order to the 3rd defendant and the other members of his court that the plaintiff must in any event be found guilty.

(e) That the 3rd defendant took the plaintiff to the District Commissioner after his conviction.

(f) That the District Commissioner had instructed Hoare to review the proceedings at a time when he did not know the verdict of the court.

Counsel tried to make capital of the fact on the evidence it appears that the District Commissioner had instructed his Assistant to review the proceedings before he knew that the plaintiff was in fact convicted. However, this is not how I read the evidence. The evidence is that the District Commissioner instructed Hoare to review the case, but there is no evidence as to what time of day he told him so. One thing is clear, namely, that he gave him his instruction before the plaintiff was taken to Hoare's office, and there is no evidence showing that the District Commissioner had not already known the court's verdict.

In my opinion, all the matters relied upon as piling up to constitute the offence of conspiracy are matters which were lawful and within the competence of the District Commissioner and the defendants to perform, and in the performance of which I find that none of them resorted to unlawful means.

In the circumstances therefore and for the reasons given, the plaintiff's entire claim fails and I dismiss it with costs to be taxed.

[COURT OF APPEAL]

Freetown
June 5, 1959

Bairamian, Ag. P. Hurley and Ames, Ag. JJ.A.

IN THE MATTER OF PIERRE SARR N'JIE, BARRISTER AND SOLICITOR OF THE SUPREME COURT OF THE GAMBIA

AND

IN THE MATTER OF RULE 7, ORDER IX OF THE FIRST SCHEDULE TO THE RULES OF THE SUPREME COURT, 1928

[Miscellaneous Civil Case No. S.63/58]

Practice and procedure—Suspension of legal practitioner—Whether deputy judge can represent judge in matter which is not "proceeding in the court"—Whether judge acting apart from Supreme Court has jurisdiction to suspend legal practitioner—Rules of the Supreme Court, 1928, Ord. IX, r. 7 (Cap. 5, Subsidiary Legislation of the Gambia, 1955)—Supreme Court Ordinance (Cap. 5, Laws of the Gambia, 1955) ss. 2, 4, 7, 15, 27, 72—West African Court of Appeal Ordinance (Cap. 6, Laws of the Gambia, 1955) s. 14*—Notaries Public Ordinance (Cap. 19, Laws of the Gambia, 1955) s.* 4*—Interpretation Ordinance (Cap. 1, Laws of the Gambia, 1955) s.* 11.

On September 22, 1958 a deputy judge in the Gambia suspended a legal practitioner from practising within the jurisdiction of the Gambia Supreme Court. From the order the practitioner appealed, claiming that the deputy judge did not have jurisdiction to make the order and that rule 7 of Order IX of the Rules of the Supreme Court, under which the order was made, was ultra vires.

Held, that the the Supreme Court Ordinance (Cap. 5, Laws of the Gambia, 1955) gave no jurisdiction to the deputy judge to make the order in question.

The court also said, by way of obiter dictum, that rule 7 of Order IX of the Rules of the Supreme Court was invalid, since it purported to confer power to suspend a legal practitioner on the judge of the Supreme Court, whereas such power resides in the Supreme Court itself.

Note: The decision in this case was reversed by the Judicial Committee of the Privy Council on May 3, 1961. See *Att.-Gen.* v. *N'Jie* [1961] 2 All E.R. 504.

Cases referred to: *In re the Justices of the Court of Common Pleas at Antigua* (1830) 1 Knapp 267, 12 E.R. 321; *Godfrey* v. *George* [1896] 1 Q.B. 48; *Institute of Patent Agents* v. *Lockwood* [1894] A.C. 347; *The King* v. *Gray's Inn* (1780) 1 Dougl. 353, 99 E.R. 227.

Edward F. N. Gratiaen (with him *E. D. N'jie*) for the appellant.

Christopher O. E. Cole (Ag. Attorney-General) for the respondent.

BAIRAMIAN AG. P. This is an appeal from an order made by a deputy judge in the Gambia on September 22, 1958, to strike the name of a person enrolled there as a barrister and solicitor off the roll of court, with a direction that the Inn of Court in which he had been called be informed.

The proceedings begin with a notice of motion which has this heading:

"Before the Honourable the Chief Justice of the Gambia.

