P.C. BONGAY v. MACAULEY

Circuit Court (Tew, C.J.): March 5th, 1931

[1] **Constitutional Law — chiefs — paramount chief — rights and duties — right of entry to communal land to work on it for good of community — interference and denial of right amounts to flouting chief's authority:** Under the customary law prevailing in the Big Bo Chiefdom, the Paramount Chief has the right to enter communal land, whether occupied by a settler or a native of the community, to do whatever he thinks necessary for the good of the community; and a settler's interference with this right, by physical obstruction and claims to absolute ownership of the land, amounts to the flouting of the chief's authority (page 226, lines 25—39).

[2] **Equity — acquiescence — undisturbed possession of communal land — conditions for application of doctrine under customary law of Big Bo Chiefdom:** The doctrine of acquiescence in equity as applied to a case of long possession of land means, in the case of communal land in the Big Bo Chiefdom, that the person in whom the control and disposition of the land is vested has allowed the occupier to remain in possession under the mistaken belief that the land is his own absolutely, or at least that he has a better title than that which he actually has, and has allowed him to spend money or do some other act on the faith of that mistaken belief (page 227, lines 15—22).

[3] **Land Law — occupational rights — allotment of tribal land — under Mende customary law non-native settler must pay "shake hand," annual tribute and loyal respect to Paramount Chief — may be exempted from payment of tribute:** Under the Mende customary law prevailing in the Big Bo Chiefdom a non-native would-be settler is required to give the Paramount Chief a "shake hand" or present before he is allotted a piece of land, for which he will then pay the Paramount Chief an annual tribute (from which the Chief may exempt him in his discretion) and so long as he behaves loyally and respectfully to the Paramount Chief he can continue to occupy the land (page 222, lines 21—33; page 226, lines 16—21).

[4] **Land Law — occupational rights — under Mende customary law right ceases at settler's death and land reverts to community — no succession for settler's children though Chief may re-grant land to them:** Under Mende customary law, when a settler dies the land granted to him reverts to the family or community so that his children cannot succeed to it as of right; but it could be re-granted to them by the Paramount Chief just as if they were newcomers applying for a fresh grant (page 223, lines 9—40).

[5] **Land Law — right of entry — Paramount Chief of Big Bo Chiefdom may enter communal land and work on it for good of community — interference and denial of right amounts to flouting Chief's authority:** See [1] above.

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[6] **Land Law — title — communal title — whole community in Big Bo Chiefdom has equal right to land controlled by Paramount Chief and Tribal Authority — land allotted to individuals remains property of community:** Under the customary law in force in the Big Bo Chiefdom all the members of the community have an equal right to the land in the chiefdom, but general control over it is vested in the Paramount Chief and the Chiefs constituting the Tribal Authority who can allot a piece of land to an individual for cultivation or building purposes; but the land so given still remains the property of the community (page 221, line 5—page 222, line 18).

[7] **Land Law — title — forfeiture — flouting authority of Paramount Chief of Big Bo Chiefdom — offending party forfeits title and may be expelled:** Under the Mende customary law prevailing in the Big Bo Chiefdom, loyalty to the Paramount Chief is the basic principle of land tenure and disloyalty, such as continued flouting of the Chief's authority, entails forfeiture of rights over land and ejectment from it (page 222, line 34—page 223, line 8; page 227, lines 6—11).

[8] **Succession — family provision — no succession to land as of right for settler's children under Mende customary law though Chief may re-grant land to them:** See [4] above.

The plaintiff brought an action against the defendant in the Circuit Court for recovery of possession of land.

The plaintiff, suing on behalf of himself as Paramount Chief of the Big Bo Chiefdom and of the Tribal Authority of the Chiefdom, sought to recover possession of two areas of land from the defendant, a non-native settler to whom the land had been granted more than 30 years previously by the then Paramount Chief. There were originally two further plaintiffs described as "land owners," one of whom later died and both of whose names were later struck out.

The defendant, a carpenter by trade, had married the daughter of the Paramount Chief and been granted some land by him in 1892 for the purposes of cultivation. Some of this land the defendant sub-let for building purposes contrary to the terms of his grant and disputes arose between him and the Paramount Chief which were eventually settled in 1905 by the then Governor. The terms of the agreement reached were contained in a letter from the Governor to the defendant, the relevant parts of which stated that (a) the land would remain the defendant's property so long as he cultivated it in accordance with the conditions as to cultivation; (b) the defendant had no right to sub-let the land; and (c) as a result of the defendant's marriage with the daughter of the Paramount Chief, the Chiefs would recognise the

right of any children of this marriage to succeed to the land. From the date of this letter the defendant remained in possession of the land even though he continued to sub-let parts of it.

