

cit., at 306, says: "Damages are merely a substitute for such possession, and the damages must therefore be the equivalent of the chattel, and amount to the full value of it. In other words, the plaintiff in trover is entitled either to the property or to its pecuniary equivalent." See the case of *Swire v. Leach* (3).

Salmond also states at 309: "The value recoverable in an action for conversion is in general the value of the property at the date of the conversion, and not its value at any earlier or later date." See the judgment of Lord Porter in *Caxton Publishing Co. v. Sutherland Publishing Co.* (1).

Having ascertained by the authorities the manner in which the damages in these different claims should be assessed, I award the plaintiff on the claim of trespass £20 against the first and second defendants. As regards the trover and conversion claims, the damages are assessed as follows: £124. 9s. 6d. against the first and second defendants and £438 against the third defendant. Costs are to be taxed against all three defendants.

Judgment for the plaintiff.

IN RE HAMILTON and IN RE FREETOWN IMPROVEMENT
ORDINANCE (CAP. 89)

SUPREME COURT (Luke, Ag.J.): February 4th, 1952
(Civil Case No. 382/51)

- [1] Administrative Law—public officers—authority of public officer—citizen protected if misled by public officer into believing acting legally—protection extends to criminal offence of which knowledge necessary element: While the illegality of an act done in the face of a statutory prohibition is not affected by the fact that it has been induced by a misleading assumption of authority by a Government officer, such inducement will be a material factor in criminal proceedings against the actor resulting from reliance on the misleading assumption of authority if a necessary element of the offence is knowledge, and in any case it will have a bearing on the sentence to be imposed (page 183, line 40—page 184, line 11; page 187, lines 37–41).
- [2] Criminal Law—mistake or ignorance—mistake of law—citizen misled by Government officer into believing acting legally—material to prosecution of offence requiring knowledge and to sentence: See [1] above.
- [3] Land Use Planning—building regulations—approval of plans—failure

5 to signify disapproval within statutory time limit prevents subsequent
objection to building—Freetown Improvement Ordinance (*cap.* 89);
Where plans of a proposed building are deposited with a local
authority, and the authority fails to give the owner notice of dis-
approval within the time laid down by statute, it may then be
10 unable to object to a building erected according to the plans; and
therefore where the Director of Public Works fails to signify his
disapproval of plans deposited with him under s.14 of the Freetown
Improvement Ordinance (*cap.* 89) within the one-month period
specified in s.16(1), an owner who proceeds with his building in
15 reliance on this is entitled to the protection afforded by s.59(1)
even if the building infringes other provisions of the Ordinance, and
this is especially so where the Director has granted a building permit
and has caused the building to be inspected without raising any
objection (page 185, line 17; page 186, line 17; page 187, lines 12–36).

15 The petitioner appealed under s.59(1) of the Freetown Improve-
ment Ordinance (*cap.* 89) against an order of the respondent, the
Director of Public Works.

The petitioner gave the respondent notice under the Freetown
Improvement Ordinance of his intention to build a house and
forwarded a plan and specifications of the building. The respondent
20 granted him a building permit after the siting had been checked
and verified, and the petitioner then gave the respondent notice of
commencement of the building. The siting was inspected again,
and then building continued uninterrupted until, after the expiration
of the one-month period which the respondent had, under s.16(1)
25 of the Ordinance, to signify his disapproval, the respondent served
the petitioner with an order requiring him to site the building
four feet from a side boundary line in accordance with r.13(iii) of
the First Schedule to the Ordinance.

30 The petitioner admitted contravention of the mandatory provision
of r.13(iii), but contended that he was misled by the respondent's
approval of the plans, the granting of the building permit and the
site inspection. He further contended that, the respondent having
failed to signify his disapproval within the prescribed period of one
month, he could not then object to the building and cause the
35 petitioner inestimable and undue hardship.

The respondent admitted the approval of the plans and the
granting of the permit, but maintained that, since the building
infringed a mandatory provision of the Ordinance, he had no
authority to make such approval or grant. He further maintained
40 that the illegality of the building was not cured by the misassumption
of authority on his part.

