SYLVESTER YOUNG Re-called—Re-examined by WRIGHT said—

William
Sylvester
Young.
Re-exam-
ination.

I have gone through the registers of conveyancing in the registrar general's office. Mormodu Allie owned two properties in Garrison Street, one from C. A. Macauley and the other from A. B. Sillah. One is in Garrison and Rawdon Street and the other (At this stage both Counsel agree that Court may call an arabic expert and they agree on Mr. Iscankanda David Salamah.

ISCANKANDA DAVID SALAMAH.

Iscankanda
David
Salamah.

Witness called by the Court at request and by consent of parties—sworn on bible—examined by Court saith—

20 My name is Iscankanda David Salamah. I reside at 3 Wilberforce St. Freetown. Trader. I know arabic. I taught arabic in the college and High School of Labannon and I was Chief translator to the High Commission of Bagdah Iraq, during the time of Sir Gilbert Claster and Sir Henry Dobbs. I used to contribute articles to our arabic literature and some magazines. To a certain extent I can differentiate between writings of individuals in arabic. I see the arabic signature in Exhibit " E. " It is not a good handwriting. The first word looks like " Alwaleh " or " Alwalla " the second is " Mohamed " the third is " Allie " or " Allah " as we write it. I see Exhibit " D " the signature in arabic. This looks very much like 30 " Alwallah " or " Alwallaha, " the second is " Mohamed, " and the third is " Allah " or " Allie. " There is little difference between the signature in " D " and " E " in that some letters are large and some are small. A person who is only trained to write his signature is always trying to improve his signature and sometimes two of his signatures differ. I see page 1 the signature by the side. The translation is the same as that in page 7 of Exhibit " D " except that the first letter " aleph " " A " is omitted in page 1 but is not in page 7. I see the second page the word " A " is there. The first name looks like the one in page 7. The word " Mohamed " is there. The last character of the second name 40 " Mohamed " does not look very much like the one in page 7. The last word is almost the same as in page 7. In page 3, there is a bit of difference between the handwriting in page and that in page 7 in the way the characters look. The difference is that in page 7 the characters look bigger than in page 3. I see page 4 there is also a little difference. The signature on the side of the will looks the same but that at page 7 is different. I see page 5. The signature on the side looks like those on the first four pages but differ

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from the 7th page. The signature on sixth page resembles all the others before it. All the signatures on the first six pages look alike but different from the seventh page in the size of the characters. (By consent will dated 20th August 1939 admitted "G.")

No. 17.
Plaintiff's
Evidence.
Iscankanda
David
Salamah—
continued.

By KEMPSON (Leave through Court)—

I see Exhibit "G" the signature in arabic. It looks like "Allah Mohamed Allah." Then there is something like "Allie." Then there is "Allie Mohamed Allie." That is written better. It is different from the writing on Exhibit "D." I see the signature in arabic in Exhibit "C." The first character looks illegible. I can read the second. It is "Mohamed," the third is "Allah" or "Allie." In Exhibit "C" the first word is written as "ra." It looks like "ra." and not as "wah." These two handwritings in Exhibits "D" and "C" are different. 10

Adjourned to 18th instant.

Isatu
Darami.
Examina-
tion.

ISATU DARAMI—sworn on Koran—examined by Wright saith—

I reside at 4 Jenkins St. Freetown. Trader. I own Jenkins Street No. 4. I bought the property. I have a deed of conveyance for the property. Here is the deed. (Deed of conveyance tendered.)

MARKE objects that deed must be proved. 20

ORDER—

Deed not admitted. My name is Benonkeh. When I came here I was married to Darami.

William
Sylvester
Young.
Further
Re-exam-
ination.

WILLIAM SYLVESTER YOUNG recalled—

I am deputy registrar general. I have register of properties of Mormodu Allie at Garrison Street. They are in Vol. 139 page 22 property conveyed by C. A. E. Macauley to Mormodu Allie on 18th September 1942 corner of Garrison Street and Rawdon St. numbered 29 in the public register of town lot of land. No municipal number given (Register tendered admitted "H."). Here is another property between Ahmed Alhadi Master and Registrar Supreme Court to alter Mohamed Allie in Vol. 146 p. 6 of register. It is corner of Rawdon and Garrison Streets. It was property of Daniel Lawrence Hedd. (Register tendered admitted H1.) There is no other property in Garrison Street in the name of Mormodu Allie in the register. There is property in Vol. 132 p. 570 in name of Mormodu Allie in Kissy Road. It was a sale by Alfred Augustus Cole to Mormodu Allie and Haja Fatmatta. It is at corner of Kissy Road and Fourah Bay Road. (Register tendered admitted H2.) There is a property in 2 Kissy Road completed by the Official Administrator in Vol. 158 p. 29. (Register tendered admitted H3.) I have register in the name of Mormodu Allie for 3 James Street in Vol. 108 page 574. (Register tendered admitted H4.) It was sold on 13th July 1944 to Rukoh Seisay in Vol. 147 page 8. (Register tendered admitted H5.) 30 40

CROSS-EXAMINED by MARKE—

I have got receipts for Will and Codicil of Mormodu Allie. They were handed to me by Ahmed Seray Wurie. They were received on the 5th February 1948 (2 receipts tendered admitted J1 & 2.) I handed over the will and codicil on 5th February and received these two documents on 5th February 1948.

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—
No. 17.
Plaintiff's
Evidence.

RE-EXAMINED BY WRIGHT—

Wurie wrote on the receipt back in the Office when he received the will and codicil.

William
Sylvester
Young.

Further
Cross-exami-
nation.

10 JOHN CONI DOUGAN recalled by Court states—

I do not remember the amount I was paid for the 1942 will but I was paid. I was paid £3 3s. 0d. for making 1946 will. I was paid 10s. 6d. for making codicil of 1947.

Re-exami-
nation.

AHMED SERAY WURIE recalled. Examined by MARKS saith—

John Coni
Dougan,
recalled.

My signature appears on this document. It is dated 10th February 1948. It is renunciation of probate. I witnessed the renunciation. (Document tendered. Wright objects. Ruling—not relevant in a question as to whether will was properly executed or was a forgery.) I do not remember if I handed over the document about renunciation to the Official

Ahmed
Seray
Wurie,
recalled.

20 Administrator. It was not handed with the will and codicil. The will and codicil had been handed to Alhadi before the renunciation was signed. I never asked Haja Fatmatta to marry me. It is not true that I gave the evidence I have given because the woman preferred Alhadi to me. I never gave Haja Fatmatta gifts of money in lots of £5, £10 and £40.

Case for Plaintiffs closed.

ZIZER applied for leave to call rebutting evidence—

(1) To show that Alhadi was not handed the will in Kata's house by Kata.

30 (2) That Wurie had all the documents. He carried messages from Kata to Alhadi.

Alhadi was not cross-examined when he was in box.

It is proposed to call Haja Fatmatta Kata.

Haja Fatmatta Kata will also throw light on the allegations about authority to sell property given to Mr. J. E. Wright—the auctioneer.

(3) There was the allegation that she told Ibrahim that at the end of 40 days she would read the will.

WRIGHT—

Does not object.

RULING—

40 As the Defendant started as Official Administrator the ordinary rule of practice is reversed and it is from that they should be given an opportunity to call rebutting evidence on material points. Leave is granted but rebutting evidence would be only such as permitted by the Court.

No. 18.

Defendant's Evidence in Rebuttal.

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No. 18.
Defendant's
Evidence.

Haja
Fatmatta
Kata.
Examina-
tion.

HAJA FATMATTA KATA—sworn on Koran examined by ZIZER saith—

My name is Haja Fatmatta Kata. I reside at 1 Elba Street, Freetown. The late Mormodu Allie was my husband. We were both muslims. I remember when he died. I know Wurie. He used to visit me since the death of my husband. He spoke to me about will of husband. Two weeks after the death of my husband he came to me and said he heard my husband made a will. I said "Yes." I said I had searched for the will but had not seen it. He said he would search for it. He came back and said he has seen 10 the will but I should go for it. I said I could not go as I was in mourning. We searched inside a tin and Wurie found 2 receipts in an envelope. He asked for an authority. I signed authority on back of receipts. Wurie took receipts. In evening Wurie brought the two documents. In presence of Ibrima Allie and me Wurie opened will and read it out. Wurie opened the codicil and read it. He explained will and codicil to me. He left the documents with me and went away. Ibrima then said I had been given the best part of the properties and he would fight me for that. The next day Wurie came. I suggested giving the estate to big lawyer Wright. He suggested I should take the estate to government to administer. Wurie 20 went away. I gave the will to Wurie. He came back and said government said he should write another paper. He then left and went away. Two days after he came with a document which I signed. Wurie took the paper away. He came later and told me he had given the paper to the Master with the will. It is not true they were delivered to the Master in my house. All these happened about three weeks after death of Mormodu Allie. I know Mr. J. E. Wright, the auctioneer. I had dealings with him about property. Once I went to Passells of Barclays Bank to draw money. He refused as our account was overdrawn. I was sent by my husband to auctioneer Wright to sell properties and pay money to the bank. J. E. Wright wrote letter to bank 30 and then I was given money by Passells. I was given £800 which I took home. I bought the property corner of Kissy Road and Fourah Bay Road. The money belonged to me and my husband as we had a common account. I used to put what I make on dying dyed cloth into a common account with my husband. After the death of my husband I did not get anyone to make a forged will.

Cross-examination CROSS-EXAMINED BY WRIGHT—

My husband had another wife Sockna Mormodu Allie. She was the senior wife. They were married long before me. Sockna Mormodu Allie came to live at 8 Magazine St. on day Mormodu Allie died and lived there 40 for 40 days. We were using the same room for the 40 days when we were in mourning. The will was never read to Mormodu Allie's wives and children. I did not tell Sockna Mormodu about the will. Wurie examined the will properly on the day he read it. After he did Ibrahima Allie also looked at

the will and examined it properly. I am sure that Wurie and Alhadi never went to my house together. Wurie bought one house from me. Wurie went to me. I sent for Alhadi. He went to my house. Wurie had gone and they never met in the house. I am sure they never met in the house. Wurie was the middleman between Alhadi and me. Alhadi never went to my house excepting when I sent for him. We did not arrange that the will should be read to all the children. I know Dougan. He never came to the house after the death of my husband. I did not get the will read to Alhaji Barber. Wurie had told me Alhaji Barber was one of the executors. Up to the present Alhadi has not read will to me. The only time will was read was when Wurie read it to me. I do not know what I have under the will.

No re-examination.

BY COURT—

I cannot read or write English. I can only sign my name. I cannot read or write arabic. I cannot sign my name in arabic.

WRIGHT addresses Court as to issue of forgery. That matter should be investigated as to whether there is forgery or not.

ZIZER—

Court stated if *prima facie* case of forgery then case should be forwarded to the Attorney General. No *prima facie* case of forgery. Wurie said he delivered will early in March. Renunciation paper was signed by him on 10th February 1948. Will was received on 5th February 1948.

Adjourned to 3rd August.

RULING on question as to allegation of forgery—

In paragraph 6 of the statement of claim as amended the Plaintiffs allege the following :—

“ That if at all the deceased executed a will on the 30th August 1946 the will propounded is not the will executed by the deceased. That the will propounded although dated 30th August 1946 was only made after the 5th February 1948 after the deceased’s death and substituted for the true will made by the testator.”

This is therefore an unequivocal allegation that the will propounded was a forgery. There is therefore an allegation that some person or persons committed the felony of forging the will and substituting it for the genuine document. I have given very careful consideration as to what should be the proper course to adopt in the circumstances. Very early in the hearing I stated that if the evidence discloses a *prima facie* case of forgery it would be easy for me to decide that issue one way or the other in these proceedings. I have considered the authorities as they point and they all indicate very clearly that where a felony is alleged and some evidence is led on that issue the Judge should stay the action until the felony is prosecuted. Reviewing the evidence, two witnesses Dougan and Macauley for the Official Administrator swore that the will in dispute was executed in their presence by the

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—
No. 18.
Defendant’s
Evidence.

—
Haja
Fatmatta
Katta.
Cross-exam-
ination—
continued.

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No. 18.
Defendant's Evidence.
Haja Fatmatta Kata.
Cross-examination—
continued.

deceased. On the other hand Wurie—a witness for the Plaintiff, who admittedly received the will from the registrar-general's office, and Ibrahim Allie—another witness for the Plaintiffs who saw the will when it was opened in the presence of Wurie and Ajah Fatmatta Kata swore that the will produced in Court was not the will which they saw and examined. Iscandar Salamah, a witness called by the Court at the request and consent of the parties gave evidence that there was some difference in certain alleged signatures of the deceased on the alleged will and in comparison with other documents alleged to have been signed by the deceased. Ajah Fatmatta Kata was called as a rebutting witness, allowed in the circumstances of the case by me. I do not think where the question is an alleged forgery it would be right to decide whether I should accept the evidence of Dougan and Macauley with the rebutting evidence of Ajah Fatmatta Kata or the evidence of Wurie and Ibrahim Allie on the other hand. If Dougan and Macauley are believed the will would be genuine. If Wurie and Ibrahim Allie are believed forgery would be disclosed. In the interest of justice I consider that the most satisfactory thing to do is to stay the action until the alleged forgery has been prosecuted. I propose to forward the record to the Attorney General for him to consider whether a *prima facie* case exists for prosecution for forgery.

E. S. BEOKU-BETTS,
Acting Chief Justice.

3/8/49.

Court informs Counsel of reply of Attorney General on question as to whether there should be prosecution for forgery. Reply is that A. G. satisfied that *prima facie* case for prosecution does not exist.

Further hearing for addresses adjourned to 29th instant.

E. S. BEOKU-BETTS.

21.11.49.

No. 19.
Discussion.

No. 19.

30

Discussion:

MARKE states that they should have the right of reply.

Rebutting evidence had nothing to do with paragraphs 1, 2, 3 and 5 of statement of claim. It had nothing to do with the due execution of the will and had nothing to do with whether deceased signed the will. It was something outside paragraphs 1, 2, 3 and 5. There is difference where rebutting evidence is brought in as to anything on the pleadings and where rebutting evidence is called with respect to anything not in the pleadings. It is true allegations were made against Official Administrator and he was given an opportunity to meet them. Calling of rebutting evidence should not alter the order of speeches as we are in the position of propounding the will.

ROGERS WRIGHT: Where the Defendants call evidence or put in documents the Plaintiff has the reply. We are the Defendants. As we call evidence Official Administrator should have had the right to reply. Rebutting evidence was called. We are plaintiffs on the record, but the Defendants are the real Plaintiffs as they began.

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10 Phipson—8th Edition—p. 35. Even if we hold position of defendants. If Plaintiffs call rebutting evidence on any particular point, as to that point Defendants have right to reply. Phipson—p. 41. The position is this that as paragraphs 1—3 and 5 of statement of claim Plaintiffs (Official Administrator) general right to reply, but as to issue in amended claim, the Defendants the right to reply.

No. 19.
Discussion
—continued.

KEMPSON: Submits that reply should be divided. Plaintiffs (Official Administrator) should have general reply and Defendant should have right of reply on issue of forgery.

RULING: In view of agreement of Counsel on this. Order is that Defendants (Plaintiffs in action) should begin excepting that on issue of forgery, they should have the reply.

Kempson applies for an adjournment to enable him to consider further authorities on point where case referred to Attorney General.

20 COURT: In view of above—hearing further adjourned to Thursday, 1st day of December 1949.

No. 20.

Argument for Plaintiffs.

KEMPSON states that he can find no authorities that decision of Attorney General is binding on the Judge on the issue of forgery.

No. 20.
Argument
for
Plaintiffs.

30 WRIGHT addresses the Court. Action is for revocation of grant made to the Defendant as Official Administrator in estate of late Alhaji Mormodu Allie. Grant was testament annexed of will dated 30th August 1946 and codicil of July 1947. Main ground upon which revocation is sought is that the will is not the will the testator made and therefore grant made should not stand. From outset due execution of will put in issue. It is for those who propound the will to prove will has been properly executed but that it is will so executed. Halsbury 34—2nd Edition—p. 66—paragraph 83. Time could require positive evidence to relevant presumption. If the question was the due execution of will, the presumption arises in due execution, but the point is the allegation that that is not the will. Those who are propounding the will must prove beyond doubt that the will was duly executed, then the presumption of due execution will arise. But they would have to satisfy the Court that the will they produce is what was
40 executed. There is no dispute a will was executed by the deceased on the

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No. 20.
Argument
for
Plaintiffs—
continued.

30th August 1946. No dispute that deceased made a codicil dated 19th July 1947. There is evidence those documents were taken out of registry after death of deceased. Up to date document was taken out of registry no dispute. Under Cap. 200 Section 23 registrar should have opened will. This not done in this case. Documents handed over to Wurie on 5th February 1948. No dispute Wurie was person who opened will and codicil. The only persons called as witnesses of execution are Macauley and Dougan. That evidence is evidence of another document which has not been produced. Court should take into consideration whether what has been produced is in fact the will of the deceased.

If will not accepted as proper will or not duly executed or forged, probate must be revoked then Exhibit "C" tendered by Official Administrator will of 1942. No evidence of due execution.

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No. 21.
Argument
for
Defendant.

No. 21.
Argument for Defendant.

KEMPSON—addresses the Court—Dealing first with execution of will, there is no dispute codicil was made in 1947, there is no dispute a codicil purporting to be a will was executed on 30th August 1946 as date appears in the codicil. Both attesting witnesses said that will was read out to testator. Paragraph 4 of statement of claim was struck out as unnecessary. It left paragraphs 1, 2, 3 and 5. Substitution of will suggested later. Counsel relied on paragraph 5 for this allegation. Paragraph 6 was then added. Both the attesting witnesses were cross-examined not that there was anything wrong with due execution of a document purported to be executed in 1946, but that they had signed Exhibit "D" after the death of the testator. If therefore the Court finds Exhibit "D" is the same as document signed in 1946, the question of due execution has been satisfactorily proved and not complicated in any way. No suggestion anything in will to bring it within category of *Fulton vs. Andrews*. The attesting witnesses did not benefit from will. No duty than to prove due execution. The whole case rests upon one point. Is Exhibit "D" the document? If it is then it has been satisfactorily propounded.