"In the Matter of Pierre Sarr N'jie, barrister and solicitor of the Supreme Court and

"In the matter of rule 7 of Order IX of the 1st Schedule to the Rules of the Supreme Court, 1928.

Notice of Motion

"Take notice that the Honourable the Chief Justice of the Gambia will be moved," etc.

That rule provides that:

"The judge shall have power, for reasonable cause, to suspend any barrister or solicitor from practising within the jurisdiction of the court for any specified period, or order his name to be struck off the Roll of Court."

The notice was given by the Attorney-General, who said to the deputy judge in his closing address (towards the end):

"Cause or matter—this is neither. This is an inquiry merely—before the Chief Justice or the person discharging his function. This is not a motion moving the Supreme Court."

Early in the judgment there is this passage:

"It will be observed that the notice of motion does not seek to move the Supreme Court, but the Chief Justice of the Gambia. The reason for this is that it is the Chief Justice who is by the Rules of Supreme Court vested with the control of barristers and solicitors."

It is clear that the Attorney-General was not moving the court and that the deputy judge was not sitting as the court.

Thus the first question is whether a deputy judge can represent the judge (there is only one and he is styled the Chief Justice now) in a matter which is not a proceeding in the court, either as a "cause" or as a "matter" within the definitions in section 2 of the Supreme Court Ordinance (Cap. 5 in the Gambia Laws, 1955).

According to section 4 of the Ordinance—

"The Supreme Court shall consist of and shall be held by and before a judge," etc.

Section 7 (1) enables the Governor to appoint a deputy judge—

"to represent the judge . . . in the exercise of his judicial powers. . . . Under subsection (3)

"The judge . . . may direct at what time and place such deputy judge shall sit, and what causes shall be heard before him, and generally make such arrangements as to him shall seem proper for the division and dispatch of the business of the Supreme Court."

I think that the aim of section 7 is to make it possible to have someone appointed, in addition to the judge, to deal with cases pending before the court: a deputy judge cannot in my opinion deal with any matter which is not a proceeding in the court.

Here the Attorney-General made it clear that his motion was not a motion moving the Supreme Court, and the deputy judge was equally clear that he was not sitting as the court.

Ground (7) in the notice of appeal is that—

"The deputy chief justice had no jurisdiction to make the order made by him on September 22, 1958."

In my opinion this ground succeeds and the appeal should be allowed and the order of September 22, 1958, set aside as being null and void.

This leaves the door open for further proceedings and brings up the question of the validity of rule 7 in Order IX, which was canvassed under ground (c) of the second set of grounds of appeal, the objection of the appellant being that the rule is ultra vires.

There was an appeal from Antigua against an order of the court disbarring a person who had been admitted to practise as a barrister and attorney; it is reported as a petition to the Privy Council sub nom. *In re the Justices of the Court of Common Pleas at Antigua* (1830) 1 Knapp 267, 12 E.R. 321. I am indebted to my learned brother Hurley J.A. for the reference. Lord Wynford said inter alia:

"The power of suspending from practice must, we think, be incidental to that of admitting to practise, as is the case in England with regard to attornies. In Antigua the characters of advocates and attornies are given to one person; the court therefore that confers both characters may for just cause take both away."

It is conceded on behalf of the appellant that the Gambia Supreme Court has jurisdiction to suspend a person admitted to practise as a barrister and solicitor. His learned counsel describes it as an inherent jurisdiction, which may well be right. I incline to the view that this jurisdiction was conferred by section 15 of the Ordinance, which enacts that the Supreme Court shall—

"possess and exercise all the jurisdiction, powers, and authorities which are vested in or are capable of being exercised by Her Majesty's High Court of Justice in England" etc.

Viewed on the analogy of solicitors in the light of the year 1888, when the Ordinance was passed, section 72 (1) empowers the judge to make rules of court. . . .

"(*c*) for regulating the qualification, admission and enrolment of barristers, advocates, solicitors and notaries," etc.

This presupposes that the Supreme Court can admit persons to practise both as barrister and solicitor, which it does; therefore it can suspend anyone from practising in either or both characters for reasonable cause.