In 1926 the plaintiff became Paramount Chief. He wished to clear and widen a road running through the defendant's land for the convenience of people going to and from a washing place. The defendant objected, declaring that the land was his personal property, and proceeded to plant young trees on the road in support of his claim and in defiance of the plaintiff. The plaintiff, together with the other plaintiffs, thereupon brought a successful action in the Circuit Court (Butler-Lloyd, J.). The defendant's subsequent appeal to the West African Court of Appeal (reported at 1920—36 ALR S.L. 181) succeeded and the court ordered the case to be reheard in the Circuit Court.

At the rehearing, the defendant contended that he was the absolute owner of the land, that he could sell it and keep the proceeds, and that he could will it to whomever he liked; and that in any case his daughter by his lawful wife could succeed to it in accordance with the agreement recorded in the Governor's letter of 1905. The plaintiff contended that the defendant had by his conduct, or by failure to observe the conditions of his tenure, forfeited his rights to the land in spite of his long possession. He further contended that a settler's children did not succeed to his land as of right and that the defendant must have been promised his children's rights of succession by the Governor in 1905 through a misunderstanding due to poor interpretation.

The Circuit Court also considered whether the plaintiff or his predecessors had encouraged the defendant to spend money or to do other acts which he would not have done if the Paramount Chiefs had asserted their legal rights — whether, in fact, there had been acquiescence by the plaintiff and his predecessors in the defendant's claims thus making it inequitable that he should forfeit all his rights in the land.

The court gave judgment for the plaintiff.

Cases referred to:

(1) *Amodu Tijani v. Secretary, Southern Nigeria,* [1921] 2 A.C. 399; (1921), 3 Nig. L.R. 50, followed.

(2) *Lala Beni Ram v. Kundan Lal* (1899), 15 T.L.R. 258.

(3) *Ramsden v. Dyson* (1866), L.R. 1 H.L. 129; 14 W.R. 926.

(4) *Rennie v. Young* (1858), 2 De G. & J. 136; 44 E.R. 939.

(5) *Willmott v. Barber* (1880), 15 Ch. D. 96; 43 L.T. 95; on appeal (1881), 17 Ch. D. 772; 45 L.T. 229, *dictum* of Fry, J. considered.

Legislation construed:

Protectorate Native Law Ordinance, 1905 (No. 16 of 1905), s. 28:
The relevant terms of this section are set out at page 219, lines 25—28.

Protectorate Native Law Ordinance (Laws of Sierra Leone, 1925, *cap.* 170), s. 2:
The relevant terms of this section are set out at page 215, lines 39—40.

Kempson for the plaintiff;
Barlatt for the respondent.

TEW, C.J.:

The plaintiff is the Paramount Chief of the Kakuwa Chiefdom in the Protectorate, and the defendant is a native of Freetown in the Colony. The plaintiff, suing on behalf of himself and the Tribal Authority of the Chiefdom, seeks to recover possession of two portions of land at Bo, comprising together an area of 180,000 sq. yds., which have for a long time been in the occupation of the defendant.

This action was first tried in 1927, and there were then two other plaintiffs who were described as "land owners." The plaintiffs were successful in that action; but in March 1930 the West African Court of Appeal ordered a rehearing, mainly on the ground that there was not sufficient material on which a decision could be arrived at. At the new trial one of the plaintiffs described as "land owners" was reported to have died, and the names of both these plaintiffs were struck out by consent, it being agreed that Kamanda Bongay had sufficient interest in the land to enable him to maintain the action on behalf of himself and the Tribal Authority.

Here it may be as well to explain that the Tribal Authority are, in the words of one witness, the "big men of the Chiefdom," a description perfectly clear to the native mind. They are in fact a kind of executive council on whose advice the Paramount Chief frequently acts, even though he is not bound by it. In the Protectorate Native Law Ordinance (*cap.* 170), s. 2 the term is defined to mean "Paramount Chiefs and their councillors, and men of note, or Sub-Chiefs and their councillors, and men of note," and this definition was described by Mr. Bowden, who is in charge of the

Southern Province in which Bo is situated, as a reasonably sufficient description of the term in its customary meaning.

