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

endorsed on both leases: "Being the legal heirer (sic) of the premises mentioned within the lease do hereby agree upon all the terms mentioned within." Subsequently, she entered into negotiations with defendant looking toward the cancellation of the leases and the execution of a new lease. These negotiations failed, however, and in 1960 plaintiff brought suit against defendant asking for a declaration that the leases were invalid.

Held, for the defendant, (1) the plaintiff, having approved the lease in clear and unambiguous terms after she had attained her majority, could not be heard to say that she does not approve of it and that it must be set aside.

(2) The executors-lessors could not have repudiated the supplementary lease after they had received rent by virtue of it and the defendant had acted under it. They would be estopped from repudiating the lease and the plaintiff to whom the executors-lessors conveyed their interest in the premises would be bound by that estoppel.

Case referred to: *Mackley* v. *Nutting* [1949] 2 K.B. 55 (C.A.); [1949] 1 All E.R. 413.

MARKE J. The plaintiff in this action asks for a declaration that: (a) An indenture of lease dated September 17, 1952, and made between Abigail Mammah of the one part and the defendant in this action of the other part in respect of certain premises known as No. 17 Garrison Street, Freetown, and; (b) a lease supplemental to the above-mentioned indenture of lease dated January 30, 1954, and made between Messrs. Adolphus Davies and Albert Franklyn Gustavus Taylor both of the one part and the defendant of the other part in respect of same premises, are invalid.

The defendant in his defence pleaded that on August 16, 1954, that is a fortnight after she had attained her majority, the plaintiff made an endorsement on the supplemental lease approving the terms and conditions therein contained. Abigail Mammah, the grandmother of the plaintiff, having duly made her will dated February 9, 1951, devised the premises the subject of this action to the plaintiff, who was then an infant, in fee simple.

On September 17, 1952, Abigail Mammah executed a lease of the premises to the defendant for a term of 30 years at an annual rent of £90. This lease contained a covenant by the lessor, that is to say, Abigail Mammah, as follows: "To permit the lessee to make any improvements, additions and alterations to the devised premises as shall seem fit to him."

Abigail Mammah died on October 20, 1952, without altering or revoking her will and probate thereof was on February 7, 1953, granted to the executors named therein.

On January 30, 1954, the executors of this will of Abigail Mammah, though not appointed trustees for the purposes of the Settled Land Acts, executed a lease supplemental to the lease dated September 17, 1952, to the defendant in respect of the said premises, describing themselves in that supplemental lease as trustees for the purposes of the Settled Land Acts, 1882–1890, and thereby increased the rent to £110 per annum and gave the defendant power to assign or sub-let the premises at the defendant's discretion without first obtaining their permission.

The plaintiff on August 16, 1954, endorsed on both the lease and the supplemental lease that: "Being the legal heirer (sic) of the premises mentioned within the lease do hereby agree upon all the terms mentioned within."

One of the grounds on which the plaintiff asks this court to set aside the lease and the supplementary lease is that the trustees of the will of Abigail Mammah having in the supplementary lease incorrectly described themselves as trustees for the purposes of the Settled Land Acts, which they were not, had invalidated that supplementary lease.

Counsel for the defendant argued that as long as the plaintiff had approved the terms of the lease and supplementary lease she could not now be heard to say that they were invalid.

It may be convenient to consider the circumstances under which this approval was made. According to the plaintiff, she went to Miss Wright's chambers on August 16, 1954, to get the executors of the estate of her late grandmother to hand over to her everything to which she was entitled. She continued that at Miss Wright's office, one of her clerks by name Dougan, " dictated certain words to me which I wrote down. I put my signature at the end of it. The words which were dictated to me were to the effect that I agreed to what was on the paper. Dougan did not hold a stick over my head to compel me to sign what was on the paper."

Plaintiff went on to say that after she had read the lease and supplementary lease she negotiated with the defendant to cancel both documents and enter into a new lease with her and that in December, 1959, the defendant produced a draft lease to which she did not agree and which she did not sign. Dougan gave evidence that he had been a solicitors' clerk for 30 years before entering his present employment with Messrs. United African Company Limited and that he never dictated the words alleged by the plaintiff and would never have described the plaintiff as " heirer " as appears in both documents (the counterpart of lease and supplementary lease).