It follows that the judge may under section 72 (1) make rules to regulate the cursus curiae on an application to the court to suspend. Such an application begins what is in my view a civil "matter"—a "proceeding in the court not in a cause," within the definition in section 2 of the Ordinance. *Cf. Godfrey* v. *George* [1896] 1 Q.B. 48; and rules of procedure would be useful to everyone concerned and may be made at any time. But what Order IX does instead is to provide a rule, namely rule 7, which empowers the judge to suspend.

The view of the learned Attorney-General of the Gambia was, and the argument on his behalf before us is that an application to suspend is not a "cause" or "matter" in other words, it is not a proceeding in the court, and when the judge acts under that rule he is not acting as the court; hence his statement to the learned deputy judge that "this is not a motion moving the Supreme Court." Consequently an order made under that rule is not an order of court. This view is carried into section 14 of the West African Court of Appeal Ordinance (Cap. 6 of the Gambia Laws) which provides that:

> "An appeal shall lie to the Court of Appeal from any order of the judge suspending a barrister or solicitor of the Supreme Court from practice or striking his name off the Roll, and for the purposes of such appeal any such order shall be deemed to be an order of the Supreme Court."

This provision, which was enacted in 1929, was doubtless drafted on the basis that the judge, when acting under rule 7 in Order IX is not acting as the court.

There are two occasions where it may be said that he is acting apart from the court: one is when he revokes the appointment of a commissioner of affidavits under section 27 of the Supreme Court Ordinance, which empowers the judge to make such an appointment and to revoke; the other is when, as my learned brother Ames J.A. pointed out to me, he acts under section 4 of the Notaries Public Ordinance (Cap. 19), which provides that—

> "Every notary public shall be deemed to be an officer of the Supreme Court, and the judge of the Supreme Court shall have power for reasonable cause to suspend any notary from practising during any specified period, or to order his name to be struck off the Roll of Court."

Section 2 empowers the judge to appoint a person to be a notary, and section 4 to suspend him for a time or for always. This Ordinance was passed in 1946, and section 4 is modelled on rules 6 and 7 in Order IX of the Supreme Court Rules, 1928. Under section 4 of that Ordinance the judge will hold an inquiry but not as constituting the court.

Likewise under rule 7 in Order IX he will hold an inquiry but not sitting as the court. Such is the view advanced by and for the learned Attorney-General

of the Gambia, and it is on this basis that I shall discuss the validity of that rule.

In considering a rule of court one has to look at section 11 (*c*) and (*d*) of the Interpretation Ordinance (Cap. 1), which provide that, unless the contrary intention appears—

> "(*c*) No subsidiary legislation shall be inconsistent with the provisions of any Ordinance;
>
> "(*d*) subsidiary legislation shall be published in the 'Gazette' and shall have the force of law upon such publication thereof or from the date named therein."

Thus a rule when published has the force of law in so far as it is not inconsistent with, at any rate, the Ordinance under which it is made. (There is no submission that the Supreme Court Ordinance authorises the judge to make a rule which may be inconsistent with the Ordinance so I need not do more than refer to instances of a schedule to an Ordinance which some authority is empowered to alter by subsidiary legislation). Here rule 7 in Order IX has to pass the two tests suggested by (*c*) of section 11 of the Interpretation Ordinance: One is that the rule must be intra vires, for otherwise it is inconsistent with section 72 (1) of the Supreme Court Ordinance; the other test is that the rule must not be inconsistent with the Supreme Court Ordinance in any other respect.

As the jurisdiction to suspend resides in the court under the Ordinance, a rule which confers a power to suspend on the judge as apart from the court is inconsistent with the Ordinance. The rule does not deal with the procedure to be followed on an application to the court and is not intra vires the rule-making power conferred by section 72 (1).

The argument for the Attorney-General of the Gambia, that the word "regulating" in section 72 (1) (*c*) enables the judge to make rules to "control" those admitted to practice, may take one as far as rule 6, which provides that those enrolled shall be deemed officers of the court, and thus come under its discipline and control; it does not get over the objection of inconsistency to the validity of rule 7.