The history of the defendant's occupation of the land in question is of much importance and has to be considered in detail. For the earlier part of it we are dependent on the defendant alone, none of the other witnesses being old enough to remember it. He first came to Bo in 1890 when Otigua was the Paramount Chief, and took up his abode with one Yeregute whose daughter, Jenineh, he married. Jenineh was not a young woman at the time and has long since died, leaving no children. A few years later the defendant married Mamawa, a daughter of Chief Bongay, by whom he has one daughter, Rebecca. In 1892 the defendant went with Yeregute to Otigua and asked for and was allotted a piece of land outside the town. The boundaries of the land were pointed out by Otigua and his chiefs, and a large barn was built by them for the use of the defendant. Bongay, who was father of the plaintiff and at that time "Speaker", or Prime Minister, to Otigua, supervised the work of building.

In 1894, according to the defendant, Otigua and his Chiefs signed a document, Exhibit DD, relating to this land which is dated March 9th, 1894 and is in the following terms:

> "We the undersign do hereby grant to Frederick S. Macauley and his Successors; residence (*sic*) trader of Bo Native of Freetown Sierra Leone, This nineth (*sic*) day of March in the year of our Lord one thousand eight hundred & ninety four a portion of land situated on the North by Hanar town on the south by Ticonkoh road on the East by Commenda town on the West by a village of vandee and a mark between for the aforesaid Fred S. M'Cauley valuable services & friendly gifts done to us from time to time. This we do as an everlasting memorial in presence of our children and subjects. Witnesseth by their marks to same drawn in two copies."

This document is of course of no value as affecting the defendant's title, but it is of interest in other ways. The stamps affixed to it, as is agreed, were not in circulation in 1894, and the document, if executed then, certainly could not have been stamped then. The defendant's explanation is that in 1897, being told that the document was valueless without stamps, he had facsimiles of both copies made, stamped them, and destroyed the originals. This amazing story, coupled with the defendant's statements as to the date of the death of Otigua and matters connected therewith,

gives rise to serious doubts whether Otigua and his chiefs ever signed any such document at all. A document which appears to be the other copy is also in evidence in this action, having been put in by consent, and is marked Exhibit B2. It is not an exact copy of Exhibit DD, as it lacks several signatures, including that of the witness to the marks, and many of the words are either different or differently spelt; nor does it appear to be written by the same hand. No attention was called to this other copy at the trial, and it must be considered to be without any particular significance, except in so far as the differences mentioned cast additional doubt upon the truth of the defendant's story and the authenticity of either document.

In 1902 the government required some of the land occupied by the defendant for railway purposes, and the following letter was addressed to him on August 26th, 1902 by the District Commissioner, Mr. Wallis:

> "Sometime ago you purchased a piece of ground from Chief Bongay of Bo; near of (*sic*) Bo at a trifling cost.
>
> This piece of ground is at present I understand uncultivated and covered with bush, and is required by the Government for the purpose of erecting temporary quarters for some of the European engineers for the completion of the time.
>
> Chief Bongay informs me that he is willing to give you another piece of grounds (*sic*) in exchange for your present property, equally as good if not better than the ground in your possession now.
>
> His Excellency the Governor is anxious that this matter should be arranged between yourself and the Chief, so I shall be much oblige (*sic*) if you will approach him on the subject and when arranged inform the engineer at Bo of the exchange."

The original of this letter has been lost and a copy, apparently made by a somewhat illiterate person, was put in by consent.

In pursuance of the arrangement proposed in that letter, the defendant received from Chief Bongay, who was then the Paramount Chief, a piece of land in exchange for that taken, and he has a document purporting to have been executed by Chief Bongay and dated December 25th, 1902, in which the land was said to be granted to the defendant "as his personal property forever." On November 25th, 1904 the Colonial Secretary wrote the following letter to the defendant:

"I am directed by His Excellency the Governor to ask whether you want certain land situated near Bo purported to be granted to you in the year 1894, under a written agreement with Chief Oterguah and Others. His Excellency directs me further to point out that at present your title to the land is void."

This letter was apparently written in consequence of a letter under cover of which the District Commissioner at Bandajumah had forwarded the alleged agreement of 1894 to the Governor.

