

I hold that the words are not actionable without proof of special damage; and as special damage was neither pleaded nor given in evidence this action must be dismissed.

Suit dismissed.

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WILKIN and OTHERS v. WEATI

SUPREME COURT (Boston, Ag.J.): January 9th, 1954
(Civil Case No. 128/53)

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[1] Succession—intestate succession—disposal of estate—Krooman's legitimate children entitled to equal shares in estate to exclusion of any widow and other relatives: Where a member of the Kroo tribe dies intestate, under Kroo customary law all his children by wives he has "priced," i.e., married lawfully by Kroo custom, are entitled in equal shares to his property to the exclusion of any widow and all their relatives (page 350, line 40—page 351, line 7).

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The plaintiffs brought an action against the defendant to recover possession of certain property.

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The plaintiffs' father, a member of the Kroo tribe who had married according to Kroo custom, died intestate. The Official Administrator was empowered to administer the estate and conveyed the property in question to the plaintiffs. They allowed the defendant, their cousin, to live on the property with them rent-free until she was given notice to quit. The defendant did not comply with the notice and put in an adverse claim to the property, whereupon the plaintiffs instituted the present proceedings for possession.

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The Supreme Court considered who was entitled to the estate of an intestate under Kroo customary law.

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Miss Wright for the plaintiffs;
Wellesley-Cole for the defendant.

BOSTON, Ag.J.:

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The plaintiffs' claim is for possession of a portion of the premises occupied by the defendant situate at No. 30 Edward Street, Freetown, and for mesne profits.

The case for the plaintiffs is that James Wilkin, father of the plaintiffs, was the fee simple owner of the premises in question. He died on September 24th, 1942 intestate, without parting with the

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possession or ownership of the premises, leaving the plaintiffs, his children. The deceased, who was a Krooman by tribe, was married according to Kroo custom to three wives and the plaintiffs are the offspring of these marriages.

5 By an order of the Supreme Court dated August 30th, 1952, the Official Administrator was empowered to administer the estate. On completion of the administration and in course of distribution, the Official Administrator conveyed the premises in question and the only assets in the estate to the plaintiffs as the only surviving children of the deceased and the only ones entitled to the estate by Kroo customary law. The deed of conveyance is dated January 25th, 1952, and it was duly registered in the office of the Registrar-General.

10 On the death of the deceased, the plaintiffs allowed the defendant, who is their cousin, to reside in a room in the house at No. 30 Edward Street for a period. She continued to reside there rent-free with the consent of the plaintiffs. On July 19th, 1952, the plaintiffs through their solicitor gave the defendant notice to quit. She did not comply with the notice, and in a letter to the plaintiffs' solicitor by her solicitor she put in an adverse claim to the property. The 15 plaintiffs then instituted this action.

20 In her statement of defence, the defendant stated that James Wilkin (deceased) handed the deed of conveyance to her for a conveyance of the property to be made to her aunt Kortati, but that no such conveyance was made until the death of the said James Wilkin. 25 She further stated that she and Kortati have been in sole possession of the property from the death of James Wilkin, *i.e.*, September 24th, 1942.

20 In her evidence the defendant said that she and Kortati were living in the house, and that after the death of James Wilkin another aunt named Saye gave her a paper in connection with the house. This paper was not produced in court and the contents are not known. She called two witnesses who gave evidence of this paper which neither of them saw. The defendant admitted the 35 property was not given to her by James Wilkin (deceased) and she has no document conveying the property to her.

The plaintiffs said that they were all residing in the house with their late father, and that after his death they continued to reside there until the female plaintiffs got married and went to live with their respective husbands.

40 Evidence was given by the Kroo tribal headman of the devolution of property at death according to Kroo customary law to the



effect that all the children born to an intestate by women whom he "priced," i.e., married lawfully by Kroo custom, are entitled in equal shares to the property of the intestate to the exclusion of any widow and all their relatives. I accept this evidence. I hold that the premises were properly conveyed by the Official Administrator to the plaintiffs as the persons rightfully entitled to the estate of the deceased intestate.

The defendant cannot succeed in her defence of long possession for she stated that she has resided in the property since September 1942 and as such the statutory period of 12 years has not yet run in her favour. Apart from that, the male plaintiff gave evidence that since the death of his father in 1942 he has been in possession of the property. The defendant therefore did not have exclusive possession. The plaintiffs being the rightful owners of the premises, the defendant was only a tenant at will, occupying a room at the will of the plaintiffs; and when notice was served on her to quit, her tenancy came to an end. The plaintiffs are entitled to possession of the portion of the premises occupied by the defendant.

Judgment is given for the plaintiffs for possession of the portion of the premises at No. 30 Edward Street occupied by the defendant. The defendant is to pay the costs of the action which are to be taxed. There will be no order for mesne profits.

Judgment for the plaintiffs.

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OFFICIAL ADMINISTRATOR v. RANDALL

SUPREME COURT (Boston, Ag.J.): January 13th, 1954
(Civil Case No. 486/53)

- [1] Succession—Official Administrator—grants of administration—jurisdiction confined strictly to statutory powers and rights: The Official Administrator is a corporation sole created by the Administration of Estates Ordinance (*cap. 2*); and therefore in assuming jurisdiction over a particular estate he must confine himself strictly to the powers, rights and jurisdiction granted to him by that Ordinance and not go beyond it (page 355, line 41—page 356, line 5).
- [2] Succession—Official Administrator—grants of administration—may be granted letters of administration with will annexed as legal representative of deceased residuary legatee: While, in probate practice, letters of administration with the will annexed are ordinarily granted