FORGERY—Evidence is who are the people on evidence are alleged to have had anything to do with forgery. Only two persons, Dougan and Macauley. None of the other witnesses are suggested to have anything to do with forgery of Exhibit "D." When must Exhibit "D" have been forged and substituted. It must have been done, if done, between 5th February and 10th February 1948. It was taken out of registry on 5th February and witness Wurie said he read it to Haja on same afternoon. Wurie was recalled and document put to him which he said was a renuncia-

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tion dated February 10. Wurie said will and codicil had been handed to Alhadi before renunciation was signed. If the other side say they were not tied to this date then the Official Administrator must have been a party to the forgery, as he must have handed out the proper will and take in a spurious substitute. No suggestion any such thing happened. It must have been very quick work for some person, presumably Haja to forge the will. The form the forgery took. Wurie says that the will he read was signed on the last page only. Whoever forged it did not try to make the forged document look like the original but different that of one who knew the genuine

10 would notice the difference. Where handed over, it was handed to one person who had merely to look to know it was forged. It was handed by Haja to Wurie, who if he had looked at it, would have immediately seen it was a different document. The evidence of forgery is supplied by Wurie, Ibrahim Allie, and to a certain extent by Sockna. The deceased died on 22nd January, 1948, will was read on 5th February by Wurie and handed by him to the official Administrator not later than 10th February. When Wurie was first in the witness-box, he said will was handed to the Official Administrator some time earlier in March. His memory of events not very clear.

20 Sockna Allie's evidence that Dougan and Macauley went to house months after death of Mormodu Allie. That could not refer to forgery of will. The direct evidence of any substitution of will is by Wurie and Ibrahim Allie. Wurie's evidence he would have noticed several signatures. He did not remember contents of will. In July 1949 he saw will again and immediately noticed difference. Memory as to nature of paper. Not outside the bounds of possibility. Two important points for consideration.

IBRAHIM ALLIE—his supporting witness—said he remembered two things in the will read. One he had been left property in Devil Hole and other that residue to the children. He said he had told his solicitor his father never left a will. This was a lie. Far stronger evidence would be

30 required that evidence of Wurie, of Ibrahim Allie a disgruntled relative.

EVIDENCE OF SALAMAH—He was surprised at type of Arabic. It was not the type he was used to. He calls it Morocco arabic. The signatures he was given to compare are the will of 1939, will of 1942 and Codicil of 1947. Intervals. Most surprising if the signatures on those four documents did not differ. Impossible to expect signatures to be alike, then large sprawling signature in 1946 which disagrees with signature at end in the matter of size. There was some evidence about properties in the will and which had been sold. There must be very many such wills in existence. There was a mistake in the number of house in Garrison Street proved to be non-

40 existent.

Adjourned to 6th December.

KEMPSON continues to address the Court. Evidence proved that Exhibit " D " was the will executed by direct evidence. The other side set up that Exhibit " D " is a substitute for the original document. They have made allegation and it is exactly on the same footing as when undue influence

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—
No. 21.
Argument
for
Defendant
—continued.

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No. 21.
Argument
for
Defendant
—continued.

or fraud is alleged, provided the person propounding will has proved it satisfactory and on face of will there is no suspicious circumstances. If suspicion about execution of will, it must be removed by persons propounding it.

SUMMARISING—(i) Evidence as to handwriting. No one has gone into box and said the signature of Exhibit “ D ” is not that of testator. The best evidence is that of Salamah who said signatures in different documents are not the same. Salamah’s evidence that person who can only sign his name is likely to write differently and always trying to improve. The sum total of Salamah’s evidence is that the signature might or might not be the signature of the testator. Against that the evidence of two attesting witnesses. 10

(2) Evidence as to visits by the two attesting witnesses by Ibrahim and Sockna. They placed this a month after the testator’s death. Unless official administrator is included among the conspirators, substitution must have been made after 10th February as will get into hands of Official Administrator about then.

(3) Evidence of Ibrahim Allie when will was read on 5th February. Allie remembers that his name occurs several times, that he was left his father’s property and cattle at Devil Hole and residue. Reading will 40 20 days. Paragraph 5 of Statement of Claim did not entitle Defendants to raise issue of forgery. Allie said was told by his stepmother will not good. If Exhibit “ D ” read out on 5th February one can.

Evidence of Wurie interested in widow to get will and subsequently go and read it. Two items to show Wurie’s memory is sub-normal. He first said will was handed over a month after reading, subsequently when recalled he said it was handed over a few days after reading before the 10th February. He said he did not remember anything in will. Memory acute as to remember the texture of paper and single signature. He saw will after 1948 in July 1949. It may well be that he thought, thinking it 30 back, it was only signed on one page.

(4) Who forged the signature in arabic. Not Dougan or Macauley. If found will is forgery, then it means a finding that Dougann and Macauley are two criminals. The evidence necessary should be of the clearest possible kind and should leave no doubt in the mind of the Court. The Court has to be very fully satisfied with evidence before it, before it can find that Exhibit “ D ” is not document testator signed in 1946. Evidence is far short of evidence required. Exhibit “ D ” is in fact will of testator and codicil is that executed in 1947.

No. 22.
Reply for
Plaintiffs.

No. 22.
Reply for Plaintiffs.

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WRIGHT ADDRESSES THE COURT : No doubt a will dated 30th August 1946 was executed by the deceased. It was deposited in registrar general’s office and was taken out by Wurie on 5th February 1948. The whole question is whether the will executed and deposited is that produced in this

Court. 1st head dealt with by other side—who are people alleged to have had to do with will. He answered Macauley and Dougan. What about Haja Fatmatta Kata. He asked why Dougan and Macauley forged will. They could have been conspirators with Haja Fatmatta Kata. Will of 1942 residuary clause to children not to Haja Fatmatta Kata alone as 1946.

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QUESTION OF OPPORTUNITY : Will handed to Haja Fatmatta Kata and kept by her. Time sufficient between 5th February and 10th February. Evidence of Ibrahim Allie. Will was never publicly read. No suggestion any particular person forged will. No reason why time for forgery should
10 be limited. One may hesitate to suggest the Official Administrator had anything to do with it but question put to Wurie by Marke in cross-examination. Ibrahim Allie said about 3 weeks after death of father he saw Dougan go there the first time. What is established is that Dougan did go to Haja Fatmatta Kata. Why did Dougan deny he went to house.

No. 22.
Reply for
Plaintiffs—
continued.

FORM OF FORGERY : Handing to Wurie who would have found out forgery. Two points lost sight of (1) Then there was evidence of confidence between Haja Fatmatta and Wurie and (2) The documents were handed to Wurie in the same envelopes opened. Envelopes are B1 and B2.

EVIDENCE BY SOCKNA MORMODU ALLIE : Wurie's evidence—want of
20 memory. Time he handed will over to Official Administrator. Original evidence a month after death of testator, or in March. Later said he handed it before the renunciation 10th February.

When Wurie gave evidence that Exhibit " D " was not will, he had document before him. At the same time he said it was the codicil and he swore that will and codicil were of same paper. Signatures on side of pages of will in bold characters. Admitted facts, only three persons who saw will when opened. Wurie—not interested, Allie interested, Haja Fatmatta—most interested person. Allie told his Solicitor the father did not make a will because of context.

30 SALAMAH'S EVIDENCE : He compared Exhibit " D " with Exhibit " G " and Exhibit " C." He compared with Exhibit " E " Codicil. He said signatures are not the same. The evidence of Salamah taken with Wurie's evidence supports case that will was substituted. Evidence of two attesting witnesses. Dougan said he prepared two wills and both were executed. Other document not produced. (At this stage Kempson said copy is with him.)

WRIGHT that it should have been exhibited in the affidavit of Script. KEMPSON that it was carbon copy and not considered necessary. The Affidavit of Script of the 1942 will was made before pleading was amended.

40 WRIGHT : Court can take no notice of such a document.

EVIDENCE OF DOUGAN : As to type of person he is. He was clerk to Hon. C. E. Wright. He said he was paid £3 3s. 0d. for making will. As clerk he prepares documents and gets paid. If he can do that for £3 3s. 0d. he can stoop lower.

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Reply for
Plaintiffs—
continued.

MACAULEY : From demeanour the type of man he was. He was as fidgety in box as ever.

Question of fact which side is believed. Law is not that proof should be beyond doubt. Law as laid down in following cases : *Cooper vs. Slade*, 6 H. L. Cases 746 10 E.R. at 1498. In civil cases preponderance of probability. *Doe vs. Wilson* 10 Moores P.C. Cases P. 502 at 531. 14 E.R. P. 592 (as to forgery).

Distinction is made in Privy Council Case in forgery between Criminal and civil cases. *Vaughton vs. London & N.W. Railway Co.* 9 Ex. P. 93. Judgment P. 95.

If proposition correct, Court to decide whether will exhibit " D " is last will and testament of Mormodu Allie. Even if in criminal law forgery could not have been proved beyond reasonable doubt, on preponderance of evidence not will of Mormodu Allie. Will not that of Mormodu Allie and grant should be called in and revoked.

Judgment reserved. Notice to be given.

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No. 23.
Reasons for
Judgment.
Beoku-
Betts, J.,
2nd March,
1950

**No. 23.
Reasons for Judgment.**

No. C. C. 222/48.

IN THE SUPREME COURT OF SIERRA LEONE.

20

(In the Estate of MORMORDU ALLIE (Deceased).

Between

SOCK-NA MORMORDU ALLIE, ALHAJ BABA ALLIE and KEMOH
ALLIE *Plaintiffs.*
and
AHMED ALHADI, Official Administrator *Defendant.*

In view of the length of time which has elapsed since the hearing of this action began, I consider it desirable to put on the record the reasons why judgment has been apparently so long delayed. The case started on the 13th July, 1949, was continued on the next day 14th July, the following day 15th July. On the 15th July further hearing was adjourned to the 18th July. At the close of the hearing on the 18th July, certain legal submissions were made as to an allegation of forgery. Owing to the engagement of counsel and the importance of the issue raised, I adjourned the case to the 3rd August, 1949. On the 3rd August I ruled that in view of the allegation of forgery made by the Plaintiffs-on-record in the amended Statement of Claim, the felony alleged should be first prosecuted before the action is continued. I decided to forward the records to the Attorney General for him to consider whether a *prima facie* case exists for prosecution of forgery. The records and all the exhibits were forwarded to the Attorney General on the 4th August 1949, and were not received back from the Attorney General until the 29th September 1949. Soon after I proceeded to hold sessions of

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the Court in the protectorate. As soon as possible after my return to Freetown, the case was put on the list and came before me on the 21st November, 1949, when counsel were informed of the nature of the reply from the Attorney General and further hearing for addresses of counsel was adjourned to the 29th November. On 29th November, after some submissions by counsel, leading counsel for the Defendant-on-record applied for an adjournment to find authorities as to the effect of the reply of the Attorney General. Further hearing was on the 1st day of December, 1949. The addresses were continued on the 6th December and on that day judgment was reserved. On the 8th December the records and exhibits were put in evidence under a subpoena directed to the Master and Registrar of the Supreme Court in another action before the Chief Justice and came back to my possession on the 20th January last. Since then I have held sessions of the Supreme Court in the Protectorate and Colony, and owing to the importance of the case it had not been possible to complete the judgment before now.

In view of the issues involved I consider it necessary to set out the pleadings in the case. The amended Statement of Claim is as follows :—

20 “ 1. That the said Mormodu Allie late of 8 Magazine Street, Freetown, who died on the 22nd day of January, 1948, made and duly executed his true last will on the 20th August, 1939, whereof he appointed the Plaintiffs and Ajah Fatmatta Kata and Alhadi Antumani executors.

“ 2. On the 10th day of March, 1948, administration of the estate of the said Mormodu Allie with an alleged Will and Codicil bearing date the 30th August 1946 and 19th July 1947 annexed was granted to the Defendant as Official Administrator.

30 “ 3. The said alleged will was not duly executed in accordance with the provisions of Statute 7 William 4 and 1 Victoria C. 26.

“ 4. Was struck out.

“ 5. The deceased did not make or acknowledge his signature to the said alleged Will and Codicil in the presence of the witnesses.

“ 6. That if at all the deceased executed a will on the 30th August 1946 the will propounded is not the will executed by the deceased. That the will propounded although dated 30th August 1946 was only made after the 5th January 1947, after the deceased's death and substituted for the true will made by the testator.

40 “ The Plaintiffs claim :

“ (1) Revocation of the said grant.

“ (2) That the Court will pronounce against the validity of the said alleged will dated the 30th August 1946 and codicil dated 19th July, 1947.

“ (3) That the Court shall pronounce in solemn form for the last will of the said deceased dated 20th August 1939.”

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The defence was that :—

“(1) The testator, by his will dated the 30th day of August 1946 revoked the will dated the 20th day of August 1939 which is set up by the Plaintiff in paragraph 1 of the Statement of Claim.

“(2) The Defendant denies each and every allegation contained in paragraphs 3, 4 and 5 of the Statement of Claim and says that the will and codicil dated respectively the 30th August 1946, and 19th July 1947 were executed in complete accordance with the provisions of Statute 7 William 4 and 1 Vict. C. 26 and with the full knowledge and approval of the testator as to the contents thereof. 10

“ COUNTERCLAIM

“ The Defendant counterclaims that the Court shall pronounce in solemn form for the last will and codicil of the testator dated respectively the 30th August 1946 and 19th July 1947.”

It will be noticed that the defence did not refer to paragraph 6 of the amended statement of Claim in which forgery is alleged. Leave to amend by the addition of a new paragraph 6 was given during the hearing, and the Defendant-on-record agreed that the action should proceed without further delay. It was never in doubt, however, that the Defendant-on-record contested the allegation of forgery. Before reviewing the evidence and coming to a conclusion or finding as to the facts, it seems to me that the legal position should be clarified. When the Plaintiff-on-record abandoned the allegation of want of knowledge and approval of the contents of the will in paragraph 4 of the amended Statement of Claim, that question ceased to be of any interest. The case then resolved itself into a consideration of the question whether the will propounded by the Defendant-on-record (the Official Administrator) was the last will and testament of the deceased. Although according to the pleadings the Plaintiffs-on-record claimed that the Court will pronounce against both the alleged will of the 30th August, 1946, and the codicil dated 19th July, 1947, the Plaintiffs-on-record during the course of the action abandoned the part of the Claim regarding the alleged codicil. The Defendant-on-record propounds the will of the 30th day of August, 1946, and the Codicil of the 19th July 1947. The case of the Plaintiffs-on-record is that although a will was made and executed by the deceased on the 30th day of August 1946 the will produced (Exhibit “ D ”) is not the will that was executed by the deceased. The Plaintiffs specifically allege that the present will is a forged document made after the 5th day of February 1947 after the death of the deceased and substituted for the genuine document. In ordinary circumstances when the attestation clause in a will is in proper form, there is a presumption of due execution of the will, unless rebutted by clear, positive and reliable evidence (Halsbury’s Laws of England 2nd Ed. Vol. 34 p. 65). In *Tyrrell vs. Painton* 1894 Probate p. 151, it was decided that the rule throwing upon the party propounding a will prepared by a person who takes a benefit under it, the burden of showing that the paper propounded expresses the true will of the 30

deceased, is not confined to cases where the will is prepared by a person taking a benefit under it. The true rule being that whenever a will is prepared and executed in circumstances which raise the suspicion of the Court, it ought not to be pronounced for, unless the party propounding it adduces evidence which removes such suspicion. In an earlier case of *Wyatt vs. Ingram* 162 E.R. p. 1228, it had been held that where a will is impeached on the ground of fraud, the parties who seek to establish the will must remove or explain and so neutralise the facts out of which suspicion arose. Where, of course, the person who prepared the will benefited under it, the suspicion, if any, is greater and the evidence to remove, explain or neutralise the facts must in proportion be stronger. Where the person who prepared the will does not benefit under it, that circumstance does not *ipso facto* neutralise or remove suspicion. In my opinion whether any suspicion exists about the preparation of a will, is to be considered not only on evidence of facts prior to the date of the alleged will but facts subsequent to the alleged date, for by its very essence, any forgery, if done, would be in such secrecy or in such circumstances as not easily to be proved by direct evidence or by facts prior to the date of the Will.

The burden of establishing that the document produced is the genuine and last will of the testator and not a forgery is upon the person propounding the will. This brings me to the question as to how far the Court is bound by the opinion of the Attorney General that there was no *prima facie* case for criminal prosecution. Learned Counsel for the Defendant-on-record at one stage submitted that the Attorney General having stated that in his opinion there was no case for prosecution for forgery, as Judge trying a Civil case I was precluded from considering this issue in the action. The proposition was so startling in its nature that I asked Counsel to submit any authority and granted an adjournment for that purpose. Learned Counsel had to admit that he could find no such authority. I make bold to say that no such authority exists in the English Law. The Criminal law and civil are quite distinct and although it is the law that when a felony is alleged in any civil proceedings, the civil action should be stayed until the felony is prosecuted. If those who are in charge of the criminal machinery would not prosecute or think no case exists for criminal prosecution, that does not relieve the Judge in the civil action from applying his mind to the facts and deciding whether the allegation of felony has in fact been proved or whether facts exist for the conclusion to be drawn that the felony was committed. That duty the Judge has to perform irrespective of the opinion of the Attorney General. This necessarily involves a consideration of the question as to the nature of the evidence which should be regarded as sufficient in a civil action where an allegation of forgery—a criminal offence—is made. Learned Counsel for the Defendant-on-recordsubmitted that the same degree of proof is required as on a criminal trial, that is, that the case must be proved beyond reasonable doubt, while Learned Counsel for the Plaintiff-on-record submitted that the case should be decided on a preponderance of evidence, that is, on the probabilities of the case. I shall now proceed to consider which of these conflicting propositions of law is, in my opinion, correct. In the case of *Cooper vs. Slade* 27 L.J. Q.B. p. 449, it was held that

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in an action to recover penalties under the Corrupt Practices Act, 1854, the charge of bribery can be proved by a mere preponderance of probability. If it is a criminal charge for bribery, the proof must have been without reasonable doubt. In *Doe on the demise of Devine & Others vs. Wilson*, 10 Moore's Privy Council, p. 502, the Privy Council at p. 521 held as follows:—

“ Now, there is a great distinction between a Civil and a
“ Criminal case, when a question of forgery arises. In a civil
“ action the onus of proving the genuineness of a deed is cast upon
“ the party who produces it, and asserts its validity. If there be 10
“ conflicting evidence as to its genuineness, either by reason of
“ alleged forgery, or otherwise, the party asserting the deed must
“ satisfy the jury that it is genuine. The jury must weigh the
“ conflicting evidence, consider all the probabilities of the case,
“ not excluding the ordinary presumption of innocence, and must
“ determine the question according to the balance of these proba-
“ bilities. In a criminal case, the onus of proving the forgery is
“ cast on the prosecutor who asserts it, and unless he can satisfy
“ the jury that the instrument is forgery to the exclusion of reason-
“ able doubt, the prisoner must be acquitted.” 20

These two cases therefore clearly support the contention of learned Counsel for the Plaintiffs-on-record that where an act is both a crime and is a cause of action in civil proceedings, in a criminal case the charge must be proved beyond reasonable doubt, but in a civil action on the probabilities of the case, not excluding the presumption of innocence, which even in a civil action has to be taken into consideration.