The Governor shortly afterwards visited Bo and subsequently addressed to the defendant a letter dated January 11th, 1905 which is of the utmost importance in its bearing on the facts of this case. The letter, which is signed by the Governor himself, runs thus:

"I think it is desirable that a record should be made of the result of the recent interview between the Regent and representative men at Bo and ourselves with reference to the land occupied by you at Bo, especially as a complete agreement on the subject was arrived at.

The land in question was granted to you by the Chief and representative men for the purpose of cultivation. It follows that the land will remain your property so long as you cultivate it in accordance with the conditions as to cultivation subject to which the land was granted.

At the time of the grant you contracted a marriage in accordance with native law with the daughter of the Chief and as a result the Chiefs will on your death recognise the right of the children by this marriage to succeed to the land.

The native custom does not permit of your sub-letting the land and consequently you have no right to do so. With respect to the 6 or 7 building lots which you have sub-let it was arranged with the Regent that he would order the natives who were in occupation of some of the lots to quit them unless they paid you the agreed rent. With regard to the lots occupied by Sierra Leoneans the matter must remain in abeyance pending the coming into operation of a law which is about to be submitted to the Legislative Council.

I propose establishing a school for the sons of Chiefs at Bo. At this school agriculture will be one of the subjects taught to the pupils, and when the time arrives I propose considering whether the tuition in agriculture cannot be

given to the pupils by you with assistance, of course, from the Curator. On this subject I should like to learn your view.

In connection with the above mentioned school it will be necessary to obtain a supply of pure water, and I think that the stream running through your land will probably be well adapted to give the necessary supply. With the object of ascertaining whether this is the case and also to ensure that your land will be available for the purpose of teaching the pupils agriculture as above mentioned, I propose having a proper plan made of the land and a thorough examination made of the water. In your reply please let me know your views also on these matters."

The legislation referred to in the fourth paragraph of this letter was enacted as Part III of the Protectorate Native Law Ordinance, 1905, since repealed and replaced by the Protectorate Land Ordinance, 1927, and came into operation in 1906. Part III of the Ordinance dealt with the "settlement of non-natives on native lands" and provided, in effect, that any person not a native of the Protectorate, who should settle in any chiefdom, should pay a fixed sum to the Paramount Chief. Non-natives who had settled before the said date were to continue to make the "customary presents" to the Paramount Chief, but might elect to make the fixed annual payment instead. Section 28 gave the Paramount Chief power to remit the whole or any part of this fixed annual payment "in the case of any settler who, by his knowledge of any special trade or calling, is, in the opinion of the Paramount Chief, conferring a benefit on the town or place wherein the lot occupied by such settler is situated."

The defendant acknowledged the Governor's letter on January 17th, 1905 and subsequently, in letters dated March 22nd and July 22nd, 1905, wrote to the Colonial Secretary asking what arrangements were to be made with regard to the land required for the school. In para. 4 of the last letter he wrote: "I would therefore submit for His Excellency's gracious consideration for whatever remuneration can be given for the care, labour and expenses the upkeep of the land has caused me since it became my possession." The wording of this letter is significant in that the defendant does not claim to be compensated as absolute owner of the land, but only in respect of his outlay upon it. On July 29th, 1905 the Colonial Secretary replied: "When the school is started, if any portion of your land is required, I have no doubt that an

equitable arrangement will be made with you." On July 23rd, 1906 the defendant stated that the land had already been taken and asked for £8 in respect of the kola trees and plantains growing on it.

There was no further correspondence until the year 1914, when the defendant personally, and through his solicitor, complained to the Colonial Secretary that he had received compensation for only three portions of his land and had been paid nothing in respect of an area of 20 acres, which was apparently part of the area taken for Bo school. This correspondence culminated in a letter of January 8th, 1916, from the Colonial Secretary to the defendant, referring to an earlier letter addressed to his solicitor on May 22nd, 1914, in which it was stated that the government had taken no land belonging to the defendant for which he had not been paid. On April 20th, 1920 the defendant returned to the charge in two letters addressed to the Colonial Secretary, to which he received the same reply. The subject has since then apparently been dropped by everybody concerned.

In 1926 or thereabouts some more of the land occupied by the defendant was taken by the government for the purposes of a native hospital, and on June 18th, 1930 his solicitor submitted a claim for compensation for the economic trees and a small hut said to have been in existence when the land was taken. The Director of Public Works replied on July 15th, 1930 that the claim was exaggerated and that the value of the trees did not exceed £40.