Cases referred to:

- (1) *Falmouth Boat Constr. Co. Ltd. v. Howell*, [1950] 2 K.B. 16; [1950] 1 All E.R. 538; on appeal, *sub nom. Howell v. Falmouth Boat Constr. Co. Ltd.*, [1951] A.C. 837; [1951] 2 All E.R. 278, distinguished.
- (2) *Masters v. Pontypool Local Govt. Bd.* (1878), 9 Ch.D. 677; 47 L.J. Ch. 797, applied. 5
- (3) *Slee v. Bradford Corp.* (1863), 4 Giff. 262; 66 E.R. 704, applied.

Legislation construed:

Freetown Improvement Ordinance (Laws of Sierra Leone, 1946, *cap.* 89), s.14: 10

"Before the erection of a new building is commenced, the person or builder intending to erect the same shall give to the Director of Public Works notice in writing of such intention, and shall accompany such notice with a plan of the proposed building, which shall include such particulars as to the construction thereof as will enable the Director of Public Works to ascertain that the provisions of this Ordinance will be complied with: Provided always that in the case of buildings of not more than one storey:— 15

(1) Where the frontage on any street does not exceed twenty-five feet, 20

(2) Where the external walls thereof are principally constructed of wood,

the Public Works Department may dispense with a plan if the design of the proposed building is sufficiently indicated by a description thereof. Such notice shall be upon the form according to the second schedule hereto or upon any other form made in pursuance of this Ordinance, and copies of such forms shall be obtainable on application at the Public Works Department, free of cost." 25

s.16(1): "Within one month after receiving such notice, the Director of Public Works may signify his disapproval of the plan or description of the proposed building, and in case of such disapproval shall, within the said one month, point out in what respect the plan or description fails to comply with the provisions of this Ordinance." 30

s.17: "If such building be begun without such notice having been given and, where a plan is required, without such plan having been furnished, or without the approval of the Director of Public Works within the said one month, or otherwise not in accordance with the provisions of this Ordinance, the owner and builder thereof shall be deemed to have committed an offence and shall for every such offence be liable, upon summary conviction, to a penalty not exceeding twenty pounds; and the Director of Public Works may, at any time before or within twelve months next after the completion of the building, make complaint thereof before the Police Magistrate, who, upon being satisfied of the default of such owner or builder, shall order such building to be altered, taken down or demolished as the case 35 40

may require, and upon failure of the owner or builder within one month from the date of such order to alter, take down or demolish the building, the Director of Public Works may cause it to be altered, taken down or demolished pursuant to such order, and the expenses, incurred by the Director of Public Works in respect thereof shall be repaid to him by the person failing to comply with the provisions aforesaid, and shall be recoverable as damages."

s.18: "Upon the commencement of any building and also upon the completion of the structure of the said building when the roof has been covered in, and at any time thereafter, in case of any repair, addition or alteration thereto, the owner, occupier or builder shall give to the Director of Public Works notice in writing of such commencement and completion as the case may require. Such notice shall be upon the forms according to the third schedule hereto or upon any other forms made in pursuance of this Ordinance, and copies of such forms shall be obtainable on application to the Director of Public Works, free of cost."

s.22: "If the person so engaged shall not forthwith amend the same in the manner necessary to make such work conform to this Ordinance, he shall be deemed to have committed an offence punishable, upon summary conviction, by a penalty not exceeding forty shillings, and ten shillings for every day that he shall so make default."

s.59(1): "Any person who deems himself aggrieved by any order or direction of the Director of Public Works in relation to the level or width of a new street or the level of any building thereon, or by any notice, order or act of the Director of Public Works in relation to the construction, repair, alteration, taking down or demolition of any building may, within fourteen days after notice to the occupier of any such order or notice, or after such act of the Director of Public Works, appeal to the Supreme Court against the same."

First Schedule, r.13(iii): The relevant provisions of this sub-rule are set out at page 186, lines 38-40.

Hotobah-During for the petitioner;
Goode, Crown Counsel, for the respondent.