In the case of *Vaughton vs. L.N.W. Railway Co.*, 9 Ex. p. 93, it was held that in an action against carriers for the loss of the Plaintiff's goods, upon an issue that the loss arose from the felonious acts of the Defendant's servants, it is sufficient to prove facts which render it more probable that the 30
felony was committed by some one or other of the Defendant's servants than by any one not in their employment; and it is unnecessary to give such evidence as would suffice to convict any particular servant. Kelly, C.B., at page 95 said, *inter alia* :—

“ I am by no means prepared to say that the evidence in this
“ case is such as would have sustained a criminal prosecution
“ against any servant of the Company, or indeed that there was a
“ case which a Judge would have been justified in leaving to the
“ jury against any of them. But we ought to deal with this case
“ upon a different principle, and not insist upon evidence which 40
“ would convict any particular person.”

In *Hurst vs. Evans*, 1917, 1 K.B. p. 352 it was held that to prove the theft of the servant of a defendant in an action for claim under an insurance, evidence would be sufficient which might possibly not be admitted or sufficient in a criminal prosecution. Lush, J., at p. 357 of the report said, *inter alia* :—

“ Mr. Hart has contended that I cannot decide this case in
“ favour of the Defendant unless I am prepared to hold that upon

10 “ the evidence a jury ought in a criminal case to convict Mason
 “ I do not agree. I do not think that the evidence in a civil case
 “ must necessarily be the same as in a criminal case arising out
 “ of the same matter ; nor, where a case raises a question of the
 “ criminality of some third person, is a civil Court bound to find
 “ that person guilty of a criminal act upon such evidence only as
 “ would be sufficient to procure his conviction in a criminal Court.
 “ In a prosecution the Court is not adjusting rights between
 “ two persons, and the Judge often tells the jury that, though
 “ there is some evidence against the prisoner, it would not be safe
 “ to convict; but that cannot be done in a civil case. The distinc-
 “ tion is founded on the principle that the mere fact that evidence
 “ is relevant is not sufficient to allow it to be admitted in a criminal
 “ case, because a prisoner may be so prejudiced by its admission
 “ that a fair trial would become impossible. . . . Therefore it
 “ is not correct to say that if I find that this loss was due to Mason’s
 “ dishonesty it must necessarily follow that Mason should be
 “ convicted on indictment.”

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20 These cases which I have referred to support my view that the opinion of
 the Attorney General that a case for criminal prosecution does not exist
 for forgery would not dispose of the question in a civil action where forgery
 is alleged. The Judge trying a civil case must accept the responsibility of
 deciding all the issues involved. In the case of *Stadham vs. Stadham* 1929
 p. 131, Lord Harnworth, M.R., uses language which might be interpreted
 as supporting the contention of the defendant on their record. That was a
 case of divorce proceedings where Sodomy—a criminal offence was alleged
 by the wife. The Court held that in such a case the Judge should have
 warned the Jury that corroboration of the story of the wife was necessary
 as in a criminal case and that the same cogent evidence is required to over-
 30 come the presumption of innocence as in a criminal case.

Lord Harnworth in his judgment said, *inter alia* :—

40 “ the same principles apply in my judgment in divorce
 “ proceedings as in a criminal court, for it is the very nature of the
 “ charge easy to make and difficult to repel, which demands such
 “ proof as is adequate to establish the guilt of the person charged
 “ in the minds of reasonable men. Whatever may be the conse-
 “ quences to the party charged whether it be in a criminal Court,
 “ punishment, or in a civil court, loss of status, the nature of the
 “ fact remains the same ; and the fact must be proved beyond
 “ reasonable doubt with due and cautious consideration of the
 “ witnesses and the evidence.”

The other two Judges on the Appeal did not make the same general state-
 ment that in a civil action, the same proof is required as in a criminal case,
 but dealt with the fact that in divorce the same degree of proof is required
 as in a criminal case. Lord Harnworth’s statement should therefore only be
 regarded as limited to proof in divorce proceedings, and the judgment did
 not overrule the cases cited before, which show the clear distinction between

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proof of an act which is both criminal and may be the subject of consideration in civil proceedings, according to whether the proceedings before the court are criminal or civil. In support of my opinion that Lord Harnworth did not intend to overrule the previous decisions but only meant that his opinion should refer to divorce proceedings, it will be found that in divorce proceedings the rule is to require the same strict proof as in criminal proceedings. In *Brittle vs. Brittle*, 1947, 2 A.E.R., page 383, where divorce is sought on the ground of cruelty, the court held that the proof of cruelty must be of the same degree as in a criminal charge for cruelty. In *Genesi vs. Genesi*, 1948—1 A.E.R. p. 373, it was held that adultery should be proved with the same strictness as in a criminal case. 10

In the case of *Miller vs. Minister of Pensions*, 1947—2 A.E.R., page 372, Denning, J., emphasised the distinction as to degree of proof in a criminal case and in a civil action. The former he stated to be proved beyond reasonable doubt, and the latter according to the preponderance of probabilities. In the case of *Davies vs. Davies*, the Weekly Notes of December 9, 1949, Denning, then L.J., repeated the difference which must be observed in criminal and civil cases respectively. On the consideration of all the authorities I have come to the conclusion that where an act which is a crime is alleged in a civil action, if the crime is prosecuted, the proof must be beyond reasonable doubt, but in a civil action, it can be decided on the preponderance of probabilities. Therefore, as regards the allegation of forgery, my duty as Judge and Jury is to weigh the whole of the evidence for the Plaintiffs and Defendant, consider the probabilities, not excluding the ordinary presumption of innocence, and then decide whether on the evidence I am satisfied that the will in dispute is the genuine will of the deceased or is a document made subsequent to his death and substituted for the genuine will. The rule of law which would prevail in a criminal case that the alleged forgery should be proved beyond reasonable doubt does not apply in this case. In view of the nature of the action I propose to review the whole of the evidence given in this case before weighing the probabilities and coming to a conclusion on the facts. 20

The Official Administrator, who was the first witness, did not give any evidence as to the execution of the will and I think it is fair to state that as far as the allegations go, there is no pointer to his participation in any alleged forgery and no such allegation has been made in this case. He produced the probate with the will annexed dated the 10th March, 1948 (Ex. "A") and stated that the will was handed to him by A. S. Wurie in two open envelopes (Exs. "B1" & "B2"). The next witness (2nd) is for the purpose of this case one of the most important, if not the most important, for the Defendant-on-record. I may at this stage explain how it is that the Defendant on the record called his witnesses before those of the Plaintiffs on record. Both parties agreed that as the onus of proving execution is on the party propounding the will, the Official Administrator, though the Defendant should begin, and so the Defendant on the record had to begin. 40

Reverting to the evidence of the 2nd Witness (John Coni Dougan). He stated that he was Clerk to the Honourable C. E. Wright. He said he

made the will of the late Mormordu Allie, not as a Clerk of the Hon. C. E. Wright, but in his private capacity. He said he made a will for Mormordu Allie in 1942 and 1946 and a codicil in 1947. He said the deceased gave him the instructions orally for the 1946 will ; that the 1942 will was handed to him by the deceased and he (the witness) read out that will to the testator and the testator gave him instructions as to what alterations were to be made. The 1942 will was produced, tendered in evidence and marked "C." He said after he had made the will, the testator arranged a day for execution and he (witness) went to the house of the testator at Magazine Street about 4 p.m. on the day appointed when the will was executed. The witness said Macauley was present. Witness then stated that he read the will paragraph after paragraph in English and explained the meaning in broken English to the testator. He said the testator showed his assent and approval of the contents from time to time by expressions "That's right," "All right," "So I want it." Witness said the testator signed the will in Arabic and he (witness) took his mark ; he said the testator signed the last page and every page of the will, after which he (witness) and Macauley signed their signatures. He added "We all signed in the presence of each other." As regards the codicil the witness said that the testator asked him to see him in his house to make a codicil as one of his daughters had disgraced him at Mecca. As the Plaintiffs-on-record do not now dispute the validity of the codicil, it is sufficient to record that this witness gave evidence of the due execution of the codicil in proper form and as provided by law. The witness produced the will (Exhibit "D") and the codicil (Ex. "E.") In cross-examination the witness said he was perfectly sure the will was executed in August, 1946, when the testator was alive. He denied the suggestion that the will of August 1946 was only signed on the last page and affirmed that the testator signed each page. He said the testator told him to insert new properties he had bought and among them were 6 Magazine Cut and 30—30b Garrison Street. The witness said when the will was executed it was put in an envelope. When recalled this witness said that he used his fountain pen to make the mark of the testator and to sign his (the witness') name. The witness denied that he went to the house of Mormodu Allie (the deceased testator) after his death. On further recall, this witness said he was paid £3 3s. 0d. for making the will. The other witness who is alleged to have witnessed the execution of the will was the 3rd witness—Michael Selexicus Macauley. He was the clerk for the late Mormodu Allie—the testator. He supported the evidence of Dougan in every respect as regards the execution of the will. In cross-examination, he denied that it was in February 1948 that his signature was appended to the will. The witness said he could not remember if they all used the same pen, but he was there, the testator was there and Dougan was there and they all signed. The witness further stated that as far as he remembered, Mormodu Allie gave Dougan the will to "see after registration," after enclosing it in an envelope, but he could not remember if it was sealed. He said after he had witnessed the will, he did not concern himself again about the will. He could not remember if he (witness) did anything to the envelope,

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whether Mormodu Allie signed the envelope or whether he signed the envelope. The next witness—Jabez Aneyear Buxton Cole—was called to support the evidence of Dougan that Mormodu Allie had some business with Barclay's Bank, and he (the witness) went with Dougan about the latter part of 1948 to the house of Mormodu Allie. That closed the case of the Defendant-on-record—the Official Administrator.

On the Plaintiffs' side, the first witness was William Sylvester Young, The Deputy-Registrar-General. He gave evidence that the will and codicil of Mormodu Allie were deposited in his office but have been taken out; that they were delivered to A. S. Wurie on behalf of Ajah Fatmatta Kata on 5th February 1948. When delivered out they were in sealed envelopes. The 2nd Plaintiff witness—Ahmed Seray Wurie—said that after the death of Mormodu Allie, Ajah Fatmatta Kata—the widow—gave him a receipt to receive will from the Registrar-General's Office. He received the will and codicil in two envelopes which were sealed. The witness said he took the documents with envelopes still intact to the house of Ajah Fatmatta Kata on the same day that he received them. In the presence of Ajah Fatmatta Kata and Ibrahim Allie he read the will out to them and handed it to Ibrahim Allie (who I should state is one of the children of Mormodu Allie). The witness said Ibrahim Allie looked at them and gave them to Ajah Fatmatta Kata. He said he next saw the will on the 11th of July, 1949 in the C.I.D. Office. He did not then read it. He identified Exhibit "D" as the document shown to him at the C.I.D. Office but said that it was not the will that he took out of the envelope at Kata's house. He stated that the document he read in the house of Ajah Fatmatta Kata contained the signature of Mormodu Allie on the last page only. In Exhibit "D" the signature is on every page except one. He was emphatic that if the will he read at Ajah Fatmatta Kata's house had been signed on every page he would have noticed it. The witness said he and the Official Administrator went to the house of Ajah Fatmatta Kata when the will was handed to the Official Administrator. He said what happened was that Ajah Fatmatta Kata handed him the two envelopes containing the will and codicil which he passed to the Official Administrator. In cross-examination the witness stated that Exhibit "D" was not the will he read in the house of Ajah Fatmatta Kata. He said it was typed on a "thick paper like the codicil." He said he did not remember the contents of the will he read. He said the will and codicil were handed to the Official Administrator in early March. He added that Ajah Fatmatta Kata sent for the Official Administrator a month from the date he had taken the will to her. He said he was the middle-man between the Official Administrator and Fatmatta Kata but he is not so now. In answer to me the witness said the witnesses of the will he read in the house of Ajah Fatmatta Kata were Dougan and Macauley (in other words the same as those on Exhibit "D.") The 3rd witness Sock-na Mormodu Allie (one of the Plaintiffs) said that she was one of the widows of the late Mormodu Allie and was married to Mormodu Allie a long time before the deceased married Ajah Fatmatta Kata. She said she had seven children for the deceased. It appears, from the evidence, she was

- living in a separate house up to the time of the last illness of Mormodu Allie. She said when he took ill, Ajah Fatmatta Kata sent for her and she then lived in the same house with deceased and Ajah Fatmatta Kata until his death and with Ajah Fatmatta Kata for 40 days after. She said she and Ajah Fatmatta Kata shared the same room ; that no one read the will to her. She said a month after the death of Mormodu Allie, Dougan and Macauley went to Ajah Fatmatta Kata and were shown upstairs. She said they went on the whole on three different occasions. The 4th Plaintiff witness Ibrahim Allie stated that he is one of the sons of the late Mormodu
- 10 Allie who died in January 1948. He said after his death a will was read to him by A. S. Wurie at 8 Magazine Street in the presence of Ajah Fatmatta Kata. He said that when Wurie got to the house Ajah Fatmatta Kata delivered two envelopes to Wurie and asked him to read the documents in the envelopes, which was done. He said Wurie handed the documents to him after he had read them and he looked at both of them and read the contents of each. He said the next time he saw a document purporting to be the will of his father was in the Master's Office after he had consulted a solicitor. He said the will was not the same as that read to him by Wurie but the codicil was the same. The witness said he knew the signature of his father. As regards
- 20 the signature on Exhibit "D," he stated that is similar to his father's signature and it is not like his signature. He then gives his opinion about the signatures on the different pages of Exhibit "D." Witness said he did not see Dougan go to the house of his father when Mormodu Allie was alive, but he saw him at the house about two or three occasions with Macauley after his death. In cross-examination the witness said, *inter alia*, that in the will read out to him, he heard the name of Ajah Fatmatta Kata mentioned only once ; that she was not the largest beneficiary. He said his name was mentioned in the will. He remembered that the testator gave him his cattle and farms at " Devil Hole." The witness denied that there
- 30 was a quarrel between him and Ajah Fatmatta Kata after the will was read. He denied that he had threatened Ajah Fatmatta Kata because the bulk of the estate had been left to her. Witness said according to the will the residue was given to the children of the deceased who were named in the will. He said that he pressed for the will to be read out after the 40 days mourning period was over, and when he insisted Ajah Fatmatta Kata called him and said that she had been advised not to read the will as it was not good. He said they quarrelled as he was annoyed that Ajah Fatmatta Kata kept putting him off and then gave as reason for delaying the reading of the will that it was not a valid will. The 5th Plaintiff witness Bankole Emanuel
- 40 Cole, the valuer of the City Council, stated that there is no house 30—30b Garrison Street. The highest even number is 28 and 30—30b, if it existed, would be in the Victoria Park. The witness said there had been no change of numbers of houses for the last 9 years. The 1st Plaintiff witness—Young was recalled and he said that the late Mormodu Allie had two properties in Garrison Street the registers showing these properties were produced, neither of which was 28 or 30—30b. At this stage and with the consent of the parties one Iscankander David Salamah was called to read the Arabic

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signatures in the will and codicil and to compare them with other admitted signatures of the late Mormodu Allie. The nature of his evidence is such that it would be more satisfactory to refer to it when I am considering the question of the preponderance of probabilities. The 6th and last witness for the Plaintiff was Isatu Darami. She stated that she bought No. 4 Jenkins Street. The deed relating to the land was not admitted in evidence on the ground of irrelevance. The 2nd Plaintiff witness Ahmed Seray Wurie was re-called. He gave evidence about the renunciation of probate by the executors and gave the date as the 10th February, 1948. He denied suggestion by counsel for the Defendant-on-record that he gave the evidence he did because the woman preferred Alhadi (the Official Administrator) to him. After the close of the Plaintiff's case, the Defendant-on-record applied for leave to call rebutting evidence. The Plaintiff's counsel did not object and Ajah Fatmatta Kata was called. I propose only to refer to the relevant portions in her evidence. She said Wurie took two documents to her and in the presence of Ibrahim Allie opened the will and read it out and also did the same to the codicil. She said Wurie explained the will and codicil to her; that Wurie left the documents with her and went away; that after Wurie left Ibrahim said she (Ajah Fatmatta Kata) had been given the best part of the properties and he would fight her for that. She said it was Wurie who handed the will to the Official Administrator at her request and on his (Wurie's) suggestion. She denied that the documents were handed to the Defendant on the record in her house. In cross-examination she said Sock-na Allie was the senior wife of Mormodu Allie and lived in the house with her from the day of the death of Mormodu Allie and during the 40 days of the mourning. She said they used the same room but the will was never read to her and she did not tell her about the will. She said after Wurie read the will, he examined it properly and so did Ibrahim Allie.

Having reviewed the evidence generally, I propose to consider it and make up my mind what I believe and find as the facts in this case. I have in an earlier part of this Judgment stated what I conceive to be the law, and I repeat it—that although there is an allegation of forgery, which is a criminal action, I am not concerned with the criminal aspect of the matter and that where an act is both a criminal offence and is an issue in a civil action, on the trial of the civil action, the Court is not to follow the principles of the criminal law that the case should be proved beyond reasonable doubt, but should act on the principles of trial of civil cases on the preponderance of the evidence. In deciding whether the preponderance of the evidence is that the will has been forged or that it has not been forged, I have to consider the evidence given by the different witnesses and compare and weigh them with what may be said to the contrary by other witnesses, the impressions the witnesses made on me, the will itself and its contents and what would be reasonable inferences from the facts and circumstances. As I stated before, in an ordinary case, where two attesting witnesses have sworn as to due execution, that is usually accepted as sufficient evidence of the validity of a will. But where as in this case issues have been raised which tend to throw suspicion on the genuineness of the will, then the whole of the evidence and circumstances have to be examined. I propose to

examine first of all the evidence of the witnesses who proved the due execution of the will. The two witnesses, as I have stated before, are Dougan and Macauley. Dougan is a solicitor's clerk and presumably paid by his employer. One, however, finds him making a will in which £65,000 is involved. It is a matter for serious comment that clerks to solicitors are so disloyal to their employers that they undertake work which should be undertaken by their employers. The fact that Dougan was the person who is alleged to have made the will might, by itself, have given cause for suspicion, had it not been proved that he made the codicil, the will of 1942, and admittedly made the will which the Plaintiffs state was the genuine will of the same date as the disputed will. So that if those documents are not disputed it does not necessarily follow that the making of the will in dispute by a solicitor's clerk is evidence of forgery. Subject to this comment, Dougan impressed me favourably as a witness. It was suggested to him that he made the will in dispute after the death of the testator. This he denied. If I am any judge of human character and the credibility of witnesses in the box, I must state that, on the whole, Dougan appeared as a truthful witness. Macauley, the other witness, did not impress me as favourably. He was a clerk of the late Mormodu Allie, is probably a close friend or loyal servant to Fatmatta Kata, who has benefited most from the alleged will. These are not factors which necessarily detract from his capacity to speak the truth, but the most important element is that he was a very unsatisfactory witness. His memory failed him on material occasions. He did not remember what happened immediately after the execution of the will. These may be due to his age of 73 years. But when one is dealing with a witness with failing memory, too much credence cannot be placed on his evidence. While his failings may be excused on the ground of *anno domini*, his statements lose their weight in proportion. Had Macauley been the only attesting witness, I would have had no hesitation in saying that the preponderance of evidence is against his statements. But his evidence does not stand alone, and since the evidence of Dougan exists, unless the evidence of Macauley is so conflicting as to affect the value of Dougan's evidence, I must give consideration to Dougan's evidence, in view of the favourable opinion I formed of him in the witness-box. But that does not necessarily mean that this evidence is conclusive. Since it is my duty to weigh the probabilities, I have to consider the allegations to the contrary. The evidence of Sock-na Allie and Ibrahim Allie that Dougan visited the house of deceased after his death on two or three occasions is not such as I can accept or believe if it is intended to show that Dougan and Macauley met in the house where Fatmatta Kata lived and therefore had an opportunity then to forge the will. I have to use my common-sense in these matters. I have to ask myself whether if Dougan were a party to a forged will he would go to the house of the deceased at such times as he would be seen by those interested in the disposal of the properties of the deceased. Forgery suggests an element of secrecy, and a forger who makes his act patent or lends grounds for suspicion or connection with the act is a fit subject for bedlam. It seems to me quite easy for the forgery to have been made outside of the house of the deceased, and it was

In the
Supreme
Court of
Sierra
Leone.