Before dealing with the other argument for the Attorney-General I shall quote section 72 (3), (4) and (5), which read thus:

> (3) "No such rules, or any alteration, amendment or revocation thereof, shall be deemed binding until they shall have been approved by the Legislative Council, and shall have been published in the 'Gazette.'
>
> (4) All such rules, and such alterations, amendments, and revocations thereof, when so approved and published, shall have the same force and effect for all purposes as if they had been made by Ordinance, and shall in like manner come into immediate operation, or on such a day as shall be provided in such rules, subject to disallowances by Her Majesty.
>
> (5) Notwithstanding the provisions of subsection (4) hereof to the contrary, the Rules of the Supreme Court, 1928, shall be deemed binding and to have come into operation on January 1, 1929, without any publication in the 'Gazette.'"

If it is argued, as it was, that the legislature itself *enacted* the 1928 Rules by reference in Ordinance No. 1 of 1929, which added subsection (5), the argument leads to this awkward result—that no rules can be made to amend

the Rules of 1928. But there was no such aim in subsection (5). I think that attention to subsections (3) and (4) shows that there are two requisites—approval by the council and publication in the "Gazette." Presumably when the council approves a set of rules, its clerk appends a certificate of the approval, which is published below the rules in the "Gazette." I stressed the word "and" in subsection (5) when reading it. I think that this subsection was designed to cure two deficiencies in the rules—one, that there was no certificate of approval, and the other, that the rules were published on New Year's Day and did not provide that they should come into operation on that day. It is in this light and within these limits that the opening words of subsection (5)—"Notwithstanding" etc.—are in my opinion to be construed. The effect of subsection (5) is to give the Rules of 1928 the same status as any rules might have which had received approval and were published, in accordance with subsection (4).

The rules must be treated as if they have been made by Ordinance. That sort of provision resembles the provision canvassed in *Institute of Patent Agents* v. *Lockwood* [1894] A.C. 347, the report of which contains at p. 360 some obiter dicta in Lord Herschell's judgment, that one should try to read the rules side by side with the Act but that in a case of conflict the Act should prevail—which is the effect of section 11 (*c*) and (*d*) of the Interpretation Ordinance.

If rule 7 in Order IX means (as is contended for the Attorney-General of the Gambia) that the judge when acting under it does not act as the Supreme Court in a proceeding pending in the court, the rule is inoperative. No other view of the rule was advanced on his behalf, if I understood the arguments rightly. I must therefore hold that the rule is not a valid rule on that basis. In a sense my views on the rule are obiter, for the ground of allowing the appeal is the one given in the first portion of this judgment.

I propose on that ground that the appeal be allowed and the order and direction made and given by the deputy judge on September 22, 1958, be set aside as being null and void.

AMES AG. J.A. I agree with the learned President and my learned brother Hurley that this appeal must succeed on ground 7.

A deputy judge can only exercise "the judicial powers" of the Chief Justice. Section 7 of the Supreme Court Ordinance, in particular its subsection (3), makes it clear to me that by "judicial powers" is meant powers which he exercises when constituting the Supreme Court under section 4, to the exclusion of any other of the powers. The application before the learned deputy judge did not ask him to exercise, and he himself expressly purported not to be exercising, the judicial powers of the Chief Justice in this sense. Consequently he was without jurisdiction.

This means that the proceedings before the deputy judge were a nullity and the matter is still pending and awaiting valid determination. I also agree with the President that it is consequently desirable to consider ground of appeal 1 (c), which is that rule 7 of Order IX is ultra vires. This ground was Mr. Gratiaen's main ground and the one on which he began his argument.

I agree with the conclusion of the learned President that the rule is ultra vires. I do not find any help in considering how and by whom barristers are called, enrolled and can be disbarred in England or how and by whom solicitors are there admitted and can be struck off. In the Gambia there are neither

barristers as such nor solicitors as such, but every person whose name is on the roll of legal practitioners is at one and the same time all the time both a barrister and solicitor. Consequently one must look to the laws of the Gambia for guidance on the question; and the laws of the Gambia, when examined closely as we have had to examine them, seem to me to be deficient.

There is no Ordinance on the subject of legal practitioners. The Supreme Court Ordinance is what one must look at. The object of the Ordinance is as stated in the long title, "to make better provision for the administration of justice in the Colony of the Gambia." It contains no other mention of legal practitioners than that in section 72 (1) (*c*) which enables the Chief Justice to make rules for the following:

> (*c*) for regulating the qualification, admission and enrolment of barristers, advocates, solicitors and notaries, and of persons acting temporarily in those capacities, and for regulating their employment in causes and their fees, and for regulating the taxation and recovery of their fees and disbursement.

