At the end of the case counsel conceded that on the evidence the petitioner was clearly guilty of desertion and cruelty and the respondent guilty of adultery. The questions to be decided by the court are (1) which of the parties, if any, is entitled to a decree nisi, and (2) whether costs are to be awarded if at all and against whom.

I find on the evidence that the acts of cruelty on the part of the petitioner and his desertion of the respondent in November 1955 long preceded the adulterous relationship between the respondent and co-respondent. I find that long before the respondent's adultery commenced, this marriage was irrevocably broken by the petitioner's cruelty and desertion. I am satisfied that the petitioner had irrevocably arrived at the decision that he would never live with his wife again and that in the circumstances his conduct was quite unaffected when he learned of his wife's adulterous association. It is abundantly clear to me that the acts of cruelty and desertion on the part of the petitioner conduced to the wife's adultery. The petitioner constantly deprived his wife of his comfort, society and protection, all rights to which a wife is entitled. In an old case, *Jeffreys* v. *Jeffreys*, 164 E.R. at p. 1367, the learned judge stated, inter alia:

> "If chastity be the duty of the wife, protection is no less that of the husband. The wife has a right to the comfort and support of the husband's society, the security of his home and name . . . whoever falls short in this regard if not the author of his own misfortune, is not wholly blameless in the issue; and though he may not have justified his wife, he has so far compromised himself as to forfeit his claim for a divorce."

This principle of the law is placed beyond all doubt by our own Matrimonial Causes Ordinance (No. 9 of 1949) in the proviso of section 7 (2) (*d*).

In the circumstances, I have come to the conclusion that the petitioner must fail in his petition. The respondent succeeds in her prayer for the dissolution of the marriage and, taking everything into consideration, I make no order as to costs.

I therefore order that the marriage had and solemnised between the parties on October 29, 1953, be dissolved by reason of the cruelty and desertion of the petitioner.

[SUPREME COURT]

Freetown
June 3,
1961

IN THE MATTER OF THE ESTATE OF MOPEH PALMER (DECD.)

[C. C. 119/60]

Benka-Coker
C.J.

Administration of Estates—Devolution of estate on intestacy—Death of man without leaving widow, children, parents, brothers or sisters—Persons upon whom assets should devolve—Whether all assets should be realised and net proceeds paid into Intestate Fund—Administration of Estates Act (Cap. 45, Laws of Sierra Leone, 1960) s. 29, rr. 6 and 7 of Second Schedule.

Mopeh Palmer died intestate on December 8, 1957, leaving no widow, children, parents, brothers or sisters. He was, however, survived by certain next of kin of his father and his mother (Rose Palmer). His father had predeceased his mother. Letters of Administration were granted to the Official

Administrator of Estates, who petitioned the Supreme Court praying for directions "(a) Whether the assets herein should devolve on any person or persons; or (b) whether all the assets should be realised and the net proceeds paid into the Intestate Fund."

Held (1) that the assets should devolve on "the next of kin of Rose Palmer who were living at the death of Mopeh Palmer, i.e., any brother or sister of Rose Palmer and any child or issue of any such brother or sister who were living at the death of Mopeh Palmer, i.e., to Christopher, Zach, Sophia, and Elizabeth (brothers or sisters of Rose Palmer) if living at the death of Rose Palmer, and to any child or issue of them if living at the death of Mopeh Palmer."

(2) That no directions as to whether all assets should be realised and the net proceeds paid into the Intestate Fund could be given, because "there is no evidence before me that it is necessary to realise some or all assets for the purpose of administration of the estate."

The Official Administrator appeared in person.

BENKA-COKER C.J. This is a petition by the Official Administrator of Estates in Sierra Leone praying this court for directions in the estate of one Mopeh Palmer, late of Soldier Street, Freetown, Sierra Leone, who died at Freetown aforesaid on December 8, 1957, and whose estate this court granted on March 19, 1960, Letters of Administration to the said Official Administrator to administer.

The Official Administrator prayed the court for directions as to: (a) whether the assets herein should devolve on any person or persons; or (b) whether all the assets should be realised and the net proceeds paid into the Intestate Fund. Attached to the petition is a document marked "A" showing the family tree.

The deceased Mopeh Palmer died possessed of the following: House and Land at No. 1 Soldier Street, Freetown, and Land at New England, Brookfields, and the sum of £331 0s. 0d. in Barclays Bank, Freetown.

