

necessary in the present case to pronounce any opinion upon it. The difference of rate here is 10 per cent, and it cannot, I think, be maintained that the difference is either so small as to be illusory or so great as to make the higher rate prohibitory.”

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Since therefore the reasonableness of the conditions depends on the existence of an alternative rate the company must prove that a reasonable alternative rate exists. This is undoubtedly to be found in r.32 of the Railway (Goods Tariff) Rules which provide for railway risk rates at an addition of 10% per ton-mile over and above the owner’s risk rates, an additional freight which cannot but be thought to provide a reasonable alternative, since it makes the difference between the two rates precisely that which was held just and reasonable in *Great Western Ry. Co. v. McCarthy* (1).

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This being so, no evidence having been led by the plaintiff to prove misconduct by the defendant’s servants or any neglect or default which would serve to set aside the terms of the contract I have no alternative but to say that I think the plaintiff was very ill-advised in bringing this action, the defence to which is so plain and unmistakable.

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I therefore give judgment for the defendant Railway Company with costs.

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Suit dismissed.

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GPANNEH and ANOTHER v. CAULKER

Supreme Court (Purcell, C.J.): March 7th, 1928

[1] **Civil Procedure — appeals — right of appeal — no appeal from decision of Kroo Chief’s Court:** There is no appeal from a decision of the Kroo Chief’s Court and so although a party to proceedings heard by him may apply to a magistrates’ court for an order enforcing his decision, the correctness of the Chief’s decision on the substantive issue between the parties may not be raised by either of them on such an application (page 139, lines 3—9).

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[2] **Civil Procedure — judgments and orders — enforcement — application for order enforcing decision of Kroo Chief may be made to magistrates’ court — parties not to re-open substantive issue during application:** See [1] above.

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[3] **Courts — magistrates’ courts — jurisdiction — may hear application for order enforcing decision of Kroo Chief — substantive issue not to be re-opened:** See [1] above.

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[4] Courts — native courts — appeals — no appeal from decision of Kroo Chief's Court: See [1] above.

5 [5] Courts — native courts — jurisdiction — Kroo Chief has jurisdiction over dispute between members of Kroo Tribe over possession of house on Kroo Reservation: The effect of the Kroo Reservation Ordinance (*cap.* 107), which states that all land within the Reservation is Crown land and that no larger tenancy than a tenancy at will shall subsist between the Crown and Kroomen occupying the land, is that no real estate can exist within the Reservation, and since the Kroo Tribal Ruler has jurisdiction to settle disputes arising between members of the Kroo Tribe relating to personal property by virtue of the Tribal Administration (Freetown) (Kroo) Rules (*cap.* 217), r.7(c), he may therefore adjudicate upon a dispute over the possession of a house on the Kroo Reservation (page 137, line 41—page 138, line 32).

15 [6] Land Law — capacity to hold and transfer land — customary land — no real estate within Kroo Reservation — houses and land constitute personal property: See [5] above.

[7] Personal Property — native land — no real estate within Kroo Reservation — houses and land constitute personal property: See [5] above.

20 The respondent brought an action in the Kroo Chief's Court against the appellant for possession of a house on the Kroo Reservation.

25 Both parties were members of the Kroo tribe living on the Kroo Reservation in Freetown. A dispute arose between them concerning the respondent's right to the possession of the house she occupied and this culminated in the forcible ejection of the respondent by the appellant. The respondent then brought an action against her in the Kroo Chief's court to regain possession of the property. The Kroo Chief gave judgment for the respondent but she was unable to repossess the house and so applied to the police magistrate's court for an order of ejection against the appellant. The order was granted and the appellant appealed against it to the Supreme Court contending that the decision of the Kroo Chief should not be enforced since — (a) he had no jurisdiction over disputes concerning real property in the Reservation, and (b) she herself was entitled to possession of the property.

The appeal was dismissed.

Legislation construed:

40 Kroo Reservation Ordinance (Laws of Sierra Leone, 1925, *cap.* 107), s.2:
The relevant terms of this section are set out at page 138, lines 18—19.

s.3: The relevant terms of this section are set out at page 138, lines 7—9.

s.6: The relevant terms of this section are set out at page 138, lines 19—22.

Schedule B, r.1: The relevant terms of this rule are set out at page 138, lines 12—13. 5

r.2: The relevant terms of this rule are set out at page 138, lines 14—17.

Tribal Administration (Freetown) (Kroo) Rules (Laws of Sierra Leone, 1925, *cap.* 217), r.7: 10

The relevant terms of this rule are set out at page 138, lines 2—5.

