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.

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

to a residuary legatee where there is land in the estate and the chain of executors is broken, the Official Administrator, if he applies as legal representative of a deceased residuary legatee and not in his official capacity, may for good reason shown be granted such letters in preference to a residuary legatee who is still alive (page 356, lines 16–29).

[3] **Succession—Official Administrator—grants of administration—no power to oppose grant of letters of administration to widow, widower or next-of-kin of intestate:** The Official Administrator has no power to oppose a grant of letters of administration to the widow, widower or next-of-kin of an intestate; and where, under s.11 of the Administration of Estates Ordinance (*cap.* 2), a claimant establishes his or her claim as widow, widower or next-of-kin, the court must grant letters of administration to that person (page 357, lines 21–30).

[4] **Succession—probate and letters of administration—persons entitled to letters of administration—administration with will annexed ordinarily given to residuary devisee if land in estate—legal representative of deceased residuary devisee may obtain grant for good reason shown:** See [2] above.

[5] **Succession—probate and letters of administration—persons entitled to letters of administration—court must grant letters to intestate's widow, widower or next-of-kin once claim established:** See [3] above.

[6] **Succession—probate and letters of administration—persons entitled to letters of administration—jurisdiction of Official Administrator confined strictly to statutory powers and rights:** See [1] above.

The plaintiff, in his capacity as Official Administrator, applied by originating summons for a grant of letters of administration with will annexed in respect of the estates of the defendant's father, mother and sister.

The defendant's father died leaving his residuary estate to his widow and six children. The widow, a daughter and a son were appointed executrices and executor of the will; and when the testator died, probate was granted to the widow and daughter, power being reserved to the son to apply for a like grant on attaining his majority. The executrices died before the estate was fully administered, and the executor did not obtain a grant of probate before his death. The defendant was then the sole surviving residuary legatee under the testator's will. The plaintiff applied in his official capacity for a grant of letters of administration with will annexed in respect of this estate and those of the widow and another of the testator's daughters, both of whom died intestate.

The Supreme Court considered in what circumstances it was

appropriate under the Administration of Estates Ordinance (*cap.* 2) to grant letters of administration to the Official Administrator in his official capacity, and whether such circumstances pertained in the present case. It also considered whether the plaintiff or the defendant was entitled to letters of administration in respect of other two estates.

Legislation construed:

Administration of Estates Ordinance (Laws of Sierra Leone, 1946, *cap.* 2), s.9(1):

> "The estate of every person dying intestate after the date of the operation of this Ordinance shall devolve upon the Official Administrator. . . ."

s.10(1): "Whenever the Official Administrator has received information in writing that any person has died within or without the jurisdiction of the Court leaving estate within the jurisdiction of the Court and if it appears:—

> (i) that any such person dies intestate; or
> (ii) that the deceased . . . has omitted to appoint an executor; or
> (iii) that the person or persons named, as executor or executors have died in the testator's lifetime, or have renounced probate thereof; or
> (iv) that probate or letters of administration with the will annexed has not been obtained within six months from the death of the testator; or
> (v) that the estate will probably be damaged, purloined or destroyed,

the Official Administrator shall by notice . . . call upon the widow or widower and such next-of-kin, executors or devisees within one month of such service or publication, to show cause why an order should not be made for him to administer such estate. . . ."

s.11: The relevant terms of this section are set out at page 357, lines 5–13.

s.16(1): "In any case in which administration of the estate of any deceased person shall have been, or shall hereafter be, granted to any person, the Official Administrator, or any person interested, may apply to the Court or a Judge thereof that letters of administration of the estate left unadministered of such deceased person may be granted to the Official Administrator, or any other person on the ground that it would be beneficial to all persons interested that the administrator be removed and that the estate be administered by the Official Administrator or such other person."

The plaintiff appeared in person.
R.W. Beoku-Betts for the defendant.

BOSTON, Ag.J.:

In this originating summons, where the Official Administrator is plaintiff and Marian Eugenia Randall is the defendant, the question the court is asked to determine is whether a grant of administration of the estates of Jabez Benjamin Luke (deceased), Jemima Lucretia Luke (deceased) and Sarian Virginia Luke (deceased) should be made to the plaintiff or to the defendant.

In support of his application, the plaintiff filed an affidavit on November 18th, 1953, in which he exhibited a copy of the will of Jabez Benjamin Luke (deceased) and a codicil thereto, and affidavits by the defendant in answer to a citation published by the plaintiff with respect to the estates of the above-named deceased. The plaintiff in his affidavit gave his reasons why a grant of administration should not be made to the defendant in respect of the three estates.

