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.

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.

[3] **Civil Procedure — declaratory action — jurisdiction — Supreme Court has no power to give declaratory judgment sitting as summary court:** The Supreme Court acting in its summary jurisdiction has no power to give a declaratory judgment (page 132, lines 3—5).

[4] **Contract — exceptions clauses — notice — party unaware of conditions not bound unless reasonable notice given:** A party to a contract is not bound by conditions of which he is not given reasonable notice and so when a railway ticket is sold subject to certain conditions the passenger is not bound unless he is aware of them or the Railway Company does all that is reasonably necessary to acquaint him with their terms (page 130, lines 1—11; lines 16—20).

[5] **Courts — Supreme Court — jurisdiction — summary jurisdiction — no power to give declaratory judgment when sitting as summary court:** See [3] above.

[6] **Railways — passenger carriage — terms and conditions — passenger unaware of conditions incorporated by ticket not bound unless reasonable notice given:** See [4] above.

[7] **Railways — passenger carriage — terms and conditions — unreasonable rules ultra vires and unenforceable — rules relieving Railway Company of obligation to carry season ticket holder if unable to produce ticket and providing in such circumstances for payment of additional penalty are ultra vires and unenforceable:** See [1] above.

[8] **Statutes — ultra vires and repugnancy — subsidiary legislation — rules ultra vires and unenforceable if unreasonable:** See [1] above.

The plaintiff brought an action against the defendant claiming damages for breach of contract, a refund of money paid to the defendant and a declaration that the defendant acted illegally and that the contract remained in force throughout the contract period.

The plaintiff bought a six monthly season ticket from the defendant Railway Company. The ticket was sold subject to certain rules made by the company under statutory authority. These rules were contained in the railway tariff which was not available to passengers on demand but might be obtained within two or three days at a price of 3s. They included a rule under which the Railway Company had no reponsibility to carry a season ticket holder who, for any reason, did not produce his ticket, and another by which a season ticket holder who was unable to produce his ticket would be liable to pay a penalty in

addition to the ordinary fare for his journey, whereas other passengers would not be liable to penalty in similar circumstances.

The plaintiff was not notified of the rules although there was a reference to them in the small print on the face of the ticket. After using his ticket for two months he lost it and was not permitted by the defendant to travel on the railway in the absence of further payment.

He then brought the present summary proceedings against the defendant contending that he was not bound by the rules on which the company purported to rely as he had no notice of them, and that in any case the rules were unreasonable and so unenforceable since the company had statutory authority only to make reasonable rules. He contended therefore that the defendant was in breach of contract and claimed damages, a refund of part of the cost of the season ticket and a declaration that the defendant acted illegally and that the contract remained in force throughout the contract period.

The court gave judgment for the plaintiff but made no declaration.

Cases referred to:

(1) *Henderson v. Stevenson* (1875), L.R. 2 Sc. & Div. 470; 32 L.T. 709.

(2) *Parker v. S.E. Ry. Co.* (1877), 2 C.P.D. 416; [1874–80] All E.R. Rep. 166.

(3) *Richardson Spence & Co. v. Rowntree*, [1894] A.C. 217; [1891–4] All E.R. Rep. 823.

PURCELL, C.J.:

The plaintiff's claim in this action is as follows:

"The plaintiff's claim is for damages and the return of 16s.11d. against the defendant for that on December 3rd, 1924 the plaintiff agreed with the defendant to be a season ticket holder and to be by the defendant safely carried upon the defendant's railway as a passenger from Water Street Station to Lumley Road Station and back for the period of six months as from December 1st, 1924 to May 31st, 1925 for reward.

From December 3rd, 1924 to on or about February 6th, 1925 the plaintiff was received by the defendant as such

passenger and was carried upon the said railway for such rewards as aforesaid.

From February 6th, 1925 to May 31st, 1925, the unexpired period, the defendant unlawfully and in breach of the said contract refused to receive the plaintiff as a passenger and to carry him upon the said railway as agreed whereby the plaintiff was deprived of proper conveyance, to which as such season ticket holder he was entitled and has suffered damage and has been put to great inconvenience and expense.

The plaintiff claims:

1. A declaration that the refusal of the defendant to receive and carry him on the said railway on February 6th, 1925 and thereafter is illegal and that the said contract was in full force and virtue up to May 31st, 1925.

2. Damages in the sum of £6.

3. Return of 16s.11d. for the unexpired period from February 6th, to May 31st, 1925."

This action was tried before me in the Summary Court on October 23rd and October 28th, on which latter day I reserved judgment.

The facts which are set out fully in the notes of evidence taken at the trial need not be recapitulated here as they are sufficiently stated in the statement of claim endorsed on the summons to which I have already referred.

The first question that arises is, What was the contract that was made between the plaintiff and the defendant? The answer to that question, as I take it to be, is that the contract was made when the plaintiff applied for his season ticket and the ticket was handed to him in exchange for payment and it undoubtedly was that the defendant company should carry the plaintiff on its trains between Lumley Road Station and Water Street Station at all such times as the plaintiff should choose to travel thereon and between the dates mentioned on the ticket. The defendant contends that it was a contract to carry subject to all the terms contained in the railway tariff and particularly subject to r.10 of 1924 and r.11 of 1923.

No doubt this contention when one looks at the provisions made by these rules would be a complete answer to the plaintiff's claim assuming always that the rules in question had been brought to his notice, and assuming further that such rules were reasonable, and I will deal with these questions *seriatim*.