The episode which brought the question of the defendant's rights over this land into court occurred in 1926 when the plaintiff, who had recently become Paramount Chief, wished to clear and widen a path which ran through the defendant's land for the convenience and safety of people of the town when going to and from a washing place. The plaintiff gave notice of his intention, and on the appointed day began the work. The defendant appeared on the scene, declared that the land was his personal property, and proceeded at once to plant kola suckers on the road that had been cleared. The plaintiff, with great good sense, then withdrew his working party. Next morning the defendant visited the plaintiff and asked him what power he had to make the road, saying that the land had been given him by the government and that the plaintiff would get into trouble if he interfered with it. The defendant's account of this incident is very different.

According to him, he merely pointed out to the plaintiff that he had damaged his plants and said nothing about his rights over the land, either when he met him on the road or at the interview next day.

Having thus outlined the history of the defendant's occupation of the land, I have now to consider the nature of his tenure. He has asserted to this court that he is absolute owner of the land, that he can sell it and keep the proceeds, that he can leave it by will to anybody he likes — in short, that he has what is known to English law as a freehold. Such a contention is manifestly absurd. It is in direct conflict not only with the evidence that has been given in this case, but with all that has been written concerning land tenure in West Africa, the main principles of which I believe to be the same throughout that country. These principles have been well stated by Chief Justice Rayner in his *Report on Land Tenure in West Africa* (1898) in a passage which was cited with approval by the Judicial Committee of the Privy Council in *Amodu Tijani v. Secretary, Southern Nigeria* (1) ([1921] 2 A.C. at 404—405; 3 Nig. L.R. at 53—54):

> " 'The next fact which it is important to bear in mind in order to understand the native land law is that the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual. All the members of the community, village or family have an equal right to the land, but in every case the Chief or Headman of the community or village, or head of family, has charge of the land, and in loose mode of speech he is sometimes called the owner. He is to some extent in the position of a trustee, and as such holds the land for the use of the community or family. He has control of it, and any member who wants a piece of it to cultivate or build a house upon, goes to him for it. But the land so given still remains the property of the community or family. He cannot make any important disposition of the land without consulting the elders of the community or family, and their consent must in all cases be given before a grant can be made to a stranger. This is a pure native custom along the whole length of this coast, and wherever we find, as in Lagos, individual owners, this is again due to the introduction of English ideas. But the native idea still has a firm hold on the people, and in most cases, even in Lagos, land is held by

the family. This is so even in cases of land purporting to be held under Crown grants and English conveyances. The original grantee may have held as an individual owner, but on his death all his family claim an interest, which is always recognised, and thus the land becomes again family land. My experience in Lagos leads me to the conclusion that except where land has been bought by the present owner there are very few natives who are individual owners of land.' "

The system prevailing in the Sierra Leone Protectorate with regard to the tenure and allotment of land has been clearly explained by the witnesses in this case. The land is held by families, not in the narrow sense of the term, "family" meaning an individual man, his wife or wives and children, but in the wider sense of a large group of people having a common ancestor. The general control over all land in a chiefdom is vested in the Paramount Chief and the Chiefs constituting the Tribal Authority, by virtue of their position: but each of these Chiefs has his own family land in which he has the same interest as any head or member of a family who is not a chief.

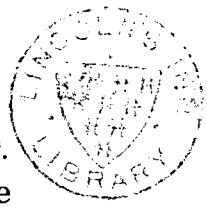
If a person who is not a native of a particular chiefdom wishes to settle in the chiefdom the procedure is clearly defined by custom. The would-be settler approaches the Chief of the town to which he comes and is taken by him to the Paramount Chief, to whom he gives a "shake-hand" or present. If the Paramount Chief approves of the settler, he allots him land, and thereafter the settler pays to the Paramount Chief an annual tribute which is fixed by the Tribal Authority. This tribute is paid in recognition of the rights of the Paramount Chief, and consists in a small part of the crops grown on the land, and sometimes apparently also in money. So long as the settler pays tribute and behaves with proper respect to the Paramount Chief, he can occupy the land allotted to him for his own life at least. These are, broadly speaking, the conditions of his tenure. Mr. Bowden, who has had a long experience of this country and is well acquainted with Mende tribal custom, sums up the matter with admirable truth and conciseness when he says that "the basic principle of land tenure in this Protectorate is loyalty to the Chief and the Tribal Authority." He defines disloyalty, entailing forfeiture of rights over land, as, for example, treason, continued refusal to pay tribute, any attempt to set up an *imperium in imperio*, or con-

tinual flouting of the authority of the Paramount Chief in any way. This means that natives of the Protectorate have recognised the importance of preserving their communal system of land tenure under an overlord, and with that object have provided for the ejectment of any one who attempts directly or indirectly to undermine it. The whole system is the very antithesis of individual ownership, and it depends for its continued existence on the enforcement in proper cases of the appropriate penalty.