According to the family tree exhibited the deceased Mopeh Palmer was the only lawful child of one Jonathan Palmer and Rose Palmer nee Hughes.

This Jonathan Palmer, whom I shall refer to herein as Jonathan Palmer 2, was one of two lawful children of another Jonathan Palmer (whom I shall refer to as Jonathan Palmer 1) and an unnamed woman. The other lawful child of the said Jonathan Palmer 1 was one Robert Palmer who married a woman named Susan—who begat by his marriage seven children, namely, Akiala, Charlie, Irene, Jonathan (whom I shall refer to herein as Jonathan 3), Jemima (later Mrs. Macauley), Christiana and Laura. This Jonathan 3 died a bachelor—presumably the six other children are still living. Mopeh Palmer died on December 8, 1957, leaving no issue although he had been married twice—first to a Miss Asgill who died leaving no issue—then to a Miss Williams who also predeceased Mopeh Palmer leaving no issue. The said Rose Palmer, wife of the said Jonathan Palmer 2, was one of five lawful children of one Zach Hughes who married an unnamed woman—namely, Rose, Christopher, Zach, Sophia and Elizabeth. Presumably Christopher died a bachelor leaving no issue having predeceased Rose Palmer.

Jonathan Palmer 2 predeceased his wife Rose Palmer. On his death, the right to inherit Mopeh's estate would become vested in his mother, Rose Palmer, and the brothers and sisters of Mopeh Palmer; if Mopeh Palmer left no widow.

child or issue and if there be no brother or sister nor child of such brother or sister, the mother, i.e., Rose Palmer, shall take the whole. Mopeh Palmer had no brother or sister. (Rules 6 (1) and 7 of Schedule 2 of Cap. 2.) If therefore Mopeh Palmer had predeceased Rose Palmer, after the death of Jonathan Palmer 2, the right to inherit Rose Palmer's estate would become vested in Rose Palmer's next-of-kin, i.e., any brother or sister, and child or issue of such brother and sister surviving the said Rose Palmer. There is no direct authority in our Ordinance to determine who should inherit Mopeh Palmer's estate on intestacy but applying rules 6 and 7 of the Second Schedule to Cap. 2, or rather inferentially from rules 6 and 7 of the Second Schedule to Cap. 2, I hold that on the death of Mopeh Palmer without any child or issue, his father having predeceased Rose Palmer, his mother, the right to succeed passes on to the next-of-kin of the said Rose Palmer who were living at the death of Mopeh Palmer, i.e., any brother or sister of the said Rose Palmer and any child or issue of any such brother or sister who were living at the death of Mopeh Palmer, i.e., to Christopher, Zach, Sophia and Elizabeth if living at the death of Rose Palmer, and to any child or issue of them, if living at the death of Mopeh Palmer. On the second question posed, it seems from section 29 (1) of the Administration of Estates Ordinance (Cap. 2) that the Official Administrator is only entitled to pay into the Intestate Fund all sums of money which shall be in his hands to the credit of an intestate estate after he shall have administered the estate of the intestate who has died without leaving a widow or widower or next-of-kin and after he has paid all debts, fees, expenses and liabilities incident to the collection, management and administration of such estate. There is no evidence before me that it is necessary to realise some or all assets for the purpose of administration of the estate. I therefore can give no directions as to whether all the assets should be realised and the next proceeds paid into the Intestate Fund.

[SUPREME COURT]

Freetown
June 5,
1961

Marke J.

RACHEL SALLY OMODALE DAVIES . . . . . *Plaintiff*

v.

MOHAMED ADIB KHALID ETER . . . . . *Defendant*

[C. C. 40/60]

Landlord and tenant—Grandmother of minor, plaintiff, leased premises to defendant—After grandmother's death, executors of her will gave supplementary lease to defendant—Plaintiff, to whom premises devised in will, agreed to terms of leases after reaching majority—Whether plaintiff could challenge validity of leases.

By her will, dated February 9, 1951, plaintiff's grandmother devised the premises in question to plaintiff, who was then a minor. On September 17, 1952, the grandmother executed a lease of the premises to defendant for a term of 30 years at an annual rent of £90. The grandmother died on October 20, 1952, and on January 30, 1954, the executors of her will gave a supplementary lease to defendant, in which they increased the rent to £110 per annum and gave defendant power to sub-let the premises at defendant's discretion. On August 16, 1954, about two weeks after reaching her majority, plaintiff