



## MASSAQUOI v. PARAMOUNT CHIEF YAMBA KUNYAFOI

WEST AFRICAN COURT OF APPEAL (Kingdon, C.J. (Nig.), Petrides, C.J. (G.C.) and Macquarrie, J. (Sierra Leone)): March 19th, 1937

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- [1] Conflict of Laws—jurisdiction of courts—civil suits between natives—jurisdiction of Circuit Court ousted by Protectorate Courts Jurisdiction Ordinance, 1932, s.9—proof of native law unnecessary before jurisdiction ousted: When one native brings a civil suit against another native in the Circuit Court, the jurisdiction of that court is *prima facie* ousted by virtue of s.9 of the Protectorate Courts Jurisdiction Ordinance, 1932, and proof of the applicable native law is not necessary before the ouster in favour of the jurisdiction of a native court takes effect (page 4, lines 12–15; page 5, line 17). 10
- [2] Courts—Circuit Court—jurisdiction—civil suits between natives—jurisdiction ousted by Protectorate Courts Jurisdiction Ordinance, 1932, s.9—proof of native law unnecessary before jurisdiction ousted: See [1] above. 15
- [3] Courts—Circuit Court—jurisdiction—civil suits between natives—jurisdiction taken away retrospectively by Protectorate Courts Jurisdiction Ordinance, 1932: The right of a person to bring a civil action in a particular court is a procedural and not a substantive right, so that it will be taken away by legislation passed after the accruing of the right of action, which will be construed as retrospective unless there are clear indications to the contrary. Civil suits between natives, which were exclusively within the jurisdiction of the Circuit Court by virtue of the Protectorate Courts Jurisdiction (Amendment) Ordinance, 1927, and which fell within the jurisdiction of the native courts following the reorganisation of the court structure by the Protectorate Courts Jurisdiction Ordinance, 1932, cannot therefore be pursued in the Circuit Court if they are commenced after the coming into force of this Ordinance (page 5, lines 18–30; page 6, lines 14–21). 20  
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- [4] Courts—jurisdiction—civil jurisdiction—right to bring action in particular court is procedural not substantive right—taken away by legislation subsequent to accrual of cause of action if right not exercised before legislation: See [3] above. 35
- [5] Courts — native courts — jurisdiction — civil jurisdiction — jurisdiction over civil suits between natives conferred by Protectorate Courts Jurisdiction Ordinance, 1932, s.9—proof of native law in Circuit Court unnecessary before jurisdiction of that court ousted: See [1] above. 40
- [6] Courts — native courts — jurisdiction — civil jurisdiction — jurisdiction over civil suits between natives conferred by Protectorate Courts 40

Jurisdiction Ordinance, 1932, s.9 even though cause of action arose before Ordinance: See [3] above.

[7] Statutes—operation—procedural and substantive enactments—jurisdiction of courts a procedural matter—affected retrospectively by legislation subsequent to cause of action unless indication to contrary: See [3] above.

[8] Statutes—operation—retrospective effect—jurisdiction of courts affected retrospectively by legislation subsequent to cause of action unless indication to contrary: See [3] above.

The plaintiff brought an action against the defendant in the Circuit Court to recover money lent to the defendant.

The plaintiff was a native trader and the defendant a paramount chief. The plaintiff alleged, and this was not disputed, that he had lent to the defendant and paid out at his request sums of money over a period of two years.

A preliminary objection was taken by the defendant that the Circuit Court had no jurisdiction to hear the case since, under s.39 of the Protectorate Courts Jurisdiction Ordinance, 1932 it could only hear cases not cognizable by any other court under the Ordinance, and s.9 of the same Ordinance provided for native courts to hear all civil cases triable by native law arising between natives. The plaintiff contended (a) that there was no evidence that the matter was triable by native law and native law should be proved before the court to oust its jurisdiction; and (b) that the right to recover the money lent to the defendant before the Protectorate Courts Jurisdiction Ordinance, 1932 came into force was, by virtue of s.13(2) of the Interpretation Ordinance, 1933, not governed by that Ordinance but by the Protectorate Courts Jurisdiction (Amendment) Ordinance, 1927 which empowered him to bring an action in the Circuit Court.