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No. 23.
Reasons for
Judgment.
Beoku-
Betts, J.,
2nd March,
1950 —
continued.

In the
Supreme
Court of
Sierra
Leone.

— —
No. 23.
Reasons for
Judgment.
Beoku-
Betts, J.,
2nd March,
1950—
continued.

very risky for the suspected forgers to be meeting in the house of the deceased under the eyes of persons interested that there should be no forgery. The evidence of Wurie is most important. It was he who received the will of the testator from the Registrar-General as well as the codicil. The two documents were received in two envelopes, Exhibits B1 and B2. He signed as witness on the 10th February the renunciation by the executors of the will. It was he who read out the will of the deceased to Fatmatta Kata. It was he who handed the will to the Defendant on the record. He swore that the will which is in evidence Exhibit " D " was not the will which he had received from the Registrar-General, and which he had read out to Ajah Fatmatta Kata and Ibrahim Allie. The reasons he gave for saying that the will he saw in Court was not the will he had read out to Ajah Fatmatta Kata and Ibrahim Allie were that the paper on which the will he read out was typed and that of Exhibit " D " were different ; that the paper of the will resembled in quality that on which the codicil (Ex. " E ") was typed, and also that the will he read out had the signature of the deceased on only one page, while the signature in Exhibit " D " appears on every page. There does not seem any reason why this witness should give false evidence except the suggestion made by one of the counsel for the Defendant that it is an act of revenge as the Defendant had succeeded to win the affections and with it the rich spoils of the estate of Mormodu Allie, for as it is said " money is the root of all evil." But there is no evidence to support this suggestion and I must reject it as unfounded. I doubt whether the Defendant would himself approve of that suggestion. I have, however, to consider the evidence of Wurie by itself and make up my mind as to the probability of the story or its value on an allegation of forgery. It seems to me that when Wurie saw the will on the 5th February 1948 he never could reasonably have contemplated any dispute as to its validity. He never saw the will again from that date until he saw it in the C.I.D. Office on the 11th July 1949. In my opinion, it would be difficult for a person who saw a document on one occasion, at a time when there was no special reason or no reason at all for particular attention, to remember 18 months after, the nature of the paper on which it was typed. I do not think that as a Judge, in what must be considered an important case, I would be acting reasonably in accepting such a statement. It is probably not as difficult to remember whether the signature was on one page only or on all the pages, but there again it is not improbable that a person reading a document 18 months earlier might not have remembered whether the signature was on one page or several pages. I do not believe that in February 1948 Wurie examined the will in order to remember the outstanding characteristics of the document. Again, I have to ask myself, would it be wise and safe to act on such evidence when the circumstances are considered and find that there has been forgery of the will ? One fact which makes me doubt the accuracy of this statement is that on comparing Exhibit " C " the will of 1942, I find that the signature of the testator appears on every page of the will, and Exhibit " C " is not disputed as a genuine will of the testator, for in fact, learned Counsel for the Plaintiffs-on-record submitted that probate of the 1942 will

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should be pronounced. It is unfortunate Wurie does not remember anything as to the contents of the will that he saw on the 5th February 1948 as that might have helped me in my conclusions. Ibrahim Allie gave evidence that Exhibit "D" is not the will he saw and examined in the presence of Wurie and Ajah Fatmatta Kata. He stated that he remembers some of the contents of the will and stated that according to the will he read, the testator gave him his cattle and farm at Devil Hole and the residuary clause was a disposition of the properties of the testator to all the children who were named by the testator. I do not know to what extent

10 I can regard this witness as disgruntled, dissatisfied and disappointed, and to what extent this condition of mind coloured his evidence, but it is not difficult to imagine the feelings of a son who had probably expected much from his father to find the bulk of the properties going to only one of the widows of the testator.

The evidence of Sock-na Allie that she was living in the same house and in the same room as Ajah Fatmatta Kata during the period of mourning when the will was brought to the house and read to Ajah Fatmatta Kata and that it was not read to her and no mention of it was made to her raises a question of grave suspicion as to the reason for the conduct of Ajah

20 Fatmatta Kata and those advising her, of whom Wurie was evidently one, at the time. I cannot understand why the will was not disclosed to the admittedly senior widow of the deceased, why it was taken to the house, read to one of the widows, at the time when the other widow was in the same house, why only Ibrahim Allie was given the opportunity of reading the will. This has not been explained to me by Ajah Fatmatta Kata or by Wurie and it seems to me that reasonable ground exists for lingering suspicion in my mind as to the motive of the persons then dealing with the will. It might with some degree of confidence be predicated that a will could not have been forged after Ibrahim Allie had read and examined it

30 properly unless he was a party to it or it was hoped he would join in the conspiracy, or he was regarded as a fool. There is a lot in the submission of counsel for the Defendant that if the will had been forged, it would not have been handed to Wurie to take to the Defendant, for the purpose of letters of administration, in an open envelope. For then the conspirators or forgers had made it within the possibility of Wurie to detect the fraud. In this case, as in all other cases, it is my duty to record my reactions to the different aspects of the evidence as given. Wurie had shown sufficient interest in this matter to go to the Registrar-General for the will. He took the will to the widow. He opened the will and read it. He witnessed the renunciation by

40 some of the executors named in the will. He acted as the middleman between the widow and the Defendant. He was given the will to take to the Defendant in an open envelope. That was a clear invitation to him to examine the will. If he had done so, then he would have discovered the forgery and the whole conspiracy would have been exposed. If people omit to take such ordinary steps, they cannot complain if the Court, in administering justice, decides the facts on what would be expected of an ordinary, reasonable person in the circumstances. The standard which is my guide

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No. 23.
Reasons for
Judgment.
Beoku-
Betts, J.,
2nd March,
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continued.

In the
Supreme
Court of
Sierra
Leone.

No. 23.
Reasons for
Judgment.
Beoku-
Betts, J.,
2nd March,
1950—
continued.

is the conduct of the ordinary reasonable person. As regards the evidence of Salmah—the arabic interpreter—I am of the opinion that his evidence does not help me to solve the knotty problem of alleged forgery. This witness, after saying that he is not acquainted with the kind of handwriting he was called to examine, made the significant statement that persons who are only taught to sign their signatures have a tendency to improve their handwriting. Surely, if that possibility exists, I would not be justified in attributing any seeming difference in the signatures of the testator to forgery.

I now propose to consider the will and its contents to see whether there is such a departure from what one would naturally expect as to the provisions of a testator with widows and children as to render it improbable that he made the will. I realise that as I am not considering the question of want of knowledge and approval or undue influence, the provisions of the will, even if unnatural, do not necessarily prove forgery. But I propose to consider this aspect of the matter for what it is worth. The testator appointed his wife Ajah Fatmatta Kata, his son Alhadi Barber and another as executors and trustees of his will. On the back of the envelopes of the will and codicil (Exhibits B1 and B2) the testator got endorsed that the documents were to be delivered to Ajah Fatmatta Kata after his death. There is no dispute about the genuineness of the endorsement and the signature of the testator on the two envelopes. This endorsement and direction suggest a special inclination towards Ajah Fatmatta Kata. It appears she was a widow living with him in the closing days of his life while Sock-na Allie lived in another house. There is no evidence as to the reason why the two women did not live with the testator, but it is not improbable that the enchanting period of Sock-na had passed, and the comparatively new broom of Ajah Fatmatta Kata was sweeping the affections of the deceased cleaner. But these are only conjectures for which there is no evidence. It seems further that the deceased did not disregard the claims of his children. Some provision is made for them. Whether it is adequate or not it is not for me to judge as that is not the question before me. It is also alleged and proved that some properties named in the will did not belong to the testator. Surely that cannot be evidence of forgery. It is not unknown that some testators dispose of properties which are not theirs either by mistake or by design.

I have now fully considered the law and reviewed the evidence as fully as possible. The conclusion that I have come to is that while there are some circumstances which call for scrutiny and examination, on the probabilities of the case, the document Exhibit " D " is, in my opinion, the true and last will of the testator. I will therefore dismiss the claim of the Plaintiffs-on-record and grant the claim on the counterclaim and pronounce that the Will produced in Court—Exhibit " D "—be granted probate in solemn form as well as the Codicil. I will hear Counsel as to costs.

HON. MR. OTTO I. E. DURING : The last remark shows that this case was properly brought and should be enquired into. If that is so, the costs should come out of the estate. If the Plaintiffs have reasons to bring this action, costs should come out of the estate.

MR. C. J. KEMPSON : It is not proper that costs of Plaintiffs come out of the estate, although no costs by the Plaintiff. Order should be that each party should pay their own costs.

ORDER : In this case I think the Court should use its discretion as to costs. In the circumstances of the case as reviewed by me, I order both parties should have costs out of the estate, except that as regards the issue of forgery, the Plaintiffs should not have their costs on any evidence in proof of that allegation.

2nd March 1950.

E. S. BEOKU-BETTS,
Judge.

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In the
Supreme
Court of
Sierra
Leone.

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No. 23.
Reasons for
Judgment.
Beoku-
Betts, J.,
2nd March,
1950—
continued.

No. 24.

Affidavit in support of Motion for Conditional Leave to Appeal to the West African Court of Appeal.

We SOCKNA MORMORDU ALLIE of 17 Martin Street, ALHAJI BABA ALLIE of 7 Guard Street, and KEMOKO ALLIE of 17 Martin Street, all of Freetown in the Colony of Sierra Leone, jointly and severally make oath and say as follows :—

No. 24.
Affidavit in
support of
motion for
Conditional
Leave to
Appeal.
30th May,
1950.

1.—We are the Plaintiffs in this action.

20 2.—The claim in the action was for a revocation of the grant of Administration with the will dated 30th August 1946 and codicil dated 19th July 1947 annexed of the estate of Mormordu Allie deceased made to the Defendant on the 10th day of March 1948 and for a pronouncement against the validity of the said will and codicil. The gross value of the estate is to the best of our knowledge information and belief £86,000.

30 3.—On the 2nd day of March 1950 judgment was pronounced in this Honourable Court by His Honour Mr. Justice Ernest Samuel Beoku-Betts dismissing our claim and upholding the counterclaim of the Defendant and decreeing that Probate in solemn form of law be granted of the said will and codicil of the above-named deceased and that the costs of both parties be taxed and paid from the estate except that we these deponents should not have our costs on any evidence in proof of the allegation of forgery.

4.—We these deponents are aggrieved by the said judgment and we are desirous of appealing against the said judgment.

Sworn at Freetown by all the above-named deponents this 30th day of May 1950 at 11 o'clock in the forenoon, before me, I having first truly, distinctly and audibly read over the contents of this affidavit to the

and Kemoko Allie sworn the 30th day of May 1950, and filed herein **THIS** In the
COURT DOTH ORDER that the said Plaintiffs do have leave to appeal against Supreme
the said judgment to the West African Court of Appeal on condition that Court of
the said Plaintiffs within one month :— Sierra
Leone.

- (A) do lodge the sum of Fifty pounds in Court to the credit of this
action to cover the cost of making up the record of appeal for
transmission to the West African Court of Appeal
- (B) do give security according to the course of this Court by Bond in
the sum of One Hundred and Fifty pounds conditioned to answer
costs in case any costs shall be awarded by the West African Court
of appeal to be paid by the Plaintiffs, and
- 10 (C) do give notice of this appeal to the Defendant and to all parties
directly affected by such appeal, Liberty to apply.

E. J. McCORMACK,
Asst. Master & Rgr.

No. 27.

Bond for Costs on Appeal.

KNOW ALL MEN BY THESE PRESENTS that we, Sock-na
Mormordu Allie, of 17 Martin Street, Freetown, in the colony of Sierra
Leone, Alhaji Baba Allie of 7 Guard Street, Freetown, in the Colony afore-
20 said, Kemok Allie of 17 Martin Street, Freetown, in the Colony aforesaid
and James Rowland Zizer of 2 Loxley Lane, Freetown, in the Colony
aforesaid are jointly and severally held and firmly bound to Ahmed Alhadi,
Official Administrator of Sierra Leone in the sum of One Hundred and Fifty
Pounds of lawful money to be paid to the said Ahmed Alhadi Official
Administrator or his successors in office, for which payment well and truly
to be made we bind ourselves, and each of us for himself and herself, in the
whole our and every of our heirs, executors and administrators, firmly by
these presents. Sealed with our seals.

Dated the 4th day of July in the year of our Lord, 1950.

30 WHEREAS a suit is now pending in the Supreme Court of Sierra Leone
at Freetown wherein the above-bounden Sock-na Mormordu Allie, Alhaji
Baba Allie and Kemok Allie are plaintiffs and the said Ahmed Alhadi
Official Administrator is Defendant ;

AND WHEREAS a judgment was given by the Court therein, on the
2nd day of March 1950, for the said Ahmed Alhadi, Official Administrator,
and the said Sock-na Mormordu Allie, Alhaji Baba Allie and Kemok Allie
have applied for leave to appeal from the said judgment ;

40 AND WHEREAS it is by law provided that the party appealing shall
give security to the satisfaction of the Court below for all such costs as may
be awarded to any respondent by the Court ;

In the
Supreme
Court of
Sierra
Leone.

No. 26.
Order
granting
Conditional
Leave to
Appeal,
5th June,
1950-
continued.

No. 27.
Bond for
Costs on
Appeal,
4th July,
1950.

In the
Supreme
Court of
Sierra
Leone.

No. 27.
Bond for
Costs on
Appeal,
4th July,
1950—
continued.

AND WHEREAS the above-named James Rowland Zizer at the request of the said Sock-na Mormordu Allie, Alhaji Baba Allie and Kemok Allie has agreed to enter into this obligation for the purposes aforesaid.

NOW THE CONDITION OF THIS OBLIGATION IS such that if the above-bounden Sock-na Mormordu Allie, Alhaji Baba Allie, Kemok Allie and James Rowland Zizer, any or either of them shall pay unto the said Ahmed Alhadi, Official Administrator, or his successors in office the costs of the said appeal as the Court shall order, then this obligation shall be void, otherwise remain in full force.

SOCK-NA ^{her} _{mark} MORMORDU ALLIE

ALHAJI BABA ALLIE.

10

KEMOKO ALLIE.

JAMES ROWLAND ZIZER.

Signed sealed and delivered by the parties hereto after the same had been read over and explained to the said Sock-na Mormordu Allie, Alhaji Baba Allie and Kemok Allie and they seemed perfectly to understand the same in the presence of :—

SAM T. JOHNSON,
A Commissioner for Oaths.

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No. 28.
Notice of
Appeal.
4th July,
1950.

No. 28.

Notice of Appeal.

TAKE NOTICE that the above-named Appellants Sock-na Mormordu Allie, Alhaji Baba Allie and Kemoko Allie intend to appeal against the judgment of His Honour Mr. Justice Ernest Samuel Beoku-Betts.

Dated the 2nd day of March, 1950.

Dated the 4th day of July, 1950.

C. D. HOTOBAH-DURING,
of 13(b) Howe Street, Freetown,
Solicitor for the above-named 30
Appellants.

To Ahmed Alhadi, Official Administrator,
and to C. J. Kempson, Esqr., His
Solicitor.

No. 29.

Affidavit in support of Motion for Final Leave to Appeal.

In the
Supreme
Court of
Sierra
Leone.

I CLAUDIUS DYONISIUS HOTOBAH-DURING of 13(b) Howe Street, Freetown, in the Colony of Sierra Leone, Barrister-at-Law, make oath and say as follows :—

No. 29.
Affidavit in
support of
Motion for
Final
Leave to
Appeal,
7th July,
1950.

1.—That I am the Solicitor for the above-named Appellants Sock-na Mormordu Allie, Alhaji Baba Allie and Kemok Allie.

2.—That on the 5th day of June 1950 I on behalf of the above-named Appellants obtained leave to appeal against the judgment of His Honour
10 Mr. Justice Ernest Samuel Beoku-Betts pronounced the 2nd day of March, 1950, upon the following conditions, that the Appellants within one month :

- (A) Pay into Court the sum of £50 to abide the cost of the record.
- (B) Enter into a bond in the sum of One Hundred and Fifty Pounds.
- (C) Serve notice on all interested parties.

3.—That on the 28th day of June 1950 the Appellants paid into court the sum of Fifty pounds (£50) as ordered as aforesaid on the said 5th day of June 1950.

4.—That on the 4th day of July 1950 the Appellants entered into a bond in the sum of £150 to abide the costs of the appeal.

20 5.—That on the 4th day of July 1950 I served notice of appeal on the Respondent and his solicitor C. J. Kempson.

C. D. HOTOBAH-DURING.

Sworn at Freetown this 7th day of July, 1950, at 132 o'clock in the forenoon.

Before me,

SAM T. JOHNSON,
A Commissioner for Oaths.

This affidavit is filed on behalf of the Appellants.

30.

Notice of Motion for Final Leave to Appeal.

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TAKE NOTICE THAT this Honourable Court will be moved on Wednesday the 12th day of July 1950 at 9 o'clock in the forenoon or as soon thereafter as Counsel can be heard by Mr. Claudius Dyonisius Hotobah-During of Counsel for the above-named Appellants Sock-na Mormodu

No. 30.
Notice of
Motion for
Final
Leave to
Appeal,
7th July,
1950.

In the
Supreme
Court of
Sierra
Leone.

Allie, Alhaji Baba Allie and Kemoko Allie that they may be granted final leave to appeal from the judgment of His Honour Mr. Justice Ernest Samuel Beoku-Bettes dated the 2nd day of March 1950.

Dated the 7th day of July 1950.

No. 30.
Notice of
Motion for
Final
Leave to
Appeal,
7th July,
1950--
continued.