LUKE, Ag.J.:

This is a petition by way of appeal under s.59(1) of the Freetown Improvement Ordinance (*cap.* 89) by the petitioner, a Mr. Charles B. Grand Hamilton.

The relevant facts, as disclosed by the petitioner, are that he has a house in building at Percival Street for which he submitted a plan to the Director of Public Works under s.14 of the said Ordinance on December 14th, 1950; and in consequence of that the site was inspected by the inspector of the said Director of Public

Works, when the siting was checked and verified by them in accordance with the plan submitted; and on December 19th, 1950 a building permit (No. 157/48) was granted to him which is annexed to the petition as Exhibit A; that, pursuant to s.18 of the said Ordinance, on September 20th, 1951 he gave the Director of Public Works notice of the commencement of the erection of the building and the building inspector of the said Director of Public Works visited his building and checked and verified the siting; that since the commencement of the building the work had continued uninterrupted and had reached about 11 ft. in height when he was served with Exhibit B, an order by the Director of Public Works requiring the petitioner to site his building four feet away from a common boundary line. 5 10

During the hearing counsel for the petitioner admitted a contravention of r.13(iii) of the First Schedule to the Ordinance, but stated that they were misled by the approval of the plan and siting as indicated by Exhibit A and the visits of the building inspector who visited the site from time to time. 15

Learned Crown Counsel, for the Director of Public Works, indorsed what petitioner's counsel submitted in so far as the plan and the permit were approved and granted by the Director of Public Works when lodged by the petitioner. He contends, however, that although the plan submitted was passed and a permit (Exhibit A) issued, yet the Director of Public Works or his agent could not do such a thing. He relies for his submission on the case of *Howell v. Falmouth Boat Constr. Co. Ltd.* (1) which went to the House of Lords, and read a portion of the judgment where Lord Simonds disagreed with a principle of law which Denning, L.J. had enunciated in deciding this case when it was before the Court of Appeal. The principle reads ([1950] 2 K.B. at 26; [1950] 1 All E.R. at 542): 20 25 30

"... [W]henever government officers, in their dealings with a subject, take on themselves to assume authority in a matter with which he is concerned, the subject is entitled to rely on their having the authority which they assume. He does not know and cannot be expected to know the limits of their authority, and he ought not to suffer if they exceed it. That was the principle which I applied in *Robertson v. Minister of Pensions* 35

Lord Simonds said ([1951] A.C. at 845; [1951] 2 All E.R. at 280): "My Lords, I know of no such principle in our law nor was any authority for it cited. The illegality of an act is the same 40

whether or not the actor has been misled by an assumption of authority on the part of a government officer however high or low in the hierarchy. I do not doubt that in criminal proceedings it would be a material factor that the actor had been thus misled if knowledge was a necessary element of the offence, and in any case it would have a bearing on the sentence to be imposed. But that is not the question. The question is whether the character of an act done in face of a statutory prohibition is affected by the fact that it has been induced by a misleading assumption of authority. In my opinion the answer is clearly No."

Both counsel for the petitioner and for the respondent in the course of their arguments made reference to s.16(1) of the same Ordinance, in which it is stated that the Director of Public Works should signify his disapproval of the plan or description of the proposed building within one month; and that a notice (Exhibit B) was served on October 31st, 1951, over a month from the date the notice (Exhibit C) dated September 20th, 1951, intimating when construction started, was delivered.

Before dealing with this petition, I must state that the case of *Howell v. Falmouth Boat Constr. Co. Ltd.* (1) is distinguishable in that the facts and circumstances in which the principle dealt with was enunciated are different from those before me. In that case the facts related to the construction of the word "licence"; whether under the war regulation in question it meant licence in writing and was capable of a retrospective meaning, and even if the licence was not retrospective the Order of 1940 was ambiguous and, being of a penal nature, must be construed in favour of the respondents who were therefore entitled to payment for the work carried out. Denning, L.J. laid down the principle in arriving at this decision which the law lords disagreed with. In this case we have an Ordinance dealing with the circumstances of this matter, and I therefore propose to deal with the facts in relation to it as they strike me.