The Circuit Court (Webber, C.J.) upheld the defendant's submission that it had no jurisdiction and struck out the case. The learned Chief Justice then stated a case for the opinion of the West African Court of Appeal in the following terms:

"In this action the plaintiff and the defendant are 'natives' as defined by the Protectorate Ordinance, 1933.

The plaintiff on December 14th, 1935 issued an action in this court as follows:

The plaintiff's claim against the defendant is to recover the sum of £129. 13s. Od., being amount lent to the defendant and amount paid for the use of the defendant at his request which amount he has admitted liability for:

Particulars :					£.	s.	d.	
29/ 5/1931	To Cash	...	...	...	10	8	0	
5/ 7/1931	" "	...	...	...	10	10	0	
4/ 9/1931	" "	...	...	...	22	18	0	
26/12/1931	" "	...	...	...	12	0	0	5
3/ 3/1932	" "	...	...	...	16	0	0	
20/ 4/1932	" "	...	...	...	8	9	0	
25/ 5/1932	" "	...	...	...	14	8	0	
29/ 5/1932	" "	...	...	...	7	0	0	
1/ 1/1933	" "	...	...	...	15	0	0	10
5/ 3/1933	" "	...	...	...	9	0	0	
26/ 7/1933	" "	...	...	...	4	0	0	
Balance due ...					£129. 13s. 0d.			15

E. S. BEOKU BETTS, *Plaintiff's Solicitor.*

1. A preliminary objection was taken by counsel for the defendant that this court had no jurisdiction on the ground that, by the provisions of s.39 of the Protectorate Courts Jurisdiction Ordinance, 1932 (No. 40 of 1932), the Circuit Court has jurisdiction only to hear causes and matters which by virtue of the provisions of the Protectorate Courts Jurisdiction Ordinance or any other Ordinance are not cognizable by any other court under the said Protectorate Courts Jurisdiction Ordinance, and as by s.9 of the same Ordinance 'the Native Courts' have jurisdiction in all civil cases triable by native law arising exclusively between natives other than a case between two or more Paramount Chiefs or tribal authority involving a question of title to land or a case in which a debt owing to him in connection with his trade is claimed by the holder of any trading licence, this matter was not cognizable by the Circuit Court. 20

2. Evidence was taken that the plaintiff was the holder of a trading licence and had licences during all the material dates up to the present. 25

3. The counsel for the plaintiff in reply contended:

(i) That there was no evidence that the matter was triable by native law and native law should be proved before the court to oust its jurisdiction. 30

(ii) That the first eight items of the claim were moneys advanced on loan before the Protectorate Courts Jurisdiction 35

Ordinance, 1932 came into force and that by virtue of s.13(2)(c) of the Interpretation Ordinance, 1933 the right of the plaintiff to recover them was not affected by this Ordinance but by s.39 of the Protectorate Courts Jurisdiction (Amendment) Ordinance, 1927.

4. There was no evidence before the court as to native law and custom, but I did not consider such proof necessary.

I upheld the submission of counsel for the defendant that the court had no jurisdiction and struck out the case.

5. The questions for the opinion of the West African Court of Appeal are the following:

1. Was it necessary for native law and custom to be proved before the Circuit Court under s.9 of the Protectorate Courts Jurisdiction Ordinance, 1932, before the jurisdiction of that court can be ousted?

2. Is the right of the plaintiff to recover the amount to be governed by the repealed Ordinance of 1927 or by the present Ordinance enacted in 1932?

(Sgd.) A. WEBBER, C.J."

#### Cases referred to:

- (1) *Abbott v. Minister for Lands*, [1895] A.C. 425; (1895), 72 L.T. 402.
- (2) *In re Hale's Patent*, [1920] 2 Ch. 377; (1920), 124 L.T. 261.
- (3) *Hamilton Gell v. White*, [1922] 2 K.B. 422; (1922), 127 L.T. 728.
- (4) *Henshall v. Porter*, [1923] 2 K.B. 193; (1923), 129 L.T. 443.
- (5) *Wright v. Hale* (1860), 6 H. & N. 227; 3 L.T. 444.
- (6) *The Ydun*, [1899] P. 236; (1899), 81 L.T. 10.