According to the Mende custom at least, the settler's interest in the land appears to cease at his death. The defendant's claim to be entitled to leave the land by will can be brushed aside, as also his absurd claim on behalf of his children by his numerous concubines; but his contention that his daughter by Mamawa should succeed to it on his death cannot be dismissed so lightly. The question assumes importance because of the statement in para. 3 of Governor Probyn's letter of January 11th, 1905 that the Chiefs would on the defendant's death recognise the right of his children by Mamawa to succeed him. None of the witnesses who spoke on this point, except the defendant's one witness, Morison, agreed that this statement is in accordance with Mende custom: and the plaintiff was of opinion that there must have been bad interpretation at the Governor's meeting with the defendant and the Chiefs. Chiefs Kebbe, Momo Gbow and Karegbanda all maintained that, if a settler who had obtained a grant of land married a woman of the country, the land would on his death go back to the family to whom it belonged, and the wife and children would be absorbed into the woman's family, in the case of a non-native, or into the deceased settler's family, in the case of a native of the Protectorate. There were differences of opinion between these witnesses on minor points, but they were agreed on this main issue, and all were of opinion that a woman cannot have any interest in land of her own right, or acquire any through her husband. The matter is not, however, free from doubt, because it does appear that certain Mende women have become Chiefs, and as such must have had an interest in land, though it would seem from Mr. Bowden's evidence that in these cases the pure Mende custom had become corrupted. It is, however, I think, clearly proved that a settler's children do not succeed to his land as of right, though it could be re-granted to them by the Paramount Chief, just as if they were newcomers applying for a fresh grant.

I turn now to the main question whether the defendant has by

his conduct, or by failure to observe the conditions of his tenure, forfeited his rights to the land in spite of his long possession. There can be no doubt that in 1890, when the defendant first settled at Bo, he was welcomed by the Chiefs. He was a carpenter by trade, and he was able to make their houses more habitable. He was a more or less educated man and thereby acquired the prestige which ability to read and write confers on such a person in the eyes of an illiterate people. It may well be, as he says, that he helped to redeem some of the Bo people from slavery, and that, at times of native risings, he did good service both for the Government and the natives. In 1905 we find the Governor addressing a letter to him over his own signature, and as late as 1912 he was invited by the District Commissioner, in a letter couched in almost flattering terms, to give evidence before a committee on land tenure. He himself says that he was regarded as a son or brother by Chief Bongay and others and that he was given a native name meaning "Mende man" and was proclaimed to be free of all customary dues. It is probable that the defendant was a much favoured person for many years, and that he came to regard himself as more or less free from the restrictions which Mende custom imposed on other settlers. His occupation of a large tract of land, much of which he never cultivated, was never questioned; on the contrary, when part of the land was required by the government from time to time he was treated in the negotiations as if he were the absolute owner. That a District Commissioner should have written to him, as Mr. Wallis did in 1902, that he had "purchased" a piece of land at Bo was calculated to deepen this impression. In these circumstances it is not a matter for surprise to find in existence a document declaring that certain land was given to him "as his personal property forever." This document was written by one Ellis, a native of Freetown and a tenant of the defendant, whose name appears thereon as a witness. I have grave doubt whether Chief Bongay ever made his mark on this document at all or, if he did, whether he ever understood the contents of it. But, whatever may have been the defendant's belief with regard to his title in 1902, he cannot contend that he was not made aware of the true position in 1905 when he received Governor Probyn's letter of January 11th. This letter, though clearly indicating to the defendant that he had no claim to the absolute ownership of the land, raises several rather important questions.



C.C.