This rule presupposes that "barristers, advocates, solicitors and notaries" shall practise before the court, and shall be admitted and enrolled to do so.

Mr. Gratiaen's argument was that, because section 72 (1) (*c*) is silent on the matters of suspension and striking off, which he argues are different matters, no rules can be made about these different matters. I am not able to agree. There is a general power under section 72 (1) to make rules for "carrying into effect this Ordinance" (intended as it was to provide for the better administration of justice). It is ridiculous to suppose (as the logical conclusion of Mr. Gratiaen's argument is) that, once admitted and enrolled, a legal practitioner in the Gambia is free of any disciplinary control. In the *Antigua* case (so to call it) the Privy Council held that a power to disbar and suspend was necessarily incidental to the power to admit and enrol. The Notaries Public Ordinance (Chap. 19) is an interesting analogy. Its purpose, as in its long title, is "to make provision for the appointment of Notaries Public and for the enrolment of Public Notaries authorised to act as such by the Master of Faculties and for other purposes in relation to the performance of notarial functions." There is no mention of their suspension or of their being struck off. Yet the Legislature enacted section 4, which provides for that, and presumably considered it to be necessary and incidental to the purpose of the Ordinance; so also in my opinion, section 72 (1) (*c*) must impliedly confer a power to make rules about suspension and striking off legal practitioners.

The rule of court, which has been made (rule 7 of Order IX), is not a rule of court prescribing the procedure for striking a name off the roll. It purports to confer upon the Chief Justice the power to do so, and makes no procedural rules.

Mr. Gratiaen admitted that the Supreme Court of the Gambia had the same inherent powers as the High Court in England over barristers and solicitors; but argued that it was not any such power that was being invoked in the proceedings before the deputy judge.

I agree with my brother Hurley as to disciplinary powers over barristers in England. In 1780, Lord Mansfield said, in the case of *The King* v. *Gray's Inn*, 99 E.R. 227,

> "All the powers which they" (he was referring to the Inns of Court) "have concerning the admission to the Bar is delegated to them from the judges. . . ."

On the other hand disciplinary powers over solicitors belonged to the court, although nowadays the Law Society exercises statutory powers over them.

As I have said, there are neither barristers nor solicitors as such in the Gambia but what are, in Colonial legislation, often called legal practitioners. I also said that the Ordinance presupposes that they shall practise before the court, and every tribunal has, in the absence of statutory provisions, power to say who shall be its officers and who shall and who shall not practise before it. The court has empowered the Chief Justice to make rules of procedure to that end. The Ordinance has not conferred upon him personally any disciplinary powers, as it has by section 27 of the same Ordinance in the case of Commissioners of Oaths or by section 4 of the Notaries Public Ordinance in the case of notaries public, who are also officers of the court. It seems to me therefore that in the Gambia the court has not parted with, or conferred upon anyone, its powers of discipline over legal practitioners, and that there does not exist a domestic tribunal (as it was called) consisting of the Chief Justice (or any such tribunal at all) with such powers of discipline.

For these reasons I think that rule IX is ultra vires unless it is validated by section 72 (5) and, as to that, I agree with the learned President that it is not and for the same reasons.

HURLEY AG. J.A. In my opinion, this appeal should be allowed for the reasons, dependent on the learned deputy judge's jurisdiction under section 7 (2) of the Supreme Court Ordinance of the Gambia, which have been given in the judgment of the learned President. However, the validity of Order IX, r. 7, in the first Schedule to the Gambia Rules of the Supreme Court, 1928, has been called in question in the appeal, and the relevance of any decision on the question of the deputy judge's jurisdiction under section 7 (2) seems to be from one aspect of the matter to depend on that rule's being intra vires, for if it were not, it would not matter whether the deputy judge had jurisdiction to enforce it In my opinion the rule is intra vires. In that I differ, with respect and regret, from my colleagues on this bench. Before giving the reasons for my view of the question, I will confess that I embarked on the inquiry which led to my decision because I recoiled from a construction of the Gambia Supreme Court Ordinance which, it seemed, would entail the consequence that nobody on the Roll of Court of the Supreme Court of the Gambia was entitled to practise in that court, or, at any rate, that enrolment is a nullity even though for some other reasons persons on the Roll may be thought to be entitled to practise in the court which has for so long in fact allowed them to practise and have audience. However, my conclusions are in no other sense dependent on my dislike of the consequences of the construction which I reject; in my opinion, the construction to which I have been led is the necessary consequence of the words used in the enactments under consideration read in the light of the authorities and law relating to their subject-matter.

