

have satisfied Mr. Edmondson. It is almost precisely what he was asking for the petitioners, namely, an opportunity to deal with the question of security. The trial judge however decided, as I have indicated, that the sub-section was, to quote his words, "imperative and absolute" and non-compliance with it was equally fatal even where the offender had been admitted to commence the proceedings as a poor person. His decision was subsequently confirmed on appeal. No question in this case before me arises of the petitioners' means, even if that were of relevance. It is purely and simply a question of some misguided citizens of Goderich having relied on somebody who was not as clever as he thought and who badly let them down. They have my sympathy for what it is worth, but in the circumstances I have no option but to order that the petition be struck off the file and that the petitioners pay the respondents' costs.

*Petition struck off.*

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METZGER v. REGEM

WEST AFRICAN COURT OF APPEAL (Smith, C.J. (Sierra Leone)):  
January 9th, 1951  
(W.A.C.A. Cr. App. No. 5/51)

- [1] **Civil Procedure—appeals—appeals to Privy Council—West African (Appeal to Privy Council) Order in Council, 1949 only regulates civil appeals:** The West African (Appeal to Privy Council) Order in Council, 1949 only regulates civil appeals, and therefore leave to appeal to the Privy Council in criminal cases can only be granted by the Judicial Committee itself and not by the West African Court of Appeal (page 88, lines 4-9). 25
- [2] **Courts—Judicial Committee of Privy Council—leave to appeal—only Judicial Committee can grant leave in criminal cases:** See [1] above. 30
- [3] **Courts—West African Court of Appeal—appeals—leave to appeal to Privy Council—West African Court of Appeal cannot grant leave in criminal cases:** See [1] above. 35
- [4] **Criminal Procedure—appeals—appeals to Privy Council—leave to appeal—leave can only be granted by Privy Council:** See [1] above.

The applicant applied for leave to appeal to the Privy Council against the decision in the criminal proceedings against him. 40

*Wilson* for the applicant;  
*Benka-Coker* for the Crown.

SMITH, C.J. (Sierra Leone):

This is a criminal matter. The West African (Appeal to Privy Council) Order in Council, 1949, which repealed the Order in Council of 1930, only regulates civil appeals.

Leave to appeal in criminal cases can only be granted by the Judicial Committee itself. This court has no jurisdiction to grant leave.

*Application refused.*

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RAHMAN v. ELBA

SUPREME COURT (Beoku-Betts, J.): February 26th, 1951  
(Civil Case No. 112/50)

[1] **Evidence—burden of proof—recovery of possession of land—plaintiff must succeed on strength of own title:** In an action for the recovery of possession of land, the plaintiff must succeed on the strength of his own title and not on the weakness of the defendant's (page 91, lines 18–22; page 92, lines 11–13).

[2] **Evidence—burden of proof—title to land—statutory title—proof of adverse possession not necessary to acquire statutory title:** A statutory title to property can be acquired by any person who is in undisturbed possession of the property for the statutory limitation period without it being necessary to prove adverse possession on his part (page 95, lines 36–40; page 96, lines 11–14).

[3] **Family Law—property—married women's property—after 1933 married woman can acquire statutory title even against husband—must not be living together or facts to prevent limitation period from running:** Although a person cannot acquire a statutory title to property if he and the owner live together in the property, time can run against the owner if he leaves and the other person continues in possession; and therefore after 1933 a married woman who is in possession of property for over 12 years acquires a statutory title to the property even as against her husband, provided that they were not living together in the property during that time and there are not facts to prevent the limitation period from running (page 95, lines 26–31; page 96, lines 4–14).

[4] **Land Law—adverse possession—need not be proved to acquire statutory title:** See [2] above.

hope however he will be able to recover the purchase price from Elba who has impressed me as thoroughly dishonest. There will be judgment for the defendant with costs.

*Suit dismissed.*

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# JABER v. RADAR

SUPREME COURT (Beoku-Betts, J.): March 2nd, 1951  
(Civil Case No. 75/50)

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- [1] Civil Procedure—pleading—matters which must be specifically pleaded—condition precedent—due performance presumed if non-performance not pleaded: Where one of the parties to an action intends to contest the performance of a condition precedent, he must, under O.XVI, r.10 of the Supreme Court Rules, 1947, state specifically what that condition is and plead its non-performance; otherwise its due performance will be presumed (page 104, lines 16–20). 15
- [2] Civil Procedure—pleading—defence—want of notice—defence must be specifically pleaded: Questions of notice or time are matters which are conditions precedent to a right of action and therefore must be pleaded specifically under O.XVI, r.10 of the Supreme Court Rules, 1947 (page 104, lines 3–13). 20
- [3] Civil Procedure—pleading—matters which must be specifically pleaded—defence of want of notice: See [2] above.
- [4] Equity—relief against forfeiture—court has discretion to grant relief—conduct of tenant to be considered—relief not granted where landlord's title impugned or tenant continues breach of covenant: The court has a discretion in deciding whether relief against forfeiture should be granted in a particular case, and in doing so must consider the conduct of the tenant: relief will be refused if he impugned the landlord's title in a way which amounts to a disclaimer or renunciation of the relationship between them, or if he continues in breach of covenant (page 104, lines 30–33; page 106, lines 7–27). 25  
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- [5] Evidence—presumptions—presumption of law—omnia praesumuntur rite esse acta—condition precedent—due performance presumed if non-performance not pleaded: See [1] above. 35
- [6] Land Law—fee simple—incidents—estate confers all rights of ownership and transfer subject to existing interests or tenancies not inconsistent with freehold: A fee simple estate, being the most extensive in quantum and the most absolute in respect to the rights it confers of all estates known to the law, confers the lawful right to exercise over, upon and in respect of the land every act of ownership imaginable, including the right to commit unlimited waste and the 40