As regards the first estate, that of Jabez Benjamin Luke (deceased) (hereinafter referred to as "the parent estate," as the two other estates are derived mainly from it), counsel for the defendant took a preliminary objection that the plaintiff has no power to apply for an order to administer the estate. Jabez Benjamin Luke (deceased), the husband of Sarian Virginia Luke (deceased), and father of Jemima Lucretia Luke (deceased), made a will dated March 21st, 1914 and a codicil thereto dated January 11th, 1916. He appointed as his executors his wife, the said Sarian Virginia Luke (deceased), his daughter Sarah Anne Spaine (deceased) and his son Jabez Benjamin Fashole Lawrence Luke (deceased). The testator died on April 9th, 1919, and probate of his will and codicil were granted by the Supreme Court on June 25th, 1919 to the wife and daughter therein named as executrices, power being reserved to his son Jabez Benjamin Fashole Lawrence Luke to apply for a like grant when he attained his majority. The two executrices who proved the will administered the estate. The daughter, Sarah Anne Spaine, died on February 1st, 1942, and the widow, Sarian Virginia Luke, died intestate on September 2nd, 1949. On the death of the latter the estate was not fully administered. The son, Jabez Benjamin Fashole Lawrence Luke, died testate on September 17th, 1953 without obtaining grant of probate of the estate. On the death of the surviving proving executrix on September 2nd, 1949 testate and of the son, Jabez Benjamin Fashole Lawrence Luke, on September 17th, 1953 without obtaining a grant of probate, the chain of executors was broken and the administration of the unadministered portion of the estate devolved in law on no one.

Besides the three children of the testator already named there are three more, namely, Hannah Ransolina Benka-Coker (née Luke) who died on June 17th, 1952, the defendant, and Josephine Yomie Taylor (née Luke) who died in February 1947. All of the six children and the widow are residuary legatees under the will of the testator.

To complete the administration of the parent estate, administration with the will annexed must be granted to someone by the court. The defendant, who is next-of-kin and a residuary legatee under the will of the testator, never applied for such a grant after the death of the last executor, who never took out probate up to the time the plaintiff published his citation. The plaintiff took out this summons as Official Administrator, and in his argument before this court he stated that he had no interest in the matter one way or the other except as the Official Administrator who has been moved to apply for the grant of administration with the will annexed, as from information at his disposal that course would serve the ends of justice. For his application, he said he relied on s.16 of the Administration of Estates Ordinance (*cap.* 2). That section however refers to cases where administration, not probate, of an estate has been given to someone who, through *devastavit* or other misconduct, fails to administer the estate properly, and the Official Administrator or any other person applies to the court that such person be removed and a grant be made to the applicant to administer the unadministered portion of the estate.

In this case, the person whose estate is concerned, Jabez Benjamin Luke (deceased), did not die intestate. He left a will, probate of which was granted to two of the executors, both of whom have died. There is therefore no administrator or even executor whom it is suggested should be removed from office. In fact at the present time there is no one in office. The parent estate did not automatically vest in the plaintiff as Official Administrator under s.9(1) of the Ordinance as the testator did not die intestate. Nor can the plaintiff rely on s.10 of the Ordinance; none of the sub-sections there apply except possibly sub-s.(v), and then there is no evidence that the estate will probably be "damaged, purloined or destroyed." The testator died over 35 years ago; his estate has been partly administered, and from the evidence even the plaintiff does not seem to know the properties remaining in the estate.

The plaintiff in his argument had to admit ultimately that he cannot bring this matter within the Ordinance. He thereupon craved the intervention of equity. As he himself said, he is a corporation

sole. He is a creature of statute and must confine himself strictly within the powers, rights and jurisdiction granted to him by the statute or ordinance creating him. In assuming jurisdiction therefore, he should not go beyond what is conferred on him by the Ordinance, nor try to read into it something which is not there.

I hold that the plaintiff has no right under the Ordinance to make this application, nor will the court grant him an order to administer the parent estate in his capacity as Official Administrator.

The plaintiff in his affidavit stated that he has been instructed to administer the estates of Hannah Ransoline Benka-Coker and Jabez Fashole Lawrence Luke (deceased). These two children of the testator, Jabez Benjamin Luke, are devisees and legatees and also residuary legatees under his will. If the plaintiff takes up the administration of these estates, he would then be their legal representative.

Ordinarily in probate practice when the chain of executors has been broken, as in this case, administration with the will annexed is given to a residuary legatee or devisee where there is land in the estate. If the plaintiff takes up administration of these two estates, he could apply, as legal representative of the two deceased and not merely as Official Administrator, for a grant of letters with the will annexed of the parent estate; and if he shows good reason, a grant may be made to him in preference to the residuary legatee who is alive, that is, the defendant. If the defendant applies for a grant in the same way and as legal representative of the estates of the two other residuary legatees, whose estates he would then be administering, the plaintiff would oppose her application and pray the court for a grant to him. But as I have said he cannot apply for a grant simply as Official Administrator.