Now there is abundant authority for the proposition that in the making of a contract unless reasonable notice of its conditions are given to the offeree such conditions are not binding on him: see *Henderson* v. *Stevenson* (1); *Parker* v. *S.E. Ry. Co.* (2); *Richardson Spence & Co.* v. *Rowntree* (3); and Anson's *Law of Contracts*, 12th ed., at 25 (1910). *Leake on Contracts*, 6th ed., at 12 (1911) also is clear on the point. He says:

> "It is necessary, in order to bind the person accepting the ticket by the incorporated conditions, that the person offering the ticket has done all that is reasonably sufficient to give notice of the contents."

Here there was only a reference in small print on the face of the ticket to the conditions contained in the railway tariff which the defendant's own witness admitted it might take a member of the public two or three days to get from the railway authorities and then only upon payment of 3s. It cannot therefore be contended that the railway authorities did all that was reasonably necessary to acquaint season ticket holders with the terms of the offer made to them and therefore it follows those terms are not binding on the season ticket holders. In England every railway company is bound by law to have its tariff charges exhibited in a conspicuous place on every railway station on their lines, and it is to be regretted that such a very salutary rule was not in force on the Sierra Leone Railway. I am quite clear that as a matter of fact neither the plaintiff George During nor his brother Mr. Claudius During was aware of these rules for the reason that they were not brought to their notice, Mr. Claudius During's evidence in my opinion is conclusive on that point. Nor do I suppose that the defendant would now seriously contend that these rules had ever been brought to their notice; such being the case, that is sufficient to dispose of this matter. By reason of the authorities I have already referred to and as the conditions were not brought to the plaintiff's notice, they are not binding on him.

Although it is not now necessary for me to do so, as the defendants have raised the question and it has been argued, I will deal very briefly with the question as to whether these rules are reasonable or unreasonable. It is well in this connection to recall the words of a very learned judge the late Alderson, B.:

> "By-laws imposing penalties, and establishing a summary mode of proceeding for the recovery of such penalties, are regarded with the utmost jealousy, and must be made in

strict pursuance of statutory authority, more especially where they restrain the freedom and liberty of the subject beyond the requirements of the ordinary law. The power of making them is an extraordinary power, and will be narrowly construed. We must look closely to the power given by the legislature, to see whether the by-law is within the scope of the authority, or whether it does not relate to matters which the general conduct of the Queen's subjects is regulated."

It has been argued that since r.10 of 1924 was made under statutory authority and the Interpretation Ordinance says that such rules are to have the force of law it is immaterial whether the Railway did what was necessary to give notice to the plaintiff or not. The plaintiff's answer to this argument is that the rule upon which the Railway relies is unreasonable and that the authority delegated by the legislature to the Railway was not to make any rules whether reasonable or unreasonable but only to make reasonable rules. Now it is quite clear to my mind that no rule of this kind can be of any avail unless it is reasonable and the question whether it is reasonable or otherwise is for the court to decide.

With all deference and respect to the Executive Council who approved of these rules, I have come to the conclusion without any doubt whatever that both rules are unreasonable and therefore *ultra vires*. I have come to this conclusion after careful and anxious consideration for these reasons:

(a) The rule purports to relieve the defendant Railway Company of the duty of fulfilling their contract to carry a season ticket holder if from any cause whatever he is unable to produce his ticket, and when one considers the occurrences that might prevent a season ticket holder from producing his ticket the unreasonableness of the rule becomes peculiarly apparent. I refer to such occurrences as the following: If, without negligence on his part, the ticket were destroyed by fire, dropped into the sea, or stolen from him or otherwise mislaid by reason of any of those casualties in human life to which one is always subject wherever one might be.

(b) The rule is unreasonable for another reason in that it discriminates against season ticket holders on the mountain section of the railway and provides that a person admittedly a season ticket holder must pay a penalty in addition to the ordinary fares if he happened not to have his season ticket with him whereas a

person not holding a season ticket or any other ticket has to pay only the ordinary ticket fare without any penalty.

This court sitting in its summary jurisdiction has no power to pronounce a declaratory judgment and for that reason I must decline to make the declaration asked for in para. 1 of the claim.

With regard to the rest of the claim I award the plaintiff £6 damages under para. 2 and the return of 16s.11d. under para. 3. There will therefore be judgment for the plaintiff for £6.16s.11d. with costs.

Judgment for the plaintiff.

WEBBER v. SIERRA LEONE RAILWAY

Supreme Court (McDonnell, Ag. J.): November 15th, 1926

[1] **Carriers — common carriers — limitations on liability — "owner's risk" clause in consideration of reduced rates enforceable if carriage at carrier's risk also offered at reasonable alternative rate:** When the consignor of goods, in consideration of a pecuniary benefit, voluntarily agrees in writing to exonerate the carrier from any liability for the loss of or damage to the goods unless caused by the misconduct of the carrier's servants, this contract may be enforced as just and reasonable if the consignor was *bona fide* offered the alternative of sending his goods at the carrier's risk at a reasonable, though higher, rate; the additional 10% charged by the Sierra Leone Railway for the carriage of goods at the Railway's risk is just and reasonable (page 134, line 17—page 135, line 14).

[2] **Contract — exceptions clauses — common carriers — written contract excluding carrier's liability in consideration of reduced rates enforceable if carriage at carrier's risk also offered at reasonable alternative rate:** See [1] above.

[3] **Railways — carriage of goods — carrier's liability — written contract excluding railway's liability in consideration of reduced rates enforceable if carriage at railway's risk also offered at reasonable alternative rate — additional 10% charged by Sierra Leone Railway reasonable:** See [1] above.

The plaintiff brought an action against the defendant in the Supreme Court claiming damages for breach of contract.

The defendant Railway Company gave their customers the choice of two alternative rates for the carriage of goods. Carriage at the higher rate was at the Railway's risk, while a 10% reduction was offered if the consignor would agree in writing to exonerate the company from liability for any loss of or damage to the goods