What were "the conditions as to cultivation" to which the second paragraph refers? Mr. Bowden says that he has never heard of land being granted *only* subject to conditions as to cultivation, and that is in accordance with all the evidence in this case. The plaintiff explains it by saying that a settler who wished to plant economic trees would have to obtain the leave of the Paramount Chief, presumably because the planting of any but annual crops would lend colour to a claim to a more permanent title than that which was actually possessed or could possibly be possessed. In any case the conditions mentioned are certainly not exclusive. At the same time I do not think, in the absence of more positive evidence, that it can be definitely asserted that one of the conditions of the defendant's tenure was that he should cultivate the whole of the land allotted to him. That it was understood that he intended to cultivate it is highly probable; but I do not think that it can be said with any certainty that failure to do so would be such a breach of the conditions of his tenure as would entail forfeiture of all his rights. It must be remembered that at the time when the land was granted to him, the defendant was in high favour with the Chiefs; that the land in question lay outside the walls of their town and was probably not wanted by them or by any native: it was in fact known as the "devil's pathway"; and that, in their then unsophisticated state, the Chiefs did not realise how much they were giving away, if only for the period of the defendant's life. The Governor appears to have been impressed in 1905 with the defendant's activities as an agriculturist; but, whatever the defendant may have been doing at that time, the fact remains that there are now only a few scattered fruit trees to be seen on the land and much of it is still dense bush.

The fourth paragraph of the letter under review is ambiguous. When the Governor referred to "sub-letting the land," did he mean land for cultivation as distinct from land for building purposes? After careful consideration I have come to the conclusion that that is the correct interpretation. The letter goes on to distinguish between building lots let to natives of the Protectorate and those let to Sierra Leoneans, or natives of the colony. In the former case, the regent had agreed to help the defendant to collect the rents; in the latter, the position was to be governed by a law which shortly afterwards came into force as the Protectorate Native Law Ordinance, 1905, the pertinent provisions of which have already been reviewed. But I must not be understood to put

upon this paragraph the wider interpretation that the defendant had a right to sublet houses, or land for building, just as he pleased. It should, I feel certain, be limited to this, that the Chiefs would raise no objection to the occupation by natives of building lots already sublet, and would recognise the defendant's right to collect rent from occupiers of those lots. Clearly there was a compromise on lines which the Governor considered to be equitable in view of the long possession of the defendant. It would be ridiculous to maintain that the Governor would, or could, override by his mere *ipse dixit* the well established native custom that forbids sub-letting. It is clear from the evidence of Mr. Bowden and the plaintiff, as well as from his own admissions, that the defendant has continued to sublet houses to Sierra Leoneans and collect rents from them in spite of the warning addressed to him by the Governor in 1905 and in contempt both of native custom and of the provisions of the law. The defendant admits that he has never paid tribute and asserts, as mentioned before, that he had been granted exemption from tribute for all time. That a Paramount Chief and his Tribal Authority have power to grant such exemption seems quite certain, and there is no reason to disbelieve the defendant's statement on this point. Indeed, s. 28 of the Protectorate Native Law Ordinance, 1905, which has been quoted earlier in this judgment, may well have been suggested by the case of the defendant.

Finally, there is the attitude of the defendant towards the plaintiff in the matter of the road. As to this, I have no hesitation in accepting the plaintiff's version of the incident. I believe that the defendant did then claim the absolute ownership of the land and attempt to assert his rights by the act of planting trees on the road that had been cleared. Such an incident could hardly have been invented, and a more deliberate act of defiance to authority can scarcely be conceived. The evidence shows, as would only have been expected, that a Paramount Chief has a right to make a road, or indeed to do anything for the benefit of the community, on the communal land, whether occupied by a settler or by a native of the community: so that, if the plaintiff had chosen merely to ask for an injunction to restrain the defendant from interfering with the making of the road, he would undoubtedly have obtained it. It is equally clear, I think, that a person whose land was taken in this way could have a right to compensation, whether in the form of other land of equal value or of money,

for any loss which he might have sustained owing to the destruction of valuable trees which he had planted. If the defendant could have proved that such trees had been destroyed in the course of widening this road, he could have recovered compensation in this court.

To sum up, I find that the defendant has, by flouting the authority of the Paramount Chief, both in the matter of his tenants and by his claim, expressed and implied, to the absolute ownership of the land, culminating with his interference with the road, been guilty of conduct which renders all his rights in the land liable to forfeiture. It only remains to consider whether there has been such acquiescence by the plaintiff's predecessors in office in the claims which the defendant now puts forward that it would be inequitable that the penalty should be enforced.

