

and unless it be plainly controlled by what follows must be confined to children living at his death. It is only when the gift to children is not to take effect in possession at the death that it can open to let in children born after the death and before the possession.”

This decision seems to me conclusive to show that only those children who were living at the testator's death take an interest under his devise, and having regard to the nature of the property and the fact that two out of the five persons interested now asked for partition and sale I think that the interests of all concerned will be served by taking this step.

An order will therefore be made for the sale of the property devised by cl. 15 of the testator's will and the distribution of the proceeds among the five children of Mrs. Thomas who were living at the date of the death of the testator George Georgius Cole. The sale is to be conducted by the plaintiff's and defendants' solicitors and the proceeds paid into court, the Master to execute the conveyance and distribute the proceeds after payment of solicitors' costs, the shares of infants to be paid to their father.

The plaintiff having failed in the first issue the costs of that issue will be borne by her. The costs of the second issue will come out of the proceeds of the sale.

*Order accordingly.*

# BANGURAH v. CHIEF BRIMAWEI

Supreme Court (Butler-Lloyd, Ag. C.J.): April 27th, 1925

[1] Courts — native courts — appeals — right of appeal — Mende Tribal Ruler cannot deny right to appeal to him from decision of Santigi or headman: A Mende Tribal Ruler may appoint a Santigi or tribal headman to carry out judicial duties on his behalf but cannot deny any person the right to take his case directly to the Tribal Ruler, or the right to appeal to him against the decision of the Santigi (page 125, line 40—page 126, line 14).

[2] Courts — native courts — constitution — headman may exercise judicial duties delegated by Mende Tribal Ruler — Tribal Ruler cannot refuse to hear case brought directly to him or deny right of appeal against headman's decision: See [1] above.

[3] Criminal Procedure — appeals — right of appeal — Mende Tribal Ruler cannot deny right to appeal to him from decision of Santigi or headman: See [1] above.

5 [4] Estoppel — approbation and reprobation — meaning — person accepting benefit of judgment estopped from denying validity of rest of proceedings: On the principle that a person may not both approbate and reprobate, a party who accepts the benefit of that part of a judgment which is in his favour is estopped from denying the validity of the rest of the proceedings (page 125, lines 29—39).

10 The plaintiff brought an action against the defendant to recover certain sums of money on the ground that they were paid to him on demand without authority or under a mistake of fact.

15 The parties were members of the Mende tribe, the defendant being a Santigi appointed by the Tribal Ruler to carry out certain judicial duties.

The plaintiff's daughter and another woman were arrested for causing a disturbance and in order to secure his daughter's release the plaintiff paid her fine and a fee to the defendant.

20 The plaintiff later summoned the other woman and some of her relatives before the defendant and paid further sums of money to him in respect of these proceedings. The defendant gave only partial judgment in favour of the plaintiff.

25 The plaintiff then brought the present proceedings against the defendant to recover the money paid to him, on the ground that only the Tribal Ruler was entitled to receive such fees. He alleged that he paid the money to the defendant in the mistaken belief that he was in fact the Tribal Ruler.

30 In reply the defendant contended that he had been validly appointed to carry out certain judicial functions on behalf of the Tribal Ruler and was therefore entitled to impose fines and receive court fees in respect of proceedings brought before him. He also contended that the plaintiff, having accepted the benefit of the partial judgment in his favour, was estopped from denying the validity of the rest of the proceedings conducted before the  
35 defendant.

The plaintiff's suit was dismissed.

BUTLER-LLOYD, Ag. C.J.:

40 In this case the plaintiff seeks to recover certain sums paid by him in connection with a palaver between a daughter of his named Boye and another woman.



S.C.

It appears that these two women were arrested and chained for creating a disturbance by the defendant who is a Santigi for the Mende Tribal Ruler. The plaintiff paid £3 as a fine on behalf of this woman and 4s. as a fee for her release and subsequently he summoned the other woman and certain relatives of hers before the Santigi, paying certain sums in the nature of court fees and depositing a wager to abide the result in accordance with native custom. These moneys he seeks to recover either (i) as money paid on demand without authority, or (ii) as money paid under a mistake of fact.

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As to (i) I am not satisfied that any demand was made. The plaintiff was under no compulsion to pay Boye's fine and still less to summon Vandí and the others before Brimawei.

As to (ii) I do not see what mistake the plaintiff could have made. He has admitted that he knew King George was Chief of the Mende and that he knew the tribal regulations. It is entirely in accordance with native custom that a headman or Santigi should stand between the ordinary native and the Chief. I think the plaintiff knew perfectly well that he was dealing with a headman and not the Tribal Ruler and was under no mistake at all when he paid the various sums. The action therefore fails in both its aspects.

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An attempt was made in the final speech for the plaintiff to introduce a new cause of action: to recover a portion of the money from the defendant as a stake-holder of a wager who had notice not to pay over before he did so. Even had I believed such notice was given, which I do not, I do not think such a cause of action put up in such a way and at such a time could succeed.

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Lastly, I am strongly of the opinion that even had the plaintiff a good cause of action under either of the two original heads he would have been estopped from setting them up on the principle of approbation and reprobation. A party cannot accept such part of a judgment or transaction as suits him while disowning the rest (See 13 *Halsbury's Laws of England*, 1st ed., at 364 (1910)). Here it is admitted that the plaintiff had the benefit of the defendant's decision as regards Vandí and wishes to escape the consequences as regards the other persons summoned by him at the same time and before the same tribunal. It is neither good justice nor good law to allow such a course.

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Much had been made of the maxim *delegatus non potest delegare* but I fail to see the relevance here. Of course the Tribal

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Ruler cannot appoint another Tribal Ruler but that is not what has been done. The Tribal Ruler has told us himself that any person not satisfied with his Santigi's decision can come to him and have his case reheard, and that if any person refused to obey a summons by the Santigi he could not be fined under the regulations without being first summoned by the Tribal Ruler himself. The object of the Tribal Ruler system is to give the native residing in Freetown a system of Government resembling that to which he is used. He has a right to go to the Tribal Ruler for justice, but the Tribal Ruler has also a right to appoint a headman to assist him in managing so large a community as the Mendes in Freetown, though of course no man need accept the decision of such a headman without appealing to the Tribal Ruler, and should he take a palaver to him direct the Tribal Ruler could not refuse to hear it.

I should like to add that I think Kowa, Brimawei's predecessor as Santigi in charge of Ginger Hall, who has just returned from a period of seclusion, and who has been in court throughout the proceedings, is probably behind this case and seeking to undermine the authority of his successor.

The case is dismissed with costs.

*Suit dismissed.*

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G. DURING, by his brother and next friend C.D.H. DURING, v.  
SIERRA LEONE RAILWAY

Supreme Court (Purcell, C.J.): November 19th, 1925

- [1] Administrative Law — public authorities — Sierra Leone Railway — rules made under statutory authority must be reasonable otherwise *ultra vires* and unenforceable: A public body which has statutory authority to make rules does not thereby have authority to lay down unreasonable rules; the question whether or not a rule is reasonable is to be determined by the courts and if they find that rules are unreasonable, such as those laid down by the Sierra Leone Railway which relieve the company of its contractual obligation to carry a season ticket holder if he is unable to produce his ticket, and provide that a season ticket holder who cannot produce his ticket is liable to pay a penalty in addition to the ordinary fare for his journey, they will declare such rules *ultra vires* and unenforceable (page 131, line 9—page 132, line 2).
- [2] Administrative Law — supervisory jurisdiction of Supreme Court — subsidiary rules made under statutory authority must be reasonable or court will declare *ultra vires* and unenforceable: See [1] above.