C. D. HOTOBAH-DURING,
of 13(b) Howe Street, Freetown,
Solicitor for the above-named
Appellants.

To The Master and Registrar, Supreme
Court, Freetown, and Ahmed Alhadi,
Official Administrator, and C. J. Kemp-
son, Esqr., his Solicitors.

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No. 31.
Order
granting
Final
Leave to
Appeal,
12th July,
1950.

No. 31.

Order granting Final Leave to Appeal.

Wednesday the 12th day of July 1950.

UPON motion made this day unto this Honourable Court by Mr. Claudius Dyonisius Hotobah-During of Counsel on behalf of the above-named Appellants Sock-na Mormordu Allie Alhaji Baba Allie and Kemok Allie for an Order granting to the said Appellants final leave to appeal against the judgment pronounced by His Honour Mr. Justice Ernest Samuel Beoku-Bettes on the 2nd day of March 1950 AND UPON HEARING the said Claudius Dyonisius Hotobah-During for the said Appellants and J. Collins Zizer of Counsel for the Respondent Ahmed Alhadi, Official Administrator AND UPON READING the affidavit of Claudius Dyonisius Hotobah-During sworn the 7th day of July 1950 and filed herein THIS COURT DOETH ORDER that the said Appellants do have final leave to appeal against the said judgment to the West African Court of Appeal.

By the Court

A. ALHADI,

Master & Registrar. 30

No. 32.
Grounds of
Appeal.
19th July,
1950.

No. 32.

Grounds of Appeal.

The Appellants being dissatisfied with the judgment of the Supreme Court of Sierra Leone delivered on the 2nd day of March 1950 and having obtained final leave to appeal therefrom dated 12th day of July 1950 hereby appeal to the West African Court of Appeal upon the grounds hereinafter set forth.

GROUNDS OF APPEAL.

- 1.—The judgment is against the weight of evidence.
- 2.—The learned Trial Judge having in doubt forwarded the papers in the action to the Honourable the Attorney General for prosecution for forgery and the Honourable the Attorney General having found that there was no case for prosecution, was wrong in continuing to hear the case.
- 3.—The Learned Trial Judge having predicated the law as to the burden of proof, did not receive the doubt which admittedly existed and which he found admittedly existed in his mind in accordance with the law
10 so laid down.

In the
Supreme
Court of
Sierra
Leone.

—
No. 32.
Grounds of
Appeal,
19th July,
1950—
continued.

Dated this 19th day of July 1950.

C. D. HOTOBAR-DURING,
Appellants' Solicitor.

No. 33.

Shorthand Note of Judgment.

IN THE WEST AFRICAN COURT OF APPEAL.

Before Their Honours :

Sir Henry W. B. BLACKALL, President.

Mr. Justice E. HALLINAN, Puisne Judge. Nigeria.

20 Mr. Justice RAGNAR HYNE, Puisne Judge, Gold Coast.

In the
West
African
Court of
Appeal.

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No. 33.
Shorthand
Note of
Judgment.

SHORTHAND NOTE OF JUDGMENT.

30 BLACKALL P.—This is an appeal against a judgment of the Acting Chief Justice Beoku-Betts dismissing a claim to have the will of one Mormodu Allie dated 30th August 1946 revoked. The Plaintiffs originally made a similar claim in respect of a codicil dated 19th July 1947, but they abandoned this in the course of the case. This was not the only instance where the Plaintiffs shifted their ground, for at the outset of the case they denied the existence of any will in 1946. Later this assertion was watered down, and the Plaintiffs rested their case on an allegation that if there had been a will in August, 1946 a forged will was substituted for it after the testator's death. When, at the hearing, evidence was adduced in support of these allegations the trial Judge considered that he should stay the proceedings in order that

In the
West
African
Court of
Appeal.

No. 33.
Shorthand
Note of
Judgment
—continued.

the Attorney-General might decide whether a *prima facie* case existed for prosecution for forgery. He therefore directed that the record be forwarded to the Attorney-General for that purpose, and adjourned the proceedings until the Attorney-General's reply was received.

Now this action was against the Official Administrator, and there was no allegation that he had forged the will ; neither was there in the evidence anything to support this. I think therefore that the learned Judge was wrong in staying the proceedings in the circumstances of this case, because the obligations which the law imposes on a person to prosecute does not apply where the action is against a third party innocent of the felony. **10**
(*White vs. Spettigue* 1845 1 Car. & Kir. 673.) I agree therefore with Mr. Hotobah During's submission on this point to that extent. But he went further, for he submitted that this error was a ground for granting a retrial. A new trial is not however granted unless, in the opinion of the Court of Appeal, some substantial wrong or miscarriage has been occasioned, and I therefore invited Mr. During to say how his client was in fact prejudiced. The learned counsel in a courageous argument attempted to surmount this obstacle. He submitted that the learned Judge had in consequence of his mistake mis-directed himself, in that he was influenced by the opinion of the Attorney-General that there was no *prima facie* case for prosecution. But **20**
unfortunately for counsel's argument the Judge set out in very plain terms that he was in no way bound by the Attorney-General's opinion.

At page 65 he said :

“ If those who are in charge of the criminal machinery would
“ not prosecute or think no case exists for criminal prosecution,
“ that does not relieve the judge in the civil action from applying
“ his mind to the facts and decide whether the allegation has in
“ fact been proved.

“ That duty the Judge has to perform irrespective of the
“ opinion of the Attorney-General.” **30**

It is, in my view, perfectly clear from this passage that the Judge was in no way influenced by the Attorney-General's opinion and that this ground of appeal therefore fails.

I now pass to grounds 1 and 3 which were argued together and which were in effect a submission that the decision was against the weight of evidence. The Plaintiffs' case rested mainly on the evidence of one Wurie. This witness read the will in February 1948 and he did not see it again until 18 months later. However, he stated definitely that in his opinion the will sought to be propounded that is Ex. D is not the will that he read in February 1948. The reasons he gave were these : in the first place he says that in the **40**
will which he then read, the testator signed only on the last page, whereas in Ex. D he also signed on the other pages. I think however that the witness might well have overlooked the signatures, other than the last one, when he read the will in 1948, because when one examines the will, it will be found that the intermediate signatures are not at the bottom of the page, but

written along the margin. The other reason which Wurie gave in support of his view was that the will that he read was on thick paper like the codicil. But again when one looks at the papers one finds that the codicil was not written on thick paper; it was written on paper which was very slightly thicker than that on which the will in dispute was written, and in this connection it must be remembered that the codicil was not prepared at the same time as the will, so one would not expect it to be written on exactly the same kind of paper. I think therefore that the learned Judge's comment that it would be difficult for a person who saw this will only once and had

10 no special reason for scrutinising it closely to be able to remember very exactly the texture of the paper upon which the document was written.

In the
West
African
Court of
Appeal.
—
No. 33.
Shorthand
Note of
Judgment
—continued.

Besides Wurie, the Plaintiff called Ibrahim Allie gave evidence in support of the allegation that the will was forged. Now, Ibrahim Allie was the son of the testator, and what he says about the signature is simply this—that it was “similar but not like” his father's signature. Well I am afraid that is a distinction without a difference.

For the Defendant, the two attesting witnesses of the will were called and there is nothing to suggest that those witnesses had anything to gain by giving false evidence. One of them was Mr. Dcugan, who stated that he had

20 actually prepared the will of 1946. The learned Judge apparently did not approve of his action in poaching upon his master's preserves by acting as a solicitor, but he did accept him as a truthful witness, who impressed him favourably. His evidence was corroborated by the other attesting witness Mr. Macauley. Much stress was laid by Mr. Hotobah-During on the Judge's remark that Macauley was a very unsatisfactory witness; but when one reads the passage as a whole it appears that the reason why the learned Judge made that remark was simply that Mr. Macauley is suffering from loss of memory owing to advancing years. For my own part, I think the learned Judge's comment on this score was not altogether justified.

30 In any event the important point is that Macauley definitely stated that the will was attested by him and it is worthy of note that both these witnesses attested the will and the codicil. Furthermore, Wurie has stated that their names appear on the will that he read in February 1948.

It do not think it is necessary for me to recapitulate the evidence any further, as the learned Judge had done so very exhaustively. This is a case which depended very largely on oral evidence, and the trial Judge had the great advantage of seeing the witnesses and hearing them. He accepted the evidence of the Defendant's witnesses on material questions in issue and having considered the evidence on both sides, I am of opinion that there was

40 sufficient evidence to justify the conclusions at which the Court below arrived, and I see no reason for interfering with the decision. In my opinion therefore the appeal should be dismissed.

Mr. Justice HALLINAN—I concur.

Mr. Justice RAGNAR HYNE—I concur.

In the
West
African
Court of
Appeal.

No. 34.
Formal Judgment.

IN THE WEST AFRICAN COURT OF APPEAL.

No. 34.
Formal
Judgment,
1st
December,
1950.

CERTIFICATE OF THE ORDER OF THE COURT.

Appeal from the Judgment of BETTS, Judge of the Supreme Court of Sierra Leone dated the 2nd day of March 1950.

SOCK-NA MORMORDU ALLIE and OTHERS *Appellants*
and
AHMED ALHADI as Official Administrator *Respondent.*

H. W. B. BLACKALL, 10
President.

This appeal coming on for hearing on the 27th and 28th days of November 1950 before Blackall President, Hallinan Judge, Nigeria and Hyne Judge, Gold Coast in the presence of C. D. Hotobah-During Counsel for the Appellants and J. C. Zizer Counsel for the Respondent.

I hereby certify that an order was made as follows :
Appeal dismissed with costs of appeal.
Order as to Costs in Court below to stand.

Given under my hand and the seal of the Court this 1st day of December 1950. 20

E. J. McCORMACK,
Acting Deputy-Registrar, West
African Court of Appeal.

No. 35.

Motion for Leave to Appeal to the Privy Council.

No. 35.
Motion for
Leave to
Appeal to
Privy
Council,
15th
December,
1950.

TAKE NOTICE that the West African Court of Appeal will be moved on Tuesday the 19th day of December 1950, at 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Mr. Claudius Dyonisius Hotobah-During of Counsel on behalf of the Plaintiffs Appellants, Sock-na Mormordu Allie, Alhaji Baba Allie and Kemok Allie, for an order for leave 30 to appeal to His Majesty the King in his Privy Council against the judgment of the West African Court of Appeal delivered on the 1st day of December 1950 whereby it was adjudged that the judgment of the Supreme Court delivered by His Honour Mr. Justice Ernest Samuel Beoku-Betts on the 2nd day of March 1950 be upheld that the claim of the Plaintiffs Appellants for a revocation be dismissed and that on the counterclaim of the Defendant Respondent probate in solemn form of law be granted of the Will dated

the 30th August 1946 and the codicil dated the 19th July 1947 of Mormordu Allie deceased.

Dated this 15th day of December, 1950.

C. D. HOTOBAH-DURING,

of 13(b) Howe Street, Freetown,
Solicitor for the Plaintiffs Appel-
lants SOCK-NA MORMORDU ALLIE,
ALHAJI BABA ALLIE and KEMOK
ALLIE.

10 To the Registrar of The West African
Court of Appeal and to Ahmed Alhadi,
Esq., and C. J. Kempson, Esq., his
Solicitor.

In the
West
African
Court of
Appeal.

No. 35.
Motion for
Leave to
Appeal to
Privy
Council,
15th
December,
1950—
continued.

No. 36.

Affidavit in support.

We SOCK-NA MORMORDU ALLIE, of 17 Martin Street, ALHAJI BABA ALLIE, of 17 Martin Street, and KEMOK ALLIE, of 17 Martin Street, Freetown, in the Colony of Sierra Leone, jointly and severally make oath and say as follows

No. 36.
Affidavit in
support.
15th
December,
1950.

20 1.—We are the Plaintiffs in this action and the Appellants on appeal in the West African Court of Appeal.

2.—Our claim in the action was for a revocation of the Grant of Administration with the Will dated 30th August 1946 and Codicil dated 19th July 1947 annexed of the estate of Mormordu Allie deceased made to the Defendant Respondent on the 10th day of March 1948 and for a pronouncement against the validity of the said Will and Codicil. The gross value of the estate is to the best of our knowledge, information and belief £86,000.

30 3.—That on the 1st day of December 1950 the West African Court of Appeal delivered a judgment in this action dismissing our appeal and upholding the judgment of His Honour Mr. Justice Ernest Samuel Beoku-Betts, delivered on the 2nd day of March 1950 whereby our claim was dismissed and the Counterclaim of the Defendant Respondent was upheld and it was decreed that probate in solemn form of law be granted of the said Will and Codicil of the above-named deceased and that the costs of both parties be taxed and paid from the estate except that we these deponent should not have our costs on any evidence in proof of the allegation of forgery. We these deponents were ordered to pay the costs in the West African Court of Appeal.

40 4.—We these deponents are aggrieved by the said judgment of the

In the
West
African
Court of
Appeal.

No. 36.
Affidavit in
support,
15th
December,
1950—
continued.

West African Court of Appeal and we are desirous of appealing to His Majesty the King in His Privy Council against the said Judgment.

Sworn at Freetown by all the above-named deponents this 15th day of December 1950 at 9.40 o'clock in the forenoon before me, I having first truly, distinctly and audibly read over and explained the contents of this Affidavit to the Deponents who appeared perfectly to understand the same and the said Sock-na Mormordu Allie made her mark and the said Alhaji Baba Allie and Kemok Allie signed their names thereto in my presence :—

SOCK-NA MORMORDU her
 X ALLIE
 mark

ALHAJI BABA ALLIE
KEMOK ALLIE

SAM T. JOHNSON,
A Commissioner for Oaths.

This Affidavit is filed on behalf of the Plaintiffs Appellants Sock-na Mormordu Allie, Alhaji Baba Allie and Kemok Allie.

No. 37.

Order granting Conditional Leave to Appeal to the Privy Council.

No. 37.
Order
granting
Conditional
Leave to
Appeal to
the Privy
Council,
19th
December,
1950.

Tuesday, the 19th day of December, 1950

UPON READING the Notice of Motion dated the 15th day of December 1950 and the joint and several Affidavit of Sock-na Mormordu Allie, Alhaji Baba Allie, and Kemok Allie sworn the 15th day of December 1950 and filed herein and UPON HEARING Counsel for the Plaintiffs Appellants THIS COURT DOETH ORDER that the Plaintiffs Appellants do have leave to appeal to His Majesty the King in his Privy Council on the following :—

- (1) That the Plaintiffs Appellants within two months from the date of this Order give security to the Deputy Registrar of this Court by Bond in the Plaintiffs Appellants and two sureties jointly and severally in the sum of £500 for the due prosecution of the Appeal and to cover all such costs as may be awarded to the Defendant Respondent by His Majesty the King in his Privy Council.
- (2) Within three months from date of this Order take necessary steps to have the records printed in England, and
- (3) Give Notice of the Appeal to all parties affected by the Appeal within two months of the date of this Order.

By the Court,

E. J. McCORMACK,
Acting Deputy Registrar.

No. 38.

Notice of Appeal.

TAKE NOTICE that Sock-na Mormordu Allie, Alhaji Baba Allie, and Kemok Allie, the above-named Plaintiffs Appellants, do intend to appeal to His Majesty the King in His Privy Council against the judgment of the West African Court of Appeal delivered on the 1st day of December 1950.

Dated the 14th day of February, 1951.

C. D. HOTOBAH-DURING,
of 13(b) Howe Street, Freetown,
Solicitor for the Plaintiffs Appellants.

In the
West
African
Court of
Appeal.

No. 38.
Notice of
Appeal to
the Privy
Council,
14th
February,
1951

10

To Ahmed Alhadi, Official Administrator,
and E. J. McCormack, Ag. Official
Administrator.
To C. J. Kempson, Esq., Solicitor for
Ahmed Alhadi.

No. 39.

Order granting Final Leave to Appeal to the Privy Council.

IN THE WEST AFRICAN COURT OF APPEAL.

In the Estate of MORMORDU ALLIE (Deceased)
Between

20

SOCK-NA MORMORDU ALLIE and OTHERS ... (Plaintiffs) Appellants
and
AHMED ALHADI Official Administrator ... (Defendant) Respondent.

No. 39.
Order
granting
Final
Leave to
Appeal to
the Privy
Council.
16th March,
1951.

The 16th day of March, 1951.

UPON MOTION this day made unto this Honourable Court by Claudius Dyonisius Hotobah-During of Counsel on behalf of the Plaintiffs Appellants for an Order granting him Final Leave to appeal to His Majesty the King in His Privy Council AND UPON HEARING the said Claudius Dyonisius Hotobah-During on behalf of the Plaintiffs Appellants and Carteret John Kempson of Counsel for the Defendant Respondent THIS COURT DOTH ORDER that the Plaintiffs Appellants do have Final Leave to appeal to His Majesty the King in His Privy Council against the judgment of the West African Court of Appeal delivered the 1st day of December 1950.

30

By the Court,
E. J. MCCORMACK,
Ag. Deputy Registrar, West African
Court of Appeal.

Exhibits.

EXHIBITS.

A.
Order
granting
Letters of
Administra-
tion,
10th March,
1948.

A.—Order granting Letters of Administration.

The 10th day of March, 1948.

UPON READING the Affidavit of AHMED ALHADI, Official Administrator of Sierra Leone, sworn on the 10th day of March, 1948, and filed herein, it is hereby ordered :—

1.—That a Grant be made of Letters of Administration with a will and codicil annexed to Ahmed Alhadi the Official Administrator to administer the estate of the said Mormordu Allie, deceased.

2.—That so much of the properties not specifically devised and those 10 listed in paragraphs 2, 16, 21 and 26 of the will of the said Mormordu Allie, deceased, as may be necessary to pay for the testamentary and funeral expenses, stamp and court fees for probate and the expense of appraising for purposes of valuation for probate and just debts owing by the said estate of the said Mormordu Allie, deceased, be sold by Public Auction or Private Treaty and that the property situate of 16, 16a and 16b Little East Street be sold to Salim Aboud for £3,200 0s. 0d.

3.—That Citation be dispensed with.

J. LUCIE-SMITH,
Chief Justice. 20

B.
Probate,
10th March,
1948.

B.—Probate.

Stamp Duty £1,304.

BE IT KNOWN that on the 10th day of March 1948 (Pursuant to Judge's Order made and filed herein) Letters of Administration with the said Will and Codicil Annexed, of all the estate which by law devolves to and vests in the personal representative of the said Mormordu Allie, deceased were granted by this Court to Ahmed Alhadi the Official Administrator to administer the estate of the said Mormordu Allie, deceased, he having been first duly sworn.

A. ALHADI,
Master and Registrar. 30

Sworn at £65,150 17s. 3d. and that the Testator died on or about the 22nd day of January 1948.

A. ALHADI,
Master and Registrar.

B (1).—Envelope containing Will.

Exhibits.

The Last Will and Testament of MORMORDU ALLIE, of No. 8 Magazine Street, Freetown, Butcher.

B. 1
Envelope
containing
Will.

To be delivered after death to :

AJAH FATMATTA KATA, of 8 Magazine Street, Freetown.