The relevant sections in this matter are ss.14, 16(1) and 18 of the Freetown Improvement Ordinance (*cap.* 89). Section 14 deals with the giving of notice of intention to erect a new building, which the petitioner did. Section 16(1) deals with the period of time within which the Director of Public Works is to signify disapproval of the plan or description of the proposed building. This was not done in this case. On the contrary Exhibit A, a building permit, was

granted, thereby showing approval of the plan. Section 18 states that upon the commencement of any building notification shall be given to the Director of Public Works. This was done by the applicant by Exhibit C on September 20th, 1951. As a reply to Exhibit C we see Exhibit B, dated October 31st, 1951, issued by the Director of Public Works to the applicant stating that his building should be sited four feet away from the north boundary line common to properties Nos. 26 and 28a Percival Street, Freetown. This application is the outcome of Exhibit B. 5

In this Ordinance the main principles are drawn from the Public Health Act, 1875, the Towns Improvement Clauses Act, 1847 and similar enactments which were in operation in England, and it becomes necessary to look into text-books and authorities to see what is the practice in operation there. This Ordinance is to regulate buildings. In 16 *Halsbury's Laws of England*, 1st ed., at 247, under the marginal heading "Authority's requirements, how signified," it is stated: "Where an owner has deposited plans, and they have been approved, and in reliance on such approval he has pulled down his existing building, it is too late for an authority to require him to set back his new one." The cases referred to are *Slee v. Bradford Corp.* (3) and *Masters v. Pontypool Local Govt. Bd.* (2). 10 15 20

In the case of *Masters v. Pontypool Local Govt. Bd.* (2), the Law Reports headnote states (9 Ch.D. at 677):

"The owner of a house after having, in accordance with a by-law of the Local Government Board, left, on the 16th October, a plan of an intended new building, the local board passed a resolution that the plan was approved of, and that he should be offered £40 for certain land of his thrown into the street. He refused to accept the £40 but proceeded with his works, and by the 26th of October had pulled down the front wall of his house. On the 27th of October the board passed a resolution abandoning the terms before offered, and requiring him to set his frontage further back. This notice was given under sect. 155 of the *Public Health Act*, 1875, as on the front of a house having been pulled down. On the 27th of November the owner of the house proceeded with his building, and on the 21st of December he was served with notice to pull down his new building:— 25 30 35

Held, that the local board having approved of a plan, and having allowed a house-owner to proceed and pull down the 40

front wall of his house, could not afterwards avail itself of the powers required when the front of a house has been taken down:

5 *Held*, that where a local board has not, during the month prescribed by the Public Health Act, s.158, signified its disapproval of plans laid before it, it cannot afterwards object to the building according to the plan."

10 The case of *Slee v. Bradford Corp.* (3) dealt with the owner of a factory, being desirous of rebuilding his premises, submitted the plans, etc., to a committee, to whom the Town Council, also the Local Board of Health, delegated their powers, and, the plans having been approved, pulled down the factory, and proceeded to rebuild it according to such plans. The Town Council, under s.35 of the Local Government Act, 1858, relating to buildings *to be*
15 erected, having required the plaintiff to set back his premises, the court restrained them by injunction from interfering with the erection of the factory according to the approved plans.

20 How are these two cases which were decided in England applicable to the case which is now before me? In an earlier portion of this judgment I mentioned that the relevant portions of the Free-town Improvement Ordinance are ss.14, 16(1) and 18. Section 14 gives notice of his intention to build, which the petitioner did on December 14th, 1950. In that notice he forwarded the plan as required with all necessary specifications, and in return he received
25 Exhibit A, a permit not only approving the plan but granting him permission to build. Section 16(1) provides for cases where there is disapproval of plans and states that the Director of Public Works is to communicate with the applicant that he disapproves of the plan within one month after receipt of such notice. In this case
30 it was not necessary. Section 18 requires that upon the commencement of any building the owner shall give notice in writing of such commencement, which in this case the petitioner did on September 20th, 1951 in Exhibit C. Despite the fact that the Director of Public Works received this notice, and his agents as stated in the
35 petition were present when this siting was carried out and had regularly visited the site, yet they did not draw attention to the contravention of r.13(iii) of the First Schedule to the Ordinance which required: "No building constructed of non-inflammable materials shall be erected nearer than four feet to any side boundary line
40 except where allowed to adjoin."