The estates of Sarian Virginia Luke and Jemima Lucretia Luke are on a different footing, and on the death of each of them intestate their estates, by s.9 of the Administration of Estates Ordinance (*cap.* 2), vested in the plaintiff. The defendant, however, as next-of-kin to each, could apply for letters of administration, and in her affidavit in reply to the plaintiff's citation she stated that she has instructed her solicitor to do so. The plaintiff in these two cases acted within his right under s.10(1)(i) of the Ordinance. I have read the affidavit of the plaintiff setting forth reasons why he is opposing a grant to the defendant of letters to administer the estates. As I have stated it is not known of what the estates actually consisted; that will be known when the parent estate is fully administered.

As far as these estates are concerned then, it cannot be said at this juncture that the defendant would not administer them properly. By law she is entitled to the grant of letters in preference to the Official Administrator. By s.11 of the Ordinance:

> "If in the course of proceedings to obtain a grant of . . . letters of administration under the provisions of section 10 [under which the plaintiff is acting], any person appears and establishes his claim to . . . letters of administration as widow or widower or next-of-kin of the deceased, the Court shall make an order that . . . letters of administration be granted to him, and shall award the Official Administrator the costs of any proceedings taken by him, to be paid out of the estate of the deceased."

The defendant in this case has put in her affidavit in reply to the citation in which she states that she is the next-of-kin of both deceased and that she is applying for letters for the estates of both deceased.

The plaintiff in his affidavit gave reasons why, in his opinion, a grant should not be made to the defendant. To my mind that step is unnecessary, or to say the least premature, in this case. There is nothing in the Ordinance empowering the plaintiff as Official Administrator to oppose anyone applying for a grant who proves that he or she is a widower, widow or next-of-kin of the intestate. All that s.11 requires is that the claimant should establish his or her claim as a widower, widow or next-of-kin of the intestate; when once that is done, in other words when once the claimant establishes his or her claim as widow, widower or next-of-kin, then the Official Administrator should "keep his hands off" and the court *shall* grant letters to the person who has thus established his or her claim to them.

If when letters have been granted to the claimant, the defendant in this case, it is felt that the estate is not being properly administered, then the Official Administrator under s.16 of the Ordinance could apply to the court to have the administrator removed and a grant made to him to complete the administration of the estate. On the hearing of that application, the facts now set forth by the plaintiff in his affidavit would become material. That being the case, it is unnecessary for the plaintiff to address the court on these facts now.

In passing I might say that, as regards procedure, when the defendant filed her affidavit in answer to the plaintiff's citation and

served it on the Official Administrator, the matter should then have been dealt with in chambers, and if the defendant failed to show cause why letters should be granted to her, then the plaintiff should present a petition to the court praying that letters be granted to him. But in the present case that procedure has not been followed. The plaintiff chose to proceed by originating summons and objection was not taken by the defendant.

The determination of the questions raised in the originating summons is:

1. With reference to the estate of Jabez Benjamin Luke (deceased), the matter has been improperly brought before the court. The Official Administrator, as such, cannot make such an application for the reasons already given and no answer can be given to that part of the question.

2. With reference to the estates of Sarian Virginia Luke (deceased) and Jemima Lucretia Luke (deceased), letters of administration of their respective estates should be granted to the defendant.

Costs of both parties are to be paid out of the estates of Jabez Benjamin Luke, Sarian Virgina Luke and Jemima Lucretia Luke (deceased) in equal shares. Costs are to be taxed as between solicitor and client.

Order accordingly.

CHOITHRAM *v.* CYPRUS WINE AND SPIRITS COMPANY LIMITED

SUPREME COURT (Boston, Ag.J.): March 15th, 1954
(Civil Case No. 497/53)

[1] **Trade Marks, Trade Names and Designs—identical or similar trade marks—extent of similarity—marks consisting merely of words must be judged by their look and sound:** Where trade marks to be compared consist merely of words, the court must judge them by their look and sound (page 361, lines 35–36).

[2] **Trade Marks, Trade Names and Designs—identical or similar trade marks—extent of similarity—marks consisting of similar designs but different words must be considered as whole:** Where trade marks have similar designs but different words, the court must consider their similarity as a whole (page 362, lines 9–13).

[3] **Trade Marks, Trade Names and Designs—identical or similar trade marks—extent of similarity—possibility of confusion by imperfect**