(Signature in Arabic)

MORMORDU ALLIE his
 X
 mark
 Testator.

10

Witness to Mark :—

J. CONI DOUGAN.

M. S. MACAULEY.

B.(2).—Envelope containing Codicil.

B. 2.
Envelope
containing
Codicil,
19th July,
1947.

Dated 19th July 1947.

Codicil to the Last Will and Testament of MORMORDU ALLIE, of No. 8 Magazine Street, Freetown, Butcher.

To be delivered after death to :

AJAH FATMATTA KATA, of 8 Magazine Street, Freetown.

20

(Signature in Arabic)

MORMORDU ALLIE his
 X
 mark
 Testator.

Witness to Mark :

J. CONI DOUGAN.

M. S. MACALUEY.

C.—Defendant's Supplementary Affidavit of Scripts with copy of Will of 25th July, 1942 annexed.

C.
Defendant's
Supple-
mentary
Affidavit of
Scripts,
6th July,
1949.

30 I, AHMED ALHADI, of 19 Fifth Street, Freetown, Official Administrator, the Defendant in this action make oath and say that since my Affidavit of Script filed herein on the 10th day of September 1948 there has come into my possession the duplicate of a Will dated the 25th day of July 1942, and annexed hereto, executed by Mormordu Allie late of 8 Magazine Street, Freetown, aforesaid deceased, the deceased in this action, the same having been handed to me by John Coni Dougan of 19 Skelton Street,

Exhibits. Wilberforce, Sierra Leone, one of the attesting witnesses thereto on the
 ——— 4th day of July 1949.

C.

A. ALHADI.

Defendant's
 Supple-
 mentary
 Affidavit of
 Scripts,
 6th July,
 1949—
continued.

Sworn by the above-named deponent at
 Freetown this 6th day of July 1949 at
 10.5 o'clock in the forenoon before me

E. CUMMINGS-JOHN,
A Commissioner for Oaths.

This Affidavit is filed on behalf of the Defendant.

I, MORMORDU ALLIE, of No. 8 Magazine Street, Freetown, in the 10
 Colony of Sierra Leone, Butcher, hereby revoke all wills, codicils and
 other testamentary dispositions heretofore made by me and declare
 this to be my last will and testament.

1.—I appoint my wife Ajah Fatmatta Katah and my sons Alhadi
 Barber and Alhadi Antumani (hereinafter called my trustees) to be the
 Executors and Trustees of this my will.

2.—I devise unto my said Executors and Trustees Firstly :—All that
 messuage and hereditaments situate and being in Kissy Street in Freetown
 aforesaid and numbered (30) thirty by the City Council of Freetown and
 Secondly :—All that messuage and hereditaments situate and being at 20
 Lower Bay, Kissi Town and numbered 9 for taxation purposes Upon Trust
 for my daughter Sock-nah her heirs and assigns in fee simple and as tenants
 in common.

3.—I devise all that messuage and hereditaments situate and being
 in Rawdon Street in Freetown aforesaid and numbered (46) forty-six by
 the City Council unto my son Demba his heirs and assigns in fee simple and
 as tenants in common.

4.—I give and devise unto my wife Ajah Fatmatta Katah for her life-
 time Firstly :—All that messuage and hereditaments situate and being in 30
 Magazine Street and numbered (8) Eight by the City Council of Freetown
 Secondly :—All that messuage and hereditaments situate and being in East
 Street in Freetown aforesaid and numbered (23) Twenty three by the City
 Council of Freetown ; Thirdly :—All that messuage and hereditaments
 situate and being in Fourah Bay Road in Freetown aforesaid and numbered
 (2) Two by the City Council of Freetown ; Fourthly :—All Those messuages
 and hereditaments situate and being in Kissy Road in Freetown aforesaid
 and numbered respectively (2) Two, (5-5A) Five to Five A by the City
 Council of Freetown ; Fifthly :—All that messuage and hereditaments
 situate and being in Fisher Street in Freetown aforesaid and numbered 40
 (20) Twenty by the City Council of Freetown and after her death or re-
 marriage I devise the same unto my trustees upon Trust for my son Alhadi
 Attumani his heirs and assign in fee simple and as tenants in common.

5.—I give and devise unto my said Executors and Trustees Firstly :— All that messuage and hereditaments situate and being in Lumley Street in Freetown and numbered (31) Thirty one by the City Council, Secondly :— All that messuage and hereditaments situate and being in Percival Street in Freetown aforesaid and numbered (12) Twelve by the City Council of Freetown and Thirdly :—All that lot piece or parcel of land situate lying and being in Magazine Cut and numbered (15) Fifteen by the City Council of Freetown upon trust for my son Alhadi Barber his heirs and assigns in fee simple.

Exhibits.
—
C.
Defendant's
Supple-
mentary
Affidavit of
Scripts,
6th July,
1949—
continued.

10 6.—I give and devise Firstly :—All that messuage and hereditaments situate and being in Guard Street, Railway Line and numbered (7) Seven by the City Council of Freetown and Secondly :—All that empty lot of land situate lying and being in Reader Street in Freetown aforesaid and numbered (8) by the City Council of Freetown unto my son Ibrahima his heirs and assigns in fee simple.

7.—I give and devise all that messuage and hereditament situate in Circular Road in Freetown unto my said Executors and Trustees Upon Trust for my son Demba his heirs and assigns in fee simple.

20 8.—I devise unto my said Executors and Trustees Firstly :—All that messuage and hereditaments situate and being in East Brook Lane Freetown numbered (10) Ten by the City Council of Freetown ; Secondly :— All that messuage and hereditaments situate and being in Wharf Road (Line Town in Freetown and numbered (7) Seven by the City Council ; Thirdly :—All that messuage and hereditaments situate and being in Benjamin Lane in Freetown aforesaid and numbered (14) Fourteen by the City Council and Fourthly :—All that messuage and hereditaments situate and being in Susan's Bay Frontage and numbered (1) One by the said City Council of Freetown Upon Trust for my son Kemok his heirs and assigns in fee simple.

30 9.—I devise unto my said Executors and Trustees all that messuage and hereditaments situate and being in Bambarra Spring and numbered (44) Forty four by the City Council upon trust for my son Demba his heirs and assigns in fee simple.

10.—I give and devise unto my said Executors and Trustees all that messuage and hereditaments situate and being in Henry Street (East) and numbered (7) Seven by the City Council for the payment of rates upon trust for my son Malligy in fee simple.

40 11.—I devise unto my said Executors and Trustees Firstly :—All that messuage and hereditaments situate and being in Circular Road in Freetown and numbered (93) Ninety three by the said City Council ; Secondly :—All that messuage and hereditaments situate and being in Edward Lane in Freetown aforesaid and numbered (17) Seventeen by the City Council upon trust for my son Ibrahima, the brother of Kemok by one mother.

Exhibits.
 C.
 Defendant's
 Supplementary
 Affidavit of
 Scripts,
 6th July,
 1949—
continued.

12.—I devise unto my said Executors and Trustees all that messuage and hereditaments situate in Bathurst Street in Freetown aforesaid and numbered (4) Four by the said City Council upon trust for my son Abdulee his heirs and assigns in fee simple and as tenants in common.

13.—I give and devise all those messuages and hereditaments situate in East Street Freetown and numbered 967 and 1145 in the Public Register and Plan of town lots of land for Freetown and 46 and 50 by the said City Council and also all that messuage and hereditaments situate and being in East Street aforesaid and numbered (43) Forty three by the City Council of Freetown for the payment of rates unto and to the use of my wife Ajah Fatmatta Kata for and during her lifetime or so long as she remains my widow and after her death or remarriage whichever even shall first happen I devise the said messuages and hereditaments unto my said Executors and Trustees upon trust for my son Alhadi Attumani and any other child or children of mine who are now or hereafter may be born by my said wife Ajah Fatmatta Kata in equal shares and as tenants in common not to be sold. 10

14.—I give and devise all that messuage and hereditaments situate and being in Circular Road in Freetown aforesaid and numbered (174A) One hundred and seventy four A by the said City Council upon trust for my son Ibrahim, the brother of Kemok by one mother. 20

15.—I devise unto my said Executors and Trustees Firstly :—All that messuage and premises situate in Waterloo Street Freetown and numbered (45) Forty five by the said City Council and Secondly :—All that messuage and premises situate in James Street Freetown and numbered (3) Three by the said City Council upon trust for my son Marmodu-Lee the brother of Malligy, his heirs and assigns in fee simple.

16.—I devise unto my said Trustees Firstly :—All that messuage and hereditaments situate and being in Dougan Street in Freetown aforesaid and numbered (23) Twenty three by the City Council ; Secondly :—All those messuages and premises situate and being in Garrison Street in Freetown aforesaid and numbered (30-30D) Thirty to Thirty D and also (22- and 22A) Twenty two and twenty two A and Thirdly :—All those messuages and hereditaments situate and being in Pultney Street in Freetown Street in Freetown aforesaid and numbered (25-25a) Twenty five to twenty five A upon trust for my daughter (Sucknali) Mariama at present residing at Madina her heirs and assigns as tenants in common. And I hereby direct and declare that the rents of the said premises after deduction all expenses for repairs and rates should be sent to her from time to time. 30 40

17.—I devise Firstly :—All that messuage and premises situate in Wellington Road Kissy and numbered (19) Nineteen for taxation purposes : Secondly :—All that messuage and premises situate and being in Calabar Town Wellington Village and numbered (13) Thirteen for taxation purposes :

Thirdly :—All that messuage and premises situate and being in Kossoh Town Hastings and Fourthly :—All that messuage and premises situate and being in Rokelle Road Hastings unto and to the use of my wife Ajah Fatmattah Kata absolutely (her heirs and assigns).

Exhibits.
— — —
C.
Defendant's
Supple-
mentary
Affidavit of
Scripts,
6th July,
1949 —
continued.

18.—I devise all my empty lot of land situate and being in Magazine Cut Freetown where late Bunjie Rainy Lumpkin Undertaker lately tenanted for keeping his Hearse unto my son Ibrahim for the purpose of building a Mosque.

19.—I devise unto my said executors and Trustees Firstly :—All that message and hereditaments situate in Jenkins Street in Freetown aforesaid and numbered (4) Four by the City Council of Freetown and Secondly :—All those messuages and hereditaments situate and being in Jenkins Street aforesaid and numbered (10-10B) Ten to ten B upon trust for my daughter Nehneh in fee simple.

20.—I devise Firstly :—All that messuage and hereditaments situate and being in Guard Street Railway Line in Freetown aforesaid and numbered (9) Nine by the City Council of Freetown ; Secondly :—All those messuages and hereditaments situate and being in Martin Street in Freetown aforesaid and numbered (17 & 17A) Seventeen and seventeen A and Thirdly :—All that messuage and premises situate and being in Main Road Granville Bay and numbered (9) unto and to the use of my wife Ajah Fatmattah Kata absolutely.

21.—I devise unto my said executors and trustees Firstly :—All that messuage and hereditaments situate and being in Circular Road in Freetown aforesaid and numbered (8) Eight by the City Council of Freetown and Secondly :—All those messuages and hereditaments situate and being in Horton Street in Freetown aforesaid and numbered (24 and 24A) Twenty four and twenty four A upon trust for my daughter Kadiah at present residing at Madina her heirs and assigns as tenants in common. And I hereby direct and declare that the rents of the said premises after deduction all expenses for repairs and rates should be sent to her from time to time.

22.—I devise unto my said executors and trustees all that messuage and hereditaments situate and being Jenkins Street in Freetown aforesaid and numbered (5) Five by the said City Council upon trust for my son Abbas his heirs and assigns as tenants in common.

23.—I devise unto my said executors and trustees all that messuage and hereditaments situate and in Manfred Lane in Freetown aforesaid and numbered (3) three by the said City Council upon trust for my daughter Isatu the sister of Nehneh in fee simple.

24.—I devise unto my said executors and trustees all that messuage and hereditaments situate and being in Krootown Road in Freetown

Exhibits. aforesaid and numbered (33) Thirty three by the said City Council upon
 C. trust for my son Marmudu-Lee (Burnt Hand) his heirs and assigns as tenants
 Defendant's in common.

Supple-
 mentary
 Affidavit of
 Scripts,
 6th July.
 1949—
continued.

25.—I devise unto my said executors and trustees Firstly :—All that messuage and hereditaments situate and being in East Street in Freetown aforesaid and numbered (48) Forty eight by the said City Council and Secondly :—All that messuage and hereditaments situate and being in Walpole Street in Freetown aforesaid and numbered (9) by the said City Council of Freetown Upon Trust for my son Alhadi Attumani his heirs and assigns in fee simple.

10

27.—I give and bequeath all my wearing apparel and jewellery and ornaments of the person unto and to the use of all my sons herein named in equal shares.

28.—I give and bequeath all the household furniture and effects belonging to me in any of the premises herein devised unto the respective devisees thereof.

29.—I give and bequeath unto my said wife Ajah Fatmatta Katah all my cattle consisting of bullocks cows goats and sheep, absolutely.

30.—I devise and bequeath all my real and personal estate not hereby otherwise disposed of unto my said executors and trustees upon trust that my said executors and trustees shall sell call in and convert into money the same or such part thereof as shall not consist of money and shall with and out of the moneys produced by such sale calling in and conversion and with and out of such part of my personal estate as shall consist of money pay my funeral and testamentary expenses and debts and the legacies bequeathed by this my will or any codicil hereto And shall stand possessed of the residuary trust moneys upon trust for all my children herein named who being sons shall attain the age of 21 years or being daughters shall attain that age or shall marry and if there shall be only one such child the whole to be in trust for that one child Provided always that if any child of mine shall die leaving a child or children who shall survive him or her and being a son or sons shall attain the age of twenty one years or being a daughter shall attain the age of twenty one years or marry then and in every such case the last mentioned child or children shall take (and if more than one equally between them) the share which his her or their parent would have taken in the residuary trust funds.

30

31.—I hereby direct that during the minority of any of the devisees herein named my said executors and trustees shall rent the/messuage and hereditaments devised to each of them under this my will for the best rent obtainable and shall pay all outgoings in respect thereof and shall pay from time to time such portion of the residue of the said rent as they shall think fit to the guardian of each devisee to be applied towards the maintenance

40

education and support of such infant devisees And I declare that the receipt of the guardian of any of the devisees and legatees under this my will shall be a sufficient discharge to my said executors and trustees for any payment made by them or any of them.

32.—And I further direct that during the minority of any of the devisees and legatees under this my will my executors and trustees shall have power and I hereby authorise and empower them to invest all monies bequeathed or due to them under this my will any of this Colony and shall pay from time to time such portion thereof as they shall think fit to the guardian of the
 10 respective legatees to be applied by them towards the maintenance education and support of such infant.

33.—And I further declare and direct that in case any of my children herein named shall die whether in my lifetime or after my decease under the age of twenty one years or shall die in my lifetime after attaining that age but without leaving issue surviving him or her then I direct the estate share and interest under this my will of such child so dying shall go and belong to and devolve upon and become vested in my other children herein named in equal shares and as tenants in common.

34.—I hereby declare that notwithstanding anything to the contrary
 20 herein my executors and trustees shall immediately after my death pay to my wife the said Ajah Fatamtta Katah a sufficient sum of money for her temporary maintenance and support And I direct that she shall immediately after the expiration of four months and ten days after my death take possession of the messuage and premises devised to her for her, herein.

35.—I hereby declare and direct that my said executors and trustees shall perform the funeral rites of the third seventh and fortieth days respectively after my death as befitting my position in life.

36.—I further direct that my trustees shall have the fullest power generally of determining all matters as to which any doubt difficulty or
 30 question may arise under or in relation to the execution of the trusts of this my will or codicil thereto And I further declare that any determination of my Trustees in relation to any of the matters aforesaid whether made upon a question formerly or actually raised or implied in any of the acts or proceedings in relation to the premises shall bind all parties interested under this my will and shall not be objected to or questioned upon any ground whatsoever.

37.—I hereby direct and declare that all sums specifically charged on any hereditaments and premises devised by this my will or any part thereof at my death (either by mortgage or otherwise) shall be as between the persons
 40 taking the said hereditaments and premises under this my will and the persons interested in my personal estate and my other real estate under this my will or any codicil hereto be considered as exclusively charged on the

Exhibits.

C.
 Defendant's
 Supplementary
 Affidavit of
 Scripts,
 6th July,
 1949—
continued.

Exhibits. said hereditaments and premises in exoneration of my personalty or other
 real estate. Residue to wife.

C.
 Defendant's
 Supple-
 mentary
 Affidavit of
 Scripts,
 6th July,
 1949—
continued.

38.—I appoint the Honourable Claude Emile Wright of Gloucester
 Street Freetown Barrister-at-Law the Solicitor for my estate and I direct
 my Trustees to consult him professionally in all matters connected with
 my estate IN WITNESS whereof I have hereunto set my hand to this my
 will this 25th day of July in the year of Our Lord One thousand nine hundred
 and forty-two.

MORMODU ALLIE his
X
mark 10

(Signature in arabic).

Signed and acknowledged by the Testator as and for
 his last will and testament the said will having been
 first read over and explained to the said Testator
 and he seemed perfectly to understand the same
 before signing his name in Arabic and making his
 mark thereto as hereinabove appears 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 :— 20

J. CONI DOUGAN,
 16 Skelton Street, Wilberforce.
Solicitor's Clerk.
 M. S. MACAULEY,
 13 Regent Road, Freetown.
Retired Civil Servant.

D. and E.
 Defendant's
 Petition
 and Will of
 1946 and
 Codicil of
 1947.

D. & E.—Defendant's Petition and Will of 1946 and Codicil of 1947.

The humble Petition of Ahmed Alhadi, Official Administrator Sheweth as
 follows :— 30

1.—Your Petitioner has been informed by the executors named in the
 will of the said Mormordu Allie deceased; and believes that Mormordu Allie
 late of 8 Magazine Street, Freetown, died on the 22nd day of January 1948
 having made his last will and that the said deceased died possessed of
 property in Sierra Leone.

2.—That the estate will probably be damaged or purloined and that
 great expense will be saved were Citation to be dispensed with.

3.—Your Petitioner therefore prays that Your Honourable Court will be pleased to order that a Grant be made of Letters of Administration with the will and codicil annexed to him to administer the estate of the said Mormordu Allie, deceased.

4.—Your Petitioner be empowered to sell either by Public Action or Private treaty so much of the properties listed in paragraphs 2, 16, 21 and 26 of the will of the said Mormordu Allie, deceased, and those properties not specifically devised in the will as may be necessary to pay for the testamentary and funeral expenses, stamp and court fees for probate and the expense of appraising for purpose of valuation for probate and all just debts owing by the estate of the said Mormordu Allie, deceased.

Dated the 10th day of March, 1948.

A. ALHADI,
Official Administrator.

IN THE SUPREME COURT OF SIERRA LEONE.