The appellant, a member of the English Bar, was enrolled to practise as a barrister and solicitor of the Supreme Court of the Colony of the Gambia under Order IX in the First Schedule to the Rules of the Supreme Court 1928, made under section 72 of the Supreme Court Ordinance, Cap. 5. Subsection (1) of section 72 provides that the judge (that is, the judge of the Supreme Court, now by an amendment of the Ordinance styled the Chief Justice) may at any time make rules of court for the Supreme Court for carrying the Ordinance into effect, and paragraph (*c*) of the subsection provides in particular for

making rules for regulating the qualification, admission, and enrolment of barristers, advocates, solicitors and notaries, and of persons acting temporarily in those capacities, and for regulating their employment in causes and their fees, and for regulating the taking and recovery of their fees and disbursements. Rule 2 of Order IX provides that the judge may, in his discretion, approve, admit and enrol to practise as a barrister and solicitor of the court a person who is entitled to practise as a barrister, or who has been admitted as a solicitor, in England, and who fulfils certain other conditions. Rule 4 provides that every person admitted to practise as a barrister or solicitor in the court, shall cause his name to be enrolled in a book to be kept for the purpose in the office of the Registrar of the Supreme Court, and to be called the Roll of Court, and no person whose name shall not be enrolled as aforesaid shall be entitled to practise. Rule 7 provides that the judge shall have power, for reasonable cause, to suspend any barrister or solicitor from practising within the jurisdiction of the court for any specified period, or to order his name to be struck off the Roll of Court. The appellants name was ordered to be struck off the Roll by an order of a deputy judge appointed under section 7 of the Ordinance to represent the judge, and he appeals against that order.

The first ground of appeal to be argued was that rule 7 was ultra vires. In support of this, learned counsel for the appellant argued that no provision had been made in section 72 enabling the judge to make rules for suspending a barrister or solicitor or for striking him off the Roll, because the only express provision relating to barristers and solicitors to be found in the section is that in subsection (1) (*c*), which provides for making rules for enrolment but not for striking off. But section 72 (1) commences by empowering the judge to make rules carrying the Ordinance into effect. The object of the Ordinance is to establish a court which will function in the Gambia, administering English law as it stood on November 1, 1888 (s. 2 of the Law of England (Application) Ordinance, Cap. 3) and exercising the same jurisdiction as the High Court in England (s. 15 of the Supreme Court Ordinance). The administration of English law in the High Court in England is effected with the participation of barristers and solicitors, and indeed it is not too much to say that the High Court could not function without them, and that the substantive law administered there, that is, English law, within the meaning of section 2 of Cap. 3, owes in very great measure its present form and rules to their participation in the work of the courts in the past. The Supreme Court of the Gambia is to administer English law, and English law in its nature cannot be administered to the best effect without allowing legal practitioners to practise and have audience in the court which administers it. The Ordinance recognises that by providing in section 72 (1) (*c*) for making rules regulating the enrolment of a body of practitioners. It is said that it does not anywhere make provisions concerning disqualifying from further practice any persons admitted to that body, either by express enactment or by a delegated power of legislating by rules of court. But, as I have said, section 72 provides for making rules for carrying the Ordinance into effect, and that would certainly in the course of time be stultified to a great or less extent if persons once enrolled as practitioners had a continuing right to remain on the Roll whether or not by their conduct they had shown themselves to be disqualified from participating in the work of the court. The Ordinance cannot properly be carried into effect if unsuitable persons are to be enabled to acquire an

indefeasible right to practise and have audience in the court, and provision for making rules for carrying the Ordinance into effect must include a power to make rules about excluding such persons from practice and audience after they have been enrolled as well as before. The same considerations apply to the functioning of any court administering English law. They are grounded on common sense, and they have in part been applied by the Privy Council in the case of the *Antigua Justices*, 1 Knapp 267, where the judgment says "The power of suspending from practice must, we think, be incidental to that of admitting to practice, as is the case in England with regard to attornies." And the judgment proceeds "In Antigua the characters of advocates and attornies are given to one person; the court therefore that confers both characters may for just cause take both away."