PURCELL, C.J.:

This case arises out of a dispute as to the possession of one of two houses which have been standing in one lot, 26 Kroo Town Road, situate within the Kroo Reservation, for some time. According to the respondent's own evidence she herself built the house. This is denied by the appellant but the point is not material to the issue. At some date, apparently in March 1926 — the date is uncertain but the act is not denied — the appellant forcibly ejected the respondent from her house. The respondent then took proceedings and brought the matter before the Kroo Chief who gave judgment in her favour but she does not appear to have been able to recover possession, and the case then came before the police magistrate. 15
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The note of these proceedings is unsatisfactory, but there is certainly no indication that the appellant then raised a *bona fide* claim of title. There is some doubt as to whether she was called upon and what case she put up. I understand she was called upon but could set up no definite claim and having stated that the Kroo Chief's judgment had been given in her favour, cross-examined him and then admitted that it had been against her. The magistrate being apparently satisfied that there was no substantial claim of right at least apart from that which had been adjudicated upon by the Kroo Chief, thereupon made an order of ejectment. 30
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I have heard the witnesses called before the magistrate and others. The facts I have already explained and the law to be applied is to be found in the Kroo Reservation Ordinance (*cap.* 107) and the Tribal Administration (Freetown) (Kroo) Rules (*cap.* 217). The first point which I have to determine is whether 40

the Kroo Chief's court was a competent court to try this dispute. By r.7(c) of the Tribal Rules the Tribal Ruler is given jurisdiction to adjudicate upon and settle disputes arising between members of the Kroo Tribe relating to personal property and domestic disturbances. Section 3 of the Kroo Reservation Ordinance (*cap.* 107) provides that:

“ . . . [T]he Kroo Reservation shall be under the charge and management of the Tribal Authority of the Kroo Tribe in Freetown.”

Rules 1 and 2 of the rules contained in Schedule B of the same Ordinance, which have effect by virtue of s.7, read:

“1. Houses may be exchanged, bartered, sold, let, given by and to Kroomen only, subject to the control of the Tribal Authority.

2. On the death of the occupier of a house, intestate, the same may be sold for the payment of debts, and subject thereto shall devolve on the person, if any, possessing rights of succession according to Kroo custom.”

Section 2 of this Ordinance declares the land within the Reservation to be Crown land — and s.6 provides that — “. . . no larger tenancy than a tenancy at will shall be deemed to subsist between the Crown and Kroomen occupying land on the said Reservation.”

What exactly was in the mind of the legislator beyond a love of alteration when he joined personal property and domestic disturbances, it is difficult to say, but he has employed terms of art and these must be construed according to their technical meaning — personal property includes both chattels real and chattels personal, and there is nothing in this Ordinance in the association of “domestic disturbance” with personal property or elsewhere to suggest that the latter only are intended. The subject matter of this dispute is within the Kroo Tribal Ruler's jurisdiction conferred by r.7 of the Tribal Rules.

The provisions of the Kroo Reservation Ordinance (*cap.* 107) which I have cited all show that this was the intention of the legislature. Section 2 clearly means that the only tenancies permitted in the Reservation are tenancies at will or at sufferance and that no real estate can exist inside the Reservation. Exactly how a tenancy at will which is determined by the death of either party devolves at all the legislature has not explained but the difficulty is doubtless better provided for by Kroo custom which is to govern

this matter (see r.2 of the Schedule) than by the common law of England.

This case has been heard and decided by the Kroo Chief and from his decision, as from that of all the Tribal Rulers of this city, there appears to be no appeal. This being so, no question of title could have been raised in the magistrate's court even if in fact any attempt had been made to do so. For the same reason the appellants are estopped from raising any question of title here. The magistrate's order must therefore stand and the appeal is dismissed with costs.

Appeal dismissed.

MACAULEY v. JUDGES OF THE SUPREME COURT OF
SIERRA LEONE and ANOTHER

Privy Council (Lord Hailsham, L.C., Lord Buckmaster and
Lord Warrington of Clyffe): May 18th, 1928

[1] Legal Profession — disciplinary proceedings — conduct amounting to reasonable cause for striking practitioner off roll — obtaining of fees from unsophisticated client on false pretence is reasonable cause: A barrister who agrees to hold a brief on behalf of another for a specified fee and then, on the pretence that the case has been transferred entirely to him, demands and receives from an ignorant and unsophisticated client a further fee out of all proportion to the importance of the case, and who, on the same pretence, persuades the client to pay him an additional fee, supposedly for conducting an appeal when in fact he has no work to do in respect of the appeal since he is not acting in it, by his conduct gives the Chief Justice reasonable cause to exercise the power conferred upon him the Supreme Court Ordinance (*cap.* 205), s.57 to order the barrister's name to be struck off the roll of the court (page 144, line 34—page 145, line 14; page 145, lines 21—24).

The respondents brought proceedings against the appellant so that he might show cause why his name should not be disciplined under the Supreme Court Ordinance (*cap.* 205), s.57.

The appellant was a barrister and solicitor of the Supreme Court. He agreed to hold a brief in the Protectorate on behalf of a senior practitioner (Mr. C.E. Wright) for a fee of 20 guineas. The case in which he was to appear was uncomplicated but, on the pretence that the case had been transferred entirely to him and that it involved a considerable amount of work, the appellant