In the Matter of the Estate of Mormordu Allie, Deceased,
and

In the Matter of the Administration of Estates Ordinance, 1945.

I, AHMED ALHADI, of 19 Fifth Street, Freetown, Sierra Leone, Official Administrator of Sierra Leone, make oath and say as follows :—

1.—That the said Mormordu Allie, deceased, made and executed his last will and testament with a codicil and thereof appointed his widow Ajah Fatmatta Katah and his sons Alhadi Barber and Alhadi Antumani his executors and trustees.

2.—That the said deceased died on the 22nd January 1948 at 8 Magazine Street in Freetown aforesaid without having revoked the said will and codicil.

3.—That by virtue of an instrument dated the 10th day of February 1948 the said Ajah Fatmatta Katah, Alhadi Barber and Alhadi Antumani renounced all their rights and title to the Probate and execution of the said will and codicil in favour of the said Official Administrator.

4.—That the said will and codicil have been duly registered in the Registrar-General's Office and the renunciation duly filed in the Master's Office attached to the Supreme Court of Sierra Leone.

5.—That I believe the paper writings hereto annexed and marked by me to contain the true and original will and testament and codicil of the said Mormordu Allie, deceased.

Exhibits.
—
D. and E.
Defendant's
Petition
and Will of
1946 and
Codicil of
1947—
continued.

Exhibits.
—
D. and E.
Defendant's
Petition
and Will of
1946 and
Codicil of
1947—
continued.

6.—That I will well and faithfully administer the estate as vested in the executors of the will of said Mormordu Allie, deceased, and that the gross value of the said estate amounts to the sum of £86,000 and no more to the best of my knowledge, information and belief.

7.—That the deceased at the time of his death was, apart from funeral, appraisement fees and administration expenses, indebted to amongst others the following persons and in the sums more or less mentioned opposite their names :—

	£	s.	d.	
Barclays Bank	2,400	10	1	10
Income Tax Department	1,341	8	10	
M. K. Basma	600	0	0	
Hassan Basma	450	0	0	
Abdulai Jallo	360	0	0	
Harouna Tarawali	360	0	0	
Mormordu Bah	300	0	0	
Khuda Mansaray	52	0	0	
Ahmadu Jallo	52	0	0	
Freetown Cold Storage Co.	400	0	0	
E. D. Morgan... ..	2,300	0	0	20
Mason	1,500	0	0	

8.—That the estate will probably be damaged or purloined and that great expense will be avoided were Citation to be dispensed with.

9.—That the total amount required for immediate distribution amounts to £10,116 3s. 11d. apart from stamp duty on the Probate estate value of £86,000.

10.—That the deceased by his said will and codicil devised in paragraphs 2, 16 and 21 thereof certain real properties to his daughter Kadiah who predeceased him.

11.—That in paragraph 26 of the said Will the deceased directed that 30 the rents accruing from the properties mentioned therein should be used to pay rates, taxes and repairs and the balance used to defray travelling expenses and maintenance of any member of his family who may visit Freetown from his home Jaber.

12.—That the deceased left no cash at the time of his death.

13.—That on the 6th day of March, 1948, the deceased's widow wrote the said Official Administrator to the effect that a few of the deceased's properties should, on account of the deceased's liabilities, be sold by private contract and not by public auction. Letter attached hereto and marked.

14.—That on the 6th March 1948 the deceased's widow wrote to the Official Administrator to the effect that the deceased's property situate at 16, 16a and 16b Little East Street Freetown be sold to one Salim Aboud for £3,200. Letter attached hereto and marked.

Exhibits.
—
D. and E.
Defendant's
Petition
and Will of
1946 and
Codicil of
1947—
continued.

15.—That to the best of my knowledge and belief the said offer of £3,200 0s. 0d. is reasonable and that the said property was purchased by the deceased for £3,000 in 1943.

10 16.—That so much of the deceased's properties not specifically devised and those listed in paragraphs 2, 16, 21 and 26 of the said will of the said Mormordu Allie, deceased, as may be necessary to pay for the testamentary and funeral expenses, stamp and court fees for Probate and the expense of appraising for purpose of valuation for probate and all just debts owing by the estate of the said Mormordu Allie, deceased, be sold either by public auction or by private treaty in accordance with the wishes of the widow who is the residuary legatee and devisee under the said will.

17.—That the nett proceeds of such sales are to be used in probate fees, funeral expenses, cost of appraising the estate of the said deceased for probate duty, all just debts owing by the estate.

A. ALHADI.

20 Sworn at Freetown this 10th day of March 1948 at 11.10 o'clock in the forenoon.

Before me,

E. CUMMINGS-JOHN,

A Commissioner for Oaths.

This is the will referred to in the Affidavit of Ahmed Alhadi sworn to on the 10th day of March 1948 and marked "A."

E. CUMMINGS-JOHN,

30

A Commissioner for Oaths.

I, MORMORDU ALLIE of No. 8 Magazine Street, Freetown, in the Colony of Sierra Leone, Butcher, hereby revoke all Wills and Codicils and other testamentary dispositions heretofore made by me and declare this to be my last Will and Testament.

1.—I appoint my wife Ajah Fatmatta Katah and my sons Alhadi Barber and Alhadi Antumani (hereinafter called my trustees) to be the Executors and Trustees of this my will.

2.—I devise unto my said Executors and Trustees Firstly:—All that messuage and hereditaments situate and being No. 30 Kissy Street, Free-
40 town, Secondly :—All that messuage and hereditaments situate and being

- Exhibits. No. 9 Lower Bay, Kissy Town Upon Trust for my daughter Sock-Nah her heirs and assigns, in fee simple and as tenants in common.
- D. and E. Defendant's Petition and Will of 1946 and Codicil of 1947—
continued.
- 3.—I devise all that messuage and hereditaments situate and being No. 46 Rawdon Street in Freetown aforesaid unto my son Demba his heirs and assigns in fee simple and as tenants in common.
- 4.—I give and devise unto my wife the said Ajah Fatmatta Katah for her lifetime Firstly :—All that messuage and hereditaments situate and being No. 8 Magazine Street, Freetown, Secondly :—all that messuage and hereditaments situate and being No. 23 East Street, Freetown ; Thirdly :—All that messuage and hereditaments situate and being No. 2 Fourah Bay Road, Freetown ; Fourthly :—All those messuages and hereditaments situate and being Nos. 2, 5-5A Kissy Road, Freetown ; Fifthly :—All that messuage and hereditaments situate and being No. 20 Fisher Street, Freetown ; Sixthly :—All that messuage and hereditaments situate and being No. 6 Magazine Cut ; and after her death or remarriage I devise the above-mentioned premises Unto my Trustees Upon Trust for my son Alhadi Attumani his heirs and assigns in fee simple and as tenants in common. 10
- 5.—I give and devise unto my said Executors and Trustees Firstly :—All that messuage and hereditaments situate and being No. 31 Lumley Street, Freetown ; Secondly :—All that messuage and hereditaments situate and being No. 12 Percival Street, Freetown, and Thirdly :—All that lot piece or parcel of land messuage and hereditaments situate and being No. 15 Magazine Cut, Freetown, Upon Trust for my son Alhadi Barber his heirs and assigns in fee simple and as tenants in common. 20
- 6.—I give and devise Firstly :—All that messuage and hereditaments situate and being No. 7 Guard Street Railway Line, Freetown, and Secondly :—All that empty lot of land situate lying and being in Reader Street in Freetown aforesaid and numbered Eight (8) by the City Council of Freetown Unto my son Ibrahim his heirs and assigns in fee simple.
- 7.—I give and devise all that messuage and hereditaments situate and being No. 3 Circular Road, Freetown, unto my said Executors and Trustees Upon Trust for my son Demba his heirs and assigns in fee simple and as tenants in common. 30
- 8.—I devise unto my said Executors and Trustees Firstly :—All that messuage and hereditaments situate and being No. 10 East Brook Lane, Freetown ; Secondly :—All that messuage and hereditaments situate and being No. 7 Wharf Road, Cline Town ; Thirdly :—All that messuage and hereditaments situate and being No. 14 Benjamin Lane, Freetown ; and Fourthly :—All that messuage and hereditaments situate and being No. 1 Susan's Bay Frontage, Freetown, Upon Trust for my son Kemok his heirs and assigns in fee simple and as tenants in common. 40

9.—I devise unto my said Executors and Trustees All that messuage and hereditaments situate and being No. 44 Bambarra Spring Upon Trust for my son Demba his heirs and assigns in fee simple and as tenants in common.

Exhibits.

D. and E.
Defendant's
Petition
and Will of
1946 and
Codicil of
1947—
continued.

10.—I give and devise unto my said Executors and Trustees all that messuage and hereditaments situate and being in Henry Street (East) and numbered 7 (Seven) Upon Trust for my son Malligy in fee simple.

11.—I devise unto my said Executors and Trustees Firstly :—All that messuage and hereditaments situate and being No. 93 Circular Road ;
10 Secondly, All that messuage and hereditaments situate and being No. 17 Edward Lane, Freetown, Upon Trust for my son Ibrahima, the brother of Kemok by one mother.

12.—I devise unto my said Executors and Trustees all that messuage and hereditaments situate and being No. 4 Bathurst Street, Freetown, Upon Trust for my son Abdulee his heirs and assigns in fee simple and as tenants in common.

13.—I give and devise all those messuages and hereditaments situate in East Street, Freetown, and numbered 967 and 1145 in the Public Register and Plan of town lots of land for Freetown and also numbered 46 and 50 by
20 the City Council of Freetown aforesaid AND ALSO ALL that messuage and hereditaments situate and being No. 43 East Street, Freetown, Unto and to the use of my said wife Ajah Fatmatta Kata for and during her lifetime or so long as she remains my widow and after her death or remarriage whichever event shall first happen I devise the said messuage and hereditaments unto my said Executors and Trustees Upon Trust for my son Alhadi Attumani and any other child or children of mine who are now or hereafter may be born by my said wife Ajah Fatmatta Kata in equal shares and as tenants in common.

14.—I give and devise all that messuage and hereditaments situate
30 and being No. 174A Circular Road, Freetown, Unto my said Executors and Trustees Upon Trust for my son Ibrahima, the brother of Kemok by one mother.

15.—I devise unto my said Executors and Trustees Firstly :—All that messuage and premises situate and being No. 45 Waterloo Street and Secondly :—All that messuage and premises situate and being No. 3 James Street, Freetown, Upon Trust for my son Marmodu-Lee the brother Maliggy, his heirs and assigns in fee simple and as tenants in common.

16.—I devise unto my said Trustees Firstly :—All that messuage and hereditaments situate and being No. 23 Dougan Street, Freetown ;
40 Secondly :—All those messuages and hereditaments situate and being

Exhibits.
 —
 D. and E.
 Defendant's
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 1947—
continued.

No. 30-30D Garrison Street, Freetown, and 22 and 22A Garrison Street aforesaid and Thirdly :—All those messuages and hereditaments situate and being Nos. 25-25A, Pultney Street, Freetown, aforesaid Upon Trust for my daughter Sock-Nali her heirs and assigns in fee simple and as tenants in common.

17.—I devise Firstly :—All that messuage and premises situate in Wellington Road Kissy and numbered Nineteen (19) for taxation purposes ; Secondly :—All that messuage and premises situate and being in Calabar Town Wellington Village and numbered Thirteen (13) for taxation purposes ; Thirdly :—All that messuage and premises situate and being in Kossoh Town Hastings and Fourthly :—All that messuage and premises situate and being in Rokelle Road Hastings Unto and to the use of my wife Ajah Fatmattah Kata her heirs and assigns as tenants in common. 10

18.—I devise all my empty lot of land situate and being in Magazine Cut, Freetown, where late Bunjie Rainy Lumpkin Undertaker lately tenanted for keeping his Hearse unto my son Ibrahima for the purpose of erecting a Mosque either alone or jointly with others for the common use of all my people for prayer.

19.—I devise unto my said Executors and Trustees Firstly :—All that messuage and hereditaments situate in Jenkins Street in Freetown aforesaid and numbered Four (4) and Secondly :—All those messuages and hereditaments situate and being Nos. 10-10B Jenkins Street aforesaid Upon Trust for my daughter Nehneh in fee simple. 20

20.—I devise Firstly :—All that messuage and hereditaments situate and being No. 9 Guard Street Railway Line, Freetown ; Secondly, All those messuages and hereditaments situate and being Nos. 17 and 17A Martin Street, Freetown ; and Thirdly :—All that messuage and premises situate and being in Main Road Granville Bay and numbered Nine (9) Unto and to the use of my wife Fattmattah Kata absolutely.

21.—I devise unto my said Executors and Trustees Firstly :—All that messuage and hereditaments situate and being No. 8 Circular Road, Freetown ; and Secondly :—All those messuages and hereditaments situate and being in Horton Street in Freetown aforesaid and numbered 24 and 24A Upon Trust for my daughter Kadiah at present residing at Madina, her heirs and assigns as tenants in common. AND I hereby direct and declare that the rents of the said premises after deducting all expenses for repairs and rates should be sent to her from time to time. 30

22.—I devise unto my said executors and trustees all that messuage and hereditaments situate and being in Jenkins Street in Freetown aforesaid and numbered Five (5) Upon Trust for my son Abbas his heirs and assigns as tenants in common. 40

23.—I devise unto my said Executors and Trustees all that messuage and hereditaments situate and being in Manfred Lane in Freetown aforesaid and numbered Three (3) Upon Trust for my daughter Isatu the sister of Nehneh, her heirs and assigns as tenants in common.

Exhibits.
—
D. and E.
Defendant's
Petition
and Will of
1946 and
Codicil of
1947—
continued.

24.—I devise unto my said executors and trustees all that messuage and hereditaments situate and being in Krootown Road in Freetown aforesaid and numbered Thirty three (33) Upon Trust for my son Marmudu-Lee (Burnt Hand) his heirs and assigns as tenants in common.

25.—I devise unto my said executors and trustees Firstly :—All that
10 messuage and hereditaments situate and being No. 48 East Street and
Secondly :—All that messuage and hereditaments situate and being No. 9
Walpole Street, Freetown, Upon Trust for my son Alhadi Attumani his
heirs and assigns as tenants in common.

26.—I devise unto my executors and trustees the following properties,
namely, Nos. 2 Pownall Street, 16-16B Little East Street, 21 Garrison Street,
6 Bambarra Spring, 8 Water Street, 2 Garrison Street, 29B Lumley Street
and 1-1A Krootown Road, Freetown, aforesaid Upon Trust that they shall
put them out on rent and to utilise the rents accruing therefrom for the
payment of the respective rates, taxes and repairs and the balance to be
20 deposited by them in a bank to defray the travelling expenses and mainten-
ance of any of member of my family who may come to Freetown on a visit
from my home Jaber.

27.—I give and bequeath all my wearing apparel and jewellery and
ornaments of the person unto and to the use of all my sons herein named in
equal shares.

28.—I give and bequeath all the household furniture and effects
belonging to me in any of the premises herein devised unto the respective
devises thereof.

29.—I give and bequeath unto my said wife Ajah Fatmatta Katah all
30 my cattle consisting of bullocks cows goats and sheep absolutely.

30.—I hereby declare and empower my said executors and trustees to
allow no sale of any of the properties herein devised and that any house
devised herein and being under mortgage or any charge, such mortgage
debt should be paid by my said executors and trustees from the rents of all
my properties as well as the my funeral and testamentary expenses and just
debts (if any) and any legacies bequeathed by this my will.

31.—I hereby direct that during the minority of any of the devisees
herein named my said executors and trustees shall rent the messuage and
hereditaments devised to each of them under this my Will for the best rent

Exhibits.
 —
 D. and E.
 Defendant's
 Petition
 and Will of
 1946 and
 Codicil of
 1947—
continued.

obtainable and shall pay out all outgoings in respect thereof and shall pay from time to time such portion of the residue of the said rent as they shall think fit to the guardian of each devisee to be applied towards the maintenance education and support of each infant devisee subject however to the payments as mentioned in paragraph 30 of this my Will AND I declare that the receipt of the guardian of any of the devisees and legatees under this my Will shall be a sufficient discharge to my said executors and trustees for any payment made by them or any of them.

32.—And I further direct that during the minority of any of the devisees and legatees under this my Will my executors and trustees shall have power and I hereby authorise and empower them to invest all monies bequeathed or due to them under this my Will in any Bank of this Colony and shall pay from time to time such portion thereof as they shall think fit to the guardian of the respective legatees as aforesaid. 10

33.—And I further declare and direct that in case any of my children herein named shall die whether in my lifetime or after my decease under the age of twenty one years or shall die in my lifetime after attaining that age but without leaving issue surviving him her or them then I direct the estate share and interest under this my Will of such child or children so dying shall go and belong to and devolve upon and become vested in my other children herein named in equal shares and as tenants in common. 20

34.—I hereby declare that notwithstanding anything to the contrary herein my said executors and trustees shall immediately after my death pay to my wife the said Fatmattah Katah (Ajah) a sufficient sum of money for her temporary maintenance and support And I direct that she shall immediately after the expiration of four months and ten days after my death take possession of the messuage and premises devised to her herein.

35.—I hereby declare and direct that my said executors and trustees shall perform the funeral rites of the third seventh and fortieth days respectively after my death as befitting my position in life. 30

36.—I further direct that my trustees shall have the fullest power generally of determining all matters as to which any doubt difficulty or question may arise under or in relation to the execution of the trusts of this my Will And I further declare that any determination of my trustees in relation to any of the matters aforesaid whether made upon a question formerly or actually raised or implied in any of the acts or proceedings in relation to the premises shall bind all parties interested under this my Will and shall not be objected to or questioned upon any ground whatsoever.

37.—All the rest and residue of my real or personal estate and effects of whatsoever kind and wheresoever situate I give devise and bequeath unto my wife the said Ajah Fatmatta Katah absolutely. 40

38.—I appoint the Honourable Claude Emile Wright of Gloucester Street Freetown Barrister-at-Law the Solicitor for my estate and I direct my trustees to consult him professionally in all matters connected with my estate over which they may have any doubt IN WITNESS whereof I have hereunto set my hand to this my Will this 30th day of August in the year of Our Lord One thousand nine hundred and forty six.

(Signature in Arabic).

MORMODU ALLIE

his
X
mark

10

Signed and acknowledged by the Testator as and for his last will and testament the said will having been first read over and explained to the said Testator and he seemed perfectly to understand the same before signing his name in Arabic and making his mark thereto as hereinabove appear in the presence of us present at the same time have hereunto subscribed our names as witnesses :—

J. CONI DOUGAN,
16 Skelton Street, Wilberforce.
Solicitor's Clerk.

20

M. S. MACAULEY,
13 Regent Road, Freetown.

Certified True Copy.

A. ALHADI,

Master and Registrar.