It has rightly been observed that section 72 (1) cannot empower the judge as rule-making authority to confer powers, such as powers of admitting to practice and disqualifying from practice, but only to regulate the exercise of powers the source of which must be found elsewhere. From what source are such powers to be derived, and what are they, in the case of a colonial court administering English law, and in particular in the case of the Supreme Court of the Gambia? Section 15 of the Ordinance provides that the Supreme Court shall possess and exercise all the jurisdiction powers and authorities which are vested in or capable of being exercised by Her Majesty's High Court of Justice in England. The Ordinance was enacted in 1888. In regard to solicitors, there were in 1888 certain disciplinary powers which had been reposed in the hands of the High Court; in the case of barristers, the powers of the courts, or rather the powers of the judges, had been delegated to the Inns of Court: *The King* v. *Gray's Inn*, 1 Doug. 353; *The Antigua Justices'* case.

Then, where a colonial court administers English law, and possess powers over solicitors but not over barristers, what powers, if any, will it have over persons who practise before it, if those persons are to practise in the character of barristers as well as solicitors? The answer was given by the Privy Council in 1830 in the *Antigua Justices'* case. In England in 1830 jurisdiction over attorneys lay in the superior courts of law and was exercisable by them separately. The jurisdiction over barristers was as it was in 1888 and is now. In Antigua advocates practised both as barristers and attorneys. They were to practise in both characters by the Court of Common Pleas and then practised in the other courts of the island as well. The petitioner, one of such practitioners, had been disbarred by the Court of Common Pleas, for various acts of professional and general misconduct with which he had been charged by the Attorney-General and other practising advocates there. He petitioned the Privy Council to restore him to the bar. The judges presented a memorial in reply in which they cited authorities to prove the right of courts to expel from the bar those of its members who misconduct themselves. The petitioner complained that the judges had proceeded to disbar him, instead of striking him off the roll as an attorney; when there must have been a regular prosecutor. The Privy Council said:

> "In England the Courts of Justice are relieved from the unpleasant duty of disbarring advocates in consequences of the power of calling to the bar and disbarring having been delegated to the Inns of Court. In the Colonies there are no Inns of Court, but it is essential for the due administration of justice that some persons should have authority to determine who are fit persons to practise as advocates and attornies there. Now advocates and

attornies have always been admitted in the colonial courts by the judges, and the judges only. The power of suspending from practice must, we think, be incidental to that of admitting to practise, as is the case in England with regard to attornies. In Antigua the character of advocates and attornies are given to one person; the court therefore that confers both characters may for just cause take both away."

What emerges from that case is this, that a colonial court has the power of admitting persons to practise before it, and may admit them to practise in the combined character of barristers and solicitors, and may disqualify persons admitted in that combined character from practising, although the courts in England are left by the English law with only the power of admitting and disqualifying solicitors. It is clear from this that the Supreme Court of the Gambia has powers of admitting persons to practise as barristers and solicitors and of disqualifying them; and what the Rules of the Supreme Court do is to regulate the exercise of that jurisdiction of the courts, to do which is well within the ambit of section 72 (1) of the Ordinance where it provides that rules may be made for carrying the Ordinance into effect.

The jurisdiction of the Supreme Court in the Gambia over practitioners is not the same as the jurisdiction of the High Court in England over solicitors, and for that reason and on general principles I think it need not necessarily be exercised in the same way, provided it is exercised by the court or by some person or authority who may lawfully exercise the court's jurisdiction. By section 4 of the Supreme Court Ordinance, the Supreme Court of the Gambia consists of, and is held by and before, the judge but that does not apply in criminal trials, which by section 33 are had before the judge and a jury. The court and the judge are not the same thing. They are not the same thing in criminal trials, to begin with. Again, the judge may exercise, within limitations, the court's jurisdiction though he is not then the court, or is not the court for the particular purpose in hand. Thus, there is the well-known distinction between the judge in Chambers and the court, which is recognised, incidentally, in section 65 of the Ordinance. Both the court and the judge conduct litigious business, but when the court conducts it, it is coram publico and when the judge conducts it, it is not. Then the judge, not the court exercises certain powers or performs certain duties ancillary to the jurisdiction over litigious matters or of an administrative nature; for example, he appoints commissioners of affidavits under section 27, he directs a special jury under section 34, he allows witnesses' expenses under section 46, he takes down evidence under section 25, and he draws up minutes of proceedings under section 51.