The doctrine of acquiescence in equity as applied to a case of long possession of land means, in the case of communal land in this country, that the person in whom the control and disposition of the land is vested has allowed the occupier to remain in possession under the mistaken belief that the land is his own absolutely, or at least that he has a better title than that which he actually has, and has allowed him to spend money or do some other act on the faith of that mistaken belief. This rule of equity has been considered in many cases, such as *Ramsden v. Dyson* (3), *Lala Beni Ram v. Kundan Lal* (2) and *Rennie v. Young* (4), and was particularly clearly stated by Fry, J. in *Willmott v. Barber* (5) in a passage which is worth reproducing in full. That was an action brought by the person in possession of the land and consequently, in the application of the passage to the facts of this case, the terms "plaintiff" and "defendant" must be transposed. The learned judge set out the circumstances under which a person having a legal right (in that case the defendant, in this case the plaintiff) will be estopped by his own acquiescence from asserting it in the following language (15 Ch. D. at 105—106; 43 L.T. at 98—99):

> "A man is not to be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to set up those rights. What, then, are the elements or requisites necessary to constitute fraud of that description? In the first place the plaintiff must have made a mistake as to his legal rights. Secondly, the plaintiff must have expended some money or must have done some act (not necessarily upon the

defendant's land) on the faith of his mistaken belief. Thirdly, the defendant, the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff. If he does not know of it he is in the same position as the plaintiff, and the doctrine of acquiescence is founded upon conduct with a knowledge of your legal rights. Fourthly, the defendant, the possessor of the legal right, must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which calls upon him to assert his own rights. Lastly, the defendant, the possessor of the legal right, must have encouraged the plaintiff in his expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal right."

Now in this case, whatever may have been the defendant's belief at first as to the nature of his rights, it is quite certain that from January, 1905 onwards he can have been under no illusion about them, but knew perfectly well that he held the land under the native customary tenure. Reference to the defendant's own letters shows that he was well aware that he could only claim compensation in respect of improvements, but that he had no claim to compensation for the land, as he would have had if he had been the absolute owner. Comment has already been made on the language used by him in para. 4 of his letter of July 22nd, 1905 to the Colonial Secretary with reference to the land taken for Bo School. Again, in June 1930 the defendant's solicitor, writing to the Director of Public Works about certain land at Bo on which hospital buildings had been erected, asked for compensation only "for economic and other valuable plants" and made no suggestion that anything was due in respect of the value of the land, apart from the improvements effected by the defendant. Thus the first four elements mentioned in Fry, J.'s judgment are found not to exist in this case, and I have only to consider whether the plaintiff, or his predecessors in office, have encouraged the defendant to expend money or to do other acts which he would not have expended or done if the person who from time to time was Paramount Chief had asserted his legal rights. As to this, the evidence leaves no doubt in my mind that the defendant has no cause of complaint on this score. He has admitted that all his houses were built with labour supplied by the Chiefs, and he has failed to show that he has been induced to spend, or has

spent, any money on the cultivation of the land other than what a tenant by native custom would ordinarily spend. He has employed a few labourers on the land, possibly for some considerable time, though, on account of this litigation, not for the last few years; but that is only what any settler would have to do, if there were no members of his family capable of doing the work.

The Chiefs who have given evidence in this case are agreed that it is unusual for a settler to be evicted on account of the isolated offence, or even more than one offence, if he agrees to amend his ways. The right of eviction, however, is always there, and I cannot say that, in all the circumstances of this case, the plaintiff has been unreasonable in seeking to enforce his rights. There will be an order for possession to take effect at the expiration of three months from this date. The defendant has been long in occupation of this land, and it is only right that he should have a reasonable time in which to evacuate it. During that time he will be at liberty to reap any annual crops that may be ripe or to take the ripe produce of economic trees. I desire to add, though I have no power in this action to make an order to that effect, that in my opinion he should now be paid compensation for the trees that were on the land which was taken by the government in 1926 or thereabouts for the purpose of erecting a hospital. Whether he should receive any compensation on account of trees on other parts of the land is a matter as to which I do not propose either to make an order or to express a decided opinion. There is no doubt that, according to native custom, he is not entitled to any such compensation and that, if he does receive any, it will be purely as an act of grace. It is a question for the plaintiff and his Chiefs to decide, having regard to the defendant's long occupation and to the services which he rendered to the Chiefdom in the early days of his residence at Bo.

The plaintiff will have the taxed costs of this action and also, in accordance with the order of the Court of Appeal, the costs of the previous trial.

Judgment for the plaintiff.