I, MORMODU ALLIE, of No. 8 Magazine Street, Freetown, in the Colony of Sierra Leone, Butcher, hereby declare this to be a Codicil to my last will and testament dated 30th August 1946. WHEREAS in paragraphs two and sixteen of my said will I devised certain hereditaments and premises therein described unto my said executors and trustees upon trust for my daughter Sock-Nah otherwise called Sock-Nali. I HEREBY CANCEL the said devises to the said Sock-Nah otherwise called Sock-Nali and I hereby devise the said hereditaments and premises as described in the said paragraphs two and sixteen of my said will unto my said Executors and Trustees Upon Trust for my daughter Kadijah at present residing at Madina her heirs and assigns as tenants in common.

30

And in all other respects I confirm my said will IN WITNESS whereof I have hereunto set my hand this 19th day of July in the year of Our Lord One thousand nine hundred and forty seven.

40

(Signature in Arabic).

MORMODU ALLIE

his
X
mark

Exhibits.
D. and E.
Defendant's
Petition
and Will of
1946 and
Codicil of
1947—
continued.

Exhibits. Signed and acknowledged by the Testator as a
 ——— Codicil to his last will the said Codicil having ben
 D. and E. first read over and explained to the said Testator
 Defendant's and he seemed perfectly to understand the same
 Petition and Will of before signing his name in Arabic and making his
 1946 and mark thereto as hereinabove appear in the presence
 Codicil of of us present at the same time who in his presence
 1947— and in the presence of each other have hereunto
continued. subscribed our names as witnesses :—

J. CONI DOUGAN, 10
 16 Skelton Street, Wilberforce.
Solicitor's Clerk.

M. S. MACAULEY,
 13 Regent Road, Freetown.

Certified True Copy.

A. ALHADI,
Master and Registrar.

8 Magazine Street,
 Freetown.

6th March, 1948. 20

A. Alhadi Esq.,
Official Administrator.

Sir,

Estate of Mormordu, Deceased.

I hereby request that I do not want any of the property to be sold by Public Auction but by private contract.

If you have any offer you will please consult me and I shall consult you of any offer I have.

I am obliged to sell a few properties on account of the debts on the Estate, because my late husband and I do not like to sell any property. 30

Yours faithfully,

HAJA FATMATTA.

This is the letter referred to in the Affidavit of Ahmed Alhadi sworn to on the 10th day of March 1948 and marked "C."

E. CUMMINGS-JOHN,
A Commissioner for Oaths.

8 Magazine Street,
Freetown.

A. Alhadi Esq.,
Official Administrator.

6th March, 1948.

Sir,

Estate of Mormordu Allie, deceased.

I have to inform you that I have agreed to sell No. 16, 16a and 16b Little East St. to Mr. Salim Aboud for £3,200.

Please receive a deposit of £600 cheque from him.

10 If you say to wait for Monday all the same please receive the deposit £600 from him and you will give him a receipt.

Yours faithfully,

HAJA FATMATTA.

This is the letter referred to in the affidavit of Ahmed Alhadi sworn to on 10th day of March 1948 and marked "C1."

E. CUMMINGS-JOHN,
A Commissioner for Oaths.

G.—Defendant's Affidavit of Scripts, Will of 1939 annexed.

20 I AHMED ALHADI of 19 Fifth Street Freetown Official Administrator the Defendant in this action make oath and say that no paper writing or parchment being or purporting to be, or having the form or effect of a Will or Codicil or testamentary disposition of Mormordu Allie late of 8 Magazine Street, Freetown, in the Colony aforesaid, deceased the Deceased in this action, or being or purporting to be instructions for, or the draft of any Will, Codicil, or other testamentary disposition of the said Mormordu Allie has at any time, either before or since his death come to the hands possession or knowledge of me this deponent or to the hands possession or knowledge of my Solicitor in this action so far as is known to me this deponent save and
30 except the true and original last will and Codicil thereto of the said deceased now remaining in the Probate Registry of this Court the said Will bearing date the 30th day of August 1946 and the said Codicil bearing date the 19th day of July 1947 also save and except a Will executed by the said deceased now remaining in my possession bearing date the 20th day of August 1939, and amended hereto.

A. ALHADI.

Sworn by the above-named deponent at Freetown this 10th day of September 1948 at 9.30 o'clock in the forenoon

40 before me,

E. CUMMINGS-JOHN,
A Commissioner for Oaths.

This Affidavit is filed on behalf of the Defendant.

Exhibits.

—
D. and E.
Defendant's
Petition
and Will of
1946 and
Codicil of
1947—
continued.

G.
Defendant's
Affidavit of
Scripts and
Will of
1939.

Exhibits. I, MORMORDU ALLIE, of No. 8 Magazine Street Freetown in the Colony
 of Sierra Leone, Butcher, hereby revoke all wills, codicils and other
 testamentary dispositions heretofore made by me and declare this to
 be my last will and testament.

G.
 Defendant's
 Affidavit of
 Scripts and
 Will of
 1939—
continued.

1.—I appoint my wives Ajah Fatmatta Katah and Socknar Mormordu Allie and my sons Alhadi Barber, Jaimokoh Allie and Alhadi Antumani (hereinafter called my trustees) to be the Executors and Trustees of this my will.

2.—I give and devise unto my wife Socknar Mormordu Allie for her natural life all the messuage and hereditaments situate lying and being at 10 Martin Street in Freetown aforesaid and numbered 6 by the City Council of Freetown for the payment of rates and after her death or remarriage I devise the same unto my Trustees upon Trust for my son Jaimokoh Allie in fee simple.

3.—I devise All That messuage and hereditaments situate and being in Kissy Street in Freetown aforesaid and numbered (30) thirty by the said City Council for the payment of rates unto my said Trustees upon Trust for my son Jaimokoh Allie in fee simple.

4.—I devise All That messuage and hereditamentssituate and being in Rawdon Street in Freetown aforesaid and numbered (46) forty six by the 20 City Council unto my wife Socknar Mormordu Allie for her natural life or so long as she remains my widow and after her death or remarriage I give and devise the same unto my Trustees Upon Trust for my son Alhadi Antumani in fee simple.

5.—I give and devise unto my wife Socknar Mormodu Allie for her lifetime All That messuage and hereditaments situate and being in Martin Street in Freetown aforesaid and numbered (7) seven by the City Council and after her death or remarriage I devise the same unto my trustees Upon Trust for my daughter Nehneh in fee simple.

6.—I give and devise unto my said wife Socknar Mormodu Allie for her 30 lifetime All That messuage and hereditaments situate and being in Martin Street Freetown and numbered (10) ten by the City Council of Freetown and after her death or remarriage I devise the same unto my Trustees Upon Trust for my daughter Kedia in fee simple.

7.—I give and devise unto my wife Ajah Fatmatta Katah for her life time Firstly :—All That messuage and hereditaments situate and being in Magazine Street and numbered (8) Eight by the City Council of Freetown and Secondly :—All That messuage and hereditaments situate and being in East Street in Freetown aforesaid and numbered (23) Twenty three by the City Council and after her death or remarriage I devise the same Unto 40 my Trustees Upon Trust for my son Alhadi Attumani in fee simple.

8.—I give and devise unto my said Executors and Trustees Firstly :—
 All That messuage and hereditaments situate and being in Magazine Street
 in Freetown aforesaid and numbered (15) Fifteen by the City Council of
 Freetown, Secondly :—All That messuage and hereditaments situate and
 being in Lumley Street in Freetown and numbered (31) Thirty one by the
 City Council, Thirdly :—All That messuage and hereditaments situate and
 being in Percival Street in Freetown aforesaid and numbered (12) Twelve
 by the City Council of Freetown and Fourthly :—All That lot piece or parcel
 of land situate lying and being in Magazine Cut and numbered (15) Fifteen
 10 by the City Council of Freetown Upon Trust for my son Alhadi Barber in
 fee simple.

Exhibits.
 —
 G.
 Defendant's
 Affidavit of
 Scripts and
 Will of
 1939—
continued.

9.—I give and devise All That messuage and hereditaments situate and
 being in Guard Street Railway Line and numbered (7) Seven by the City
 Council And All That messuage and hereditaments situate in Circular Road
 Freetown and numbered (3) Three by the City Council of Freetown Unto my
 said Executors and Trustees Upon Trust for my son Alhadi Barber in fee
 simple.

10.—I devise All That messuage and hereditaments situate and being
 in Reader Street in Freetown aforesaid and numbered (8) Eight by the City
 20 Council Unto my wife Socknar Mormodu Allie for her lifetime or so long as
 she remains my widow and after her death or remarriage I devise the same
 Unto my Trustees Upon Trust for my daughter Isattu absolutely.

11.—I devise unto my said Executors and Trustees Firstly :—All That
 messuage and hereditaments situate and being in East Brook Lane Free-
 town numbered (10) Ten by the City Council of Freetown and Secondly :—
 All That messuage and hereditaments situate and being in Wharf Road
 Clines Town in Freetown and numbered (7) Seven by the City Council Upon
 Trust for my son Abbas in fee simple.

12.—I devise unto my said executors and trustees All That messuage
 30 and hereditaments situate and being in Benjamin Lane in Freetown aforesaid
 and numbered (14) Fourteen by the said City Council Upon Trust for
 Marriatu the sister of my son Abbas in fee simple.

13.—I devise unto my said executors and trustees All That messuage
 and hereditaments situate and being in Bambarra Spring and numbered
 (44) Forty four by the City Council Upon Trust for my son Demba in fee
 simple.

14.—I give and devise unto my said Executors and Trustees All That
 messuage and hereditaments situate and being in Henry Street (East) and
 numbered (7) Seven by the City Council for the payment of rates Upon
 40 Trust for my son Malligy in fee simple.

Exhibits.
 G.
 Defendant's
 Affidavit of
 Scripts and
 Will of
 1939—
continued.

15.—I devise unto my said Executors and Trustees Firstly :—All That messuage and hereditaments situate and being in Circular Road in Freetown and numbered (93) Ninety three by the City Council for the payment of rates And Secondly, All that messuage and hereditaments situate and being in Edward Lane in Freetown aforesaid and numbered (17) Seventeen by the City Council Upon Trust for my son Amadu in fee simple.

16.—I devise unto my said Executors and Trustees All That messuage and hereditaments situate in Bathurst Street in Freetown aforesaid and numbered (4) Four by the City Council Upon Trust for my son Abdulai in fee simple. 10

17.—I give and devise All Those messuages and hereditaments situate in East Street Freetown and numbered 967 and 1145 in the Public Register and Plan of town lots of land for Freetown and 46 and 50 by the said City Council And also All That messuage and hereditaments situate and being in East Street aforesaid and numbered (43) Forty three by the City Council of Freetown for the payment of rates Unto and to the use of my wife Ajah Fatmatta Kata for and during her lifetime or so long as she remains my widow and after her death or remarriage whichever event shall first happen I devise the said messuages and hereditaments unto my said executors and trustees Upon further trust for my son Attumani and any other child or children of mine who are now or hereafter may be born by my said wife Ajah Fatmatta Katah in equal shares and as tenants in common. 20

18.—I devise unto my said executors and trustees All That messuage and hereditaments situate and being in Percival Street in Freetown aforesaid and numbered (12) Twelve by the City Council of Freetown for the payment of rates And also All That messuage and premises situate in Waterloo Street Freetown and numbered (45) Forty five by the City Council Upon Trust for my son Alhadi Barber in fee simple.

19.—I devise unto my said Trustees All That messuage and hereditaments situate and being in Dougra Street in Freetown aforesaid and numbered (23) Twenty three by the City Council Upon Trust for my daughter Mariam in fee simple. 30

20.—I devise unto my son Marmodu the brother of Maliggy All That messuage and premises situate in James Street Freetown and numbered (3) Three by the City Council in fee and simple.

21.—I devise All That messuage and premises situate in Wellington Road Kissy Unto and to the use of my wife Socknar absolutely.

22.—I devise All That messuage and premises situate and being in Calabar Town Wellington Village unto and to the use of my wife Fatmattah absolutely. 40

22.—I devise All That messuage and premises situate and being in Calabar Town Wellington Village unto and to the use of my wife Fatmattah absolutely.

23.—I devise all my empty lot of land situate and being in Magazine Cut Freetown where Bunjie Rainy Lumpkin Undertaker lately tenanted for keeping his Hearse unto my son Jaimokoh in fee simple.

24.—I give and bequeath all my wearing apparel and jewellery and ornaments of the person unto and to the use of all my sons herein named in equal shares.

10 25.—I give and bequeath all the household furniture and effects belonging to me in any of the premises herein devised unto the respective devisees thereof.

26.—I devise All That messuage and hereditaments situate in Jenkins Street in Freetown aforesaid and numbered (4) Four by the City Council of Freetown unto and to the use of my Executors Upon Trust for my daughter Nehneh in fee simple.

27.—I give and bequeath unto my said executors and trustees all my cattle consisting of bullocks cows goats and sheep Upon Trust for my wives Fatmatta and Socknar equally share and share alike.

20 28.—I devise and bequeath all my real and personal estate not hereby otherwise disposed of unto my said executors and trustees Upon Trust that my said executors and trustees shall sell call in and convert into money the same or such part thereof as shall not consist of money and shall with and out of the moneys produced by such sale calling in and conversion and with and out of such part of my personal estate as shall consist of money pay my funeral and testamentary expenses and debts and the legacies bequeath by this my will or any codicil hereto And shall stand possessed of the residuary trust moneys Upon Trust for all my children herein named who being sons shall attain the age of 21 years or being daughters shall attain that age or shall marry and if there shall be only one such child the whole to be in trust for that one child Provided always that if any child of mine shall die leaving a child or children who shall survive him or her and being a son or sons shall attain the age of 21 years or being a daughter shall attain the age of 21 years or marry then and in every such case the last mentioned child or children shall take (and if more than one equally between them) the share which his her or their parent would have taken in the residuary trust funds.

30

29.—I hereby direct that during the minority of any of the devisees herein named my said executors and trustees shall rent the messuage and hereditaments devised to each of them under this my will for the best rent obtainable and shall pay all outgoings in respect thereof and shall from time

40

Exhibits.

G.

Defendant's
Affidavit of
Scripts and
Will of
1939—
continued.

Exhibits. to time such portion of the residue of the said rent as they shall think fit to
 the guardian of each devisee to be applied by her towards the maintenance
 G. education and support of such infant devisees And I declare that the
 Defendant's receipt of the guardian of any of the devisees and legatees under this my will
 Affidavit of shall be a sufficient discharge to my said executors and trustees for any
 Scripts and Will of payment made by them or any of them.
 1939—
continued.

30.—And I further direct that during the minority of any of the
 devisees and legatee under this my will my executors and trustees shall have
 power and I hereby authorise and empower them to invest all monies 10
 bequeathed or due to them under this my will in the Post Office Savings
 Bank of this Colony and shall pay from time to time such portion thereof
 as they shall think fit to the guardian of the respective legatees to be applied
 by them towards the maintenance education and support of such infant.

31.—And I further declare and direct that in case any of my children
 herein named shall die whether in my lifetime or after my decease under the
 age of twenty one years or shall die in my lifetime after attaining that age
 but without leaving issue surviving him then I direct the estate share and
 interest under this my will of such child so dying shall go and belong to and
 devolve upon and become vested in my other children herein named in equal 20
 shares and as tenants in common.

32.—I hereby declare that notwithstanding anything to the contrary
 herein my executors and trustees shall immediately after my death pay to
 each of my wives who may be residing with me and under my protection a
 sufficient sum of money for their temporary maintenance and support.
 And I direct that my said wives shall immediately after the expiration of
 four months and ten days after my death take possession of the messuage
 and premises devised to each of them for their lifetime.

33.—I hereby declare and direct that my said executors and trustees
 shall perform the funeral rites of the third seventh and fortieth days 30
 respectively after my death as befitting my position in life.

34.—I further direct that my trustees shall have the fullest power
 generally of determining all matters as to which any doubt difficulty or
 question may arise under or in relation to the execution of the trusts of this
 my will or codicil thereto And I further declare that any determination
 of my Trustees in relation to any of the matters aforesaid whether made
 upon a question formerly or actually raised or implied in any of the acts
 or proceedings in relation to the premises shall bind all parties interested
 under this my will and shall not be objected to or questioned upon any
 ground whatsoever.

35.—I hereby direct and declare that all sums specifically charged on 40
 any hereditaments and premises devised by this my will or any part thereof

Exhibits. **J (2).—Receipt for registering Will of Mormordu Allie.**
 J. 2. Depositing Will of Mormodu Allie. Original.
 Receipt, 10th September, 1946. Registration Ordinance of 1906. No. 22324.
 Received from Mormordu Allie, Esqr., the sum of 2/6 in stamps for registering Depositing Will number 113/46.
 10th Sept. 1946. £-. 2. 6.
 Countersigned E. J. McCORMACK,
 J. CONI DOUGAN, Deputy Registrar General.
 for Mormordu Allie. 10

Exhibit
tendered
and
rejected,
10th
February,
1948.

Exhibit tendered and rejected.

E. S. BEOKU-BETTS.

Renunciation of Probate.

IN THE SUPREME COURT OF SIERRA LEONE.

In the Estate of MORMORDU ALLIE, Deceased.

WHEREAS MORMORDU ALLIE of 8 Magazine Street, Freetown, Sierra, deceased, died on the 22nd day of January, 1948, at 8 Magazine Street aforesaid, having made and duly executed his last Will and Testament bearing date the 30th day of August 1946 and Codicil dated the 19th day of July 1947 and thereof appointed his widow Ajah Fatmatta Katah and sons Alhadi Barber, and Alhadi Antumani, the undersigned, executors and trustees.

NOW WE the said Ajah Fatmatta Katah, Alhadi Barber and Alhadi Antumani, do hereby declare that we have not intermeddled in the estate of the said deceased, and will not hereafter intermeddle therein with intent to defraud creditors, and we do hereby renounce all our right and title to the Probate and execution of the said Will and Codicil in favour of the Official Administrator of Sierra Leone Mr. Ahmed Alhadi.

HAJA FATMATTA KATAH. 30
 ALHADI BARBER ALLIE.
 ALHADI ANTUMANI.

Signed by the said Ajah Fatmatta Katah,
 Alhadi Barber and Alhadi Antumani
 this day of 10th Feb., 1948 in the pres-
 ence of

M. S. MACAULEY,
Retired Civil Servant,

13 Regent Road, Freetown.

AHMED S. WURIE, 40
 42 Mountain Cut, Freetown.
 10/2/48.

In the Privy Council.

No. 22 of 1951.

ON APPEAL FROM THE WEST AFRICAN
COURT OF APPEAL.

BETWEEN
SOCKNA MORMORDU ALLIE
AND OTHERS ... (*Plaintiffs*) *Appellants*
AND
AHMED ALHADI (Official
Administrator) *Respondent.*

RECORD OF PROCEEDINGS

LAWRENCE JONES & CO.,
Winchester House,
E.C.2,
Solicitors for the Appellants.

BURCHELLS,
9-10 Kings Bench Walk,
E.C.4,
Solicitors for the Respondent.