Thus the litigious jurisdiction of the court is exercised by the court coram publico and by the judge non coram publico; and it is the judge, and not the court, who exercises powers and performs duties ancillary to the litigious jurisdiction. The court's jurisdiction over practitioners is not in my view part of its litigious jurisdiction; it is a domestic one, and is either distinct from the litigious jurisdiction, or ancillary to it. If it is distinct, there is, nevertheless, nothing in the law that requires it to be exercised coram publico or by the court itself, for it is not the same as the jurisdiction over solicitors in England nor is it necessarily to be exercised in the same way, and as litigious jurisdiction may be exercised non coram publico by the judge, so may any other jurisdiction be. And the jurisdiction over practitioners is a domestic one, not one between members of the public, and therefore in its nature need not, and very often

cannot conveniently or with propriety, be exercised in public. If the jurisdiction over practitioners is ancillary to the litigious jurisdiction, the judge may exercise it instead of the court. In either case, it is a jurisdiction which may lawfully be exercised by the judge, and in my opinion the rules of court regulating its exercise are intra vires when they provide for its exercise by the judge.

Freetown
Nov. 2,
1960

Ames P
Benka-Coker
Ag. C.J.
Wiseham C.J.

[COURT OF APPEAL]

THE UNITED AFRICA COMPANY . . . . . *Appellant*

v.

MUKTARR KALLAY . . . . . *Respondent*

[Civ.App. 37/60]

Contract of employment—Damages for dismissal—Yearly hiring—Right to receive commission.

Respondent was a storekeeper of the appellant at Makeni under a written agreement of service which provided, inter alia, that respondent should receive a salary of £6 per month and a commission on cash sales and produce bought (if any) and that the contract was terminable at any time by one month's notice on either side. When in December 1955 there was a shortage of appellant's stock in the hands of respondent, he was instructed to hand over the shop and proceed to Freetown. In Freetown, he continued to receive his monthly wages of £6 until October 1956 when, without prior notice, his services were terminated. Respondent brought an action for damages for wrongful dismissal in the Sierra Leone Supreme Court. The trial judge found (1) that the contract was a yearly hiring, that respondent was entitled to six months' notice, and, therefore, that respondent was entitled to £786 damages in lieu of notice based on £6 salary and £125 commission per month; (2) that respondent was entitled to £1,250 damages to compensate him for loss of commission during the ten months prior to his dismissal; and (3) that, by way of general damages respondent should be awarded three months remuneration, which, on the basis of £6 salary and £125 commission per month, came to £393. Against this judgment, the company appealed.

Held, (1) that the contract was not a yearly hiring, and, therefore, respondent was not entitled to six months' notice;

(2) that the company had a right to transfer respondent to a position where he did not make any sales, and, therefore, that respondent did not have any right to receive a commission while in such a position;

(3) that, since the contract expressly provided that it was terminable on a month's notice, respondent was entitled to a month's wages as damages, i.e., £6.

Cases referred to: *The King* v. *Inhabitants of Sandhurst* (1827) 108 E.R. 831; *Jackson* v. *Hayes Candy & Co., Ltd.* [1938] 4 All E.R. 587; *De Stempel* v. *Dunkels* [1938] 1 All E.R. 238; *Fairman* v. *Oakford* (1860) 157 E.R. 1334; *Orman* v. *Saville Sportswear Ltd.* [1960] 3 All E.R. 105; *Addis* v. *Gramophone Company Ltd.* [1909] A.C. 488; *Hartley* v. *Harman* (1840) 11 A. & E. 798, 113 E.R. 617.

Miss Frances C. Wright for the appellant.
Cyrus Rogers-Wright for the respondent.