#### Legislation construed:

Protectorate Courts Jurisdiction Ordinance (Laws of Sierra Leone, 1925, cap. 169), s.39 as substituted by the Protectorate Courts Jurisdiction (Amendment) Ordinance, 1927 (No. 19 of 1927), s.21:

"The Circuit Court shall have jurisdiction to hear and determine any action or suit:

- (2) For the recovery of a debt claimed by the holder of a store or hawker's license, although arising exclusively between natives, wherein the debt claimed exceeds fifty pounds."

Protectorate Courts Jurisdiction Ordinance, 1932 (No. 40 of 1932), s.9:

"The Native Courts . . . shall have jurisdiction according to native law and custom to hear and determine—

(1) all civil cases triable by native law arising exclusively between natives. . . .”

s.39(1): “The Circuit Court shall have jurisdiction to hear and determine all causes and matters which . . . are not cognizable by any other Court under this Ordinance. . . .”

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Interpretation Ordinance, 1933 (No. 29 of 1933), s.13(2):

“Where an Ordinance repeals an Ordinance, the repeal shall not—

(c) affect any right . . . acquired . . . under any enactment so repealed.”

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*Beoku-Betts* for the plaintiff;  
*Nelson Williams* for the defendant.

KINGDON, C.J. (Nig.) delivering judgment on behalf of himself and PETRIDES, C.J. (G.C.):

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The answer to the first question submitted is “No.”

In regard to the second question, the answer turns upon the question whether the right which the plaintiff had up to January 1933 to go to the Circuit Court to enforce his right to recover moneys from the defendant is a right acquired, accrued or incurred within the meaning of s. 13(2)(c) of the Interpretation Ordinance, 1933. We are of opinion that it is not (*Abbott v. Minister for Lands* (1)). This case is within the general rule of law that, while rights are not statutorily altered retrospectively, procedure is, apart from indications to the contrary, altered retrospectively (*Wright v. Hale* (5); *The Ydun* (6); and *In re Hale's Patent* (2)).

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Our answer therefore to the second question submitted to us is that the right of the plaintiff to recover the amount is to be governed by the Protectorate Courts Jurisdiction Ordinance enacted in 1932.

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MACQUARRIE, J. (Sierra Leone):

We are asked: Is the right of the plaintiff to recover the amount to be governed by the repealed Protectorate Courts Jurisdiction (Amendment) Ordinance of 1927 or by the Protectorate Courts Jurisdiction Ordinance enacted in 1932?

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In the year 1935 the plaintiff instituted a claim in the Circuit Court against the defendant in respect of transactions dated before December 31st, 1932. The plaintiff and the defendant are both natives.

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Up to that date that claim would be triable in the Circuit Court.

But the new Ordinance coming into force on January 1st, 1933 gave native courts jurisdiction in such cases, thus removing them from the jurisdiction of the Circuit Court. The plaintiff claims nevertheless that his action is triable in the Circuit Court.

5 Mr. Beoku-Betts, for the plaintiff, contended that, by s.13(2)(c) of the Interpretation Ordinance, 1933 the right of action which the plaintiff had up to December 31st, 1932 was not affected by the repeal of the old Ordinance.

10 He cited a number of English cases which, however, are all cases where there had been some proceedings taken before new legislation or else, like the case of *In re Hale's Patent* (2) of exceptional procedure, and depending also upon the legislation dealing with it or, like *Henshall v. Porter* (4), where a cause of action was in question.

15 In my opinion the contention rests upon a misconception of the meaning of the right. Had the plaintiff sued before the new Ordinance, he would have had no choice but to sue in the Circuit Court. He had a right to go to that court, but equally he had no other court to go to. He took no action at all before the new Ordinance and now wishes to act as though there had been no alteration in the law.  
20 That alteration does not affect his right to sue but does alter the tribunal to which he has to go.

In addition to the cases referred to in the judgment just read I would refer to the judgment of Atkin, L.J. in *Hamilton Gell v. White* (3) where he says ([1922] 2 K.B. at 431)—“It is obvious that that provision” [of the Interpretation Act] “was not intended to preserve the  
25 abstract rights conferred by the repealed Act.” [These words do not appear in the report of the case at 127 L.T. 728]. It seems to me the right of the plaintiff to go to the Circuit Court before the new Ordinance was such an abstract right.

30 I agree therefore that the answer to the question should be that the plaintiff's right to recover is governed by the present Ordinance.

*Ruling accordingly.*