On October 31st, 1951, over a month from the receipt of the

notice informing them that building was commenced, the Director of Public Works served the petitioner with Exhibit B requiring him to comply with the requirements of r.13(iii).

The Director of Public Works and his agents should be better qualified to know the building regulations than a subject. The petitioner in laying his foundation carried out what had been passed in Exhibit A. 5

Dealing with this portion of the Director of Public Works' notice I shall quote from a passage from the judgment of Fry, J. in the case of *Masters v. Pontypool Local Govt. Bd.* (2), already referred to, which states (9 Ch.D. at 683): 10

"The Plaintiff deposited his plan on the 16th of October. The letter of the 19th of October is not in itself very distinct as to plans; but in my opinion it permits a building to be erected in accordance with the plan. Now, a man who has been told that he may proceed with his building in accordance with the plan which he has submitted, may well say that his plan has been approved of. But further than that, the board did not actually object. They were bound to approve or disapprove within a month, and they are consequently in this dilemma. Either they have by the resolution of the 17th of October signified their approval of the plan submitted to them, or they have not signified their objection within one month. In either alternative they cannot now succeed." [These words do not appear in the report of the case at 47 L.J.Ch. 797.] 15 20 25

These two elements are present in the petitioner's case and, as a matter of fact his case is stronger in that not only was his plan approved but a building permit was granted. Apart from that the Director of Public Works did not signify disapproval of this contravention within one month as provided by s.16(1) of the Ordinance. 30

The petitioner in his petition mentioned that the building at present is 11 ft. high and in his prayer stated that if this order is carried out inestimable and undue hardship will result, as he will be liable not only to criminal proceedings under s.22 but also to the pulling-down of the building as already constructed under s.17 of the said Ordinance. 35

Even the case of *Howell v. Falmouth Boat Constr. Co. Ltd.* (1), which has been referred to, mentioned that in every case where a subject has been misled by a Government Officer or Department on the assumption of authority this element would have a bearing on the sentence to be imposed. This is a petition under s.59(1) of the 40

Ordinance by the petitioner asking relief from the court, and, fortified by the authorities I have already referred to, after reading the facts and circumstances as outlined by the petition, I find it is a case in which the court should order that the notice which has been served by the Director of Public Works should be revoked.

Petition granted.

IN RE THOMAS (DECEASED) and IN RE ADMINISTRATION OF
ESTATES ORDINANCE (CAP. 2)

SUPREME COURT (Kingsley, J.): February 11th, 1952
(Civil Case No. 349/51)

[1] Succession—intestate succession—disposal of estate—petitions to court on legal, equitable or moral grounds—blood relationship with deceased does not guarantee share—must be close relationship and proved need: Where a person petitions on legal, equitable or moral grounds to secure a share in the estate of an intestate who leaves no widow, or widower, or next-of-kin, the mere tie of blood relationship between the petitioner and the deceased does not *per se* entitle the petitioner to a share in the estate; there must be some close relationship between them and a proved need on the part of the petitioner (page 189, line 29; page 190, line 31; page 192, lines 2-5).

The petitioners claimed under s.29 of the Administration of Estates Ordinance (*cap.* 2) shares in the estate of the deceased.

The deceased died intestate and left no widower or next-of-kin as defined by the Administration of Estates Ordinance. The residue of her estate, after payment of all dues, was paid into the Intestate Fund, and the petitioners claimed shares on legal, equitable or moral grounds. Not all of the petitioners filed grounds of claim; not all the petitions showed relationship with the deceased and a need to benefit from her estate; and one of the petitions did not contain the petitioner's address. The Supreme Court considered what relationship had to be proved to have existed between the deceased and the petitioners, and the extent of their need, to entitle them to shares in the estate.

Case referred to:

(1) *In re Clarke (Dcd.)*, Supreme Court, Civil Case No. 35/40, unreported, *dicta* of Graham Paul, C.J. applied.