The defendant as to this said in evidence that the plaintiff came to his shop in 1954 and said that her father was going to challenge her right to these premises and so she wanted to sign on these documents to show that she was the owner of the premises. Continuing he said: " This happened in my shop at 17 Garrison Street. The plaintiff herself wrote this endorsement and signed it." The defendant was not cross-examined as to this. The defendant's account of how the endorsement came to be on both documents seems to me the more probable. I believe his evidence and do not believe the plaintiff on this point.

The trustees under the will of Abigail Mammah deceased incorrectly described themselves in the supplementary lease as trustees for the purposes of the Settled Land Acts, 1882–1890, and carried further this mistake or misrepresentation in the operative part of the deed which (1) increased the rent to £110 per annum, and (2) expressly allowed the lessee (that is the defendant) to sub-let or assign without the consent of the lessor.

It has not been suggested that the trustees acted in bad faith or that the trustees were actuated by fraud in executing the supplementary lease. On the contrary they provided for the plaintiff an increase in rent. And as to the sub-letting without consent of the lessor, this was a power though not expressed, which the lessee (that is the defendant) had already had in his lease from Abigail Mammah deceased. Further for four years, that is from 1954–1959, the plaintiff had been receiving this increased rent.

So that all the supplementary lease purported to do was to increase the rent of the premises from £90 per annum to £110 per annum, which rent the

defendant was apparently ready and willing to pay and which he has since the supplementary lease was executed been paying without question.

On October 5, 1954, the executors of the will of Abigail Mammah deceased granted and conveyed to the plaintiff the premises the subject of this action.

It remains now to consider the effect which the plaintiff's endorsement both on the lease and the supplementary lease can have on this transaction.

In Halsbury, 3rd ed., Vol. 15, p. 171, para. 340, appears the following which sets out the law clearly:

> "The principle that a person may not approbate and reprobate expresses two propositions, first, that the person in question, having a choice between two courses of conduct, is to be treated as having made an election from which he cannot resile, and, second, that he will not be regarded, in general at any rate, as having so elected unless he has taken a benefit under or arising out of the course of conduct which he has first pursued and with which his subsequent conduct is inconsistent."

The defendant in his evidence stated that the plaintiff asked him to cancel both the original lease and the supplementary lease, and make a new lease whereby the defendant would pay £150 rent a year. The defendant agreed to do this provided the term of the lease was extended from 30 years to 32 years. The defendant said that the plaintiff agreed to these terms but that when he presented the draft lease to her embodying this agreement the plaintiff after keeping it for a week refused to sign it and demanded a rent of £200 per annum. The plaintiff denied this and said: "I deny that the only reason why I wanted the two leases cancelled was because I wanted more rent."

I regret I cannot believe the plaintiff on this point. Beyond admitting that she negotiated for a new lease with the defendant she has refrained from stating why the defendant's lease was not executed. I have no hesitation in coming to the decision that the reason why the defendant's lease was not signed was because the plaintiff went back on her agreement for £150 per annum rent and demanded £200 per annum. Having made the negotiation abortive she adopted this course of endeavouring to have the lease and supplementary lease cancelled. It is significant that during the negotiation no word was mentioned about the invalidity of both documents; what was pre-eminent was increase of rent and the fact that the defendant had replaced the wooden building he leased from Abigail Mammah with a two storey concrete building, the municipal rates for which he was paying, in accordance with the terms of the lease. The defendant said that, while in 1954 he paid £18 municipal rates for the original building, he was now paying £128 municipal rates for the two-storey concrete building which he erected at a cost of £6,500.

To my mind the plaintiff's action is most heartless and unconscionable. After allowing the defendant at such a great cost to erect the concrete building on her land, she now wants by any means lawful or otherwise to have the defendant out of the premises so that she could have the house free of any lease. When asked why she wanted to cancel the lease her answer was: "I do not like the form of the lease. The lease provides for 30 years—I would like a lease for 10 years—I would like the rent to be reviewed—I do not like the defendant to have power to sub-let without my consent." Yet in her endorsement she had approved the conditions in the lease which contained a term of 30 years and power to sub-let without her consent.

Since January 1954 the defendant had been acting under the supplementary lease first to the executors who were his lessors, and then, as from October 5, 1954, to the plaintiff in this action. The executors-lessors could not have repudiated the supplementary lease after they had received rent by virtue of it and the defendant had acted under it. They would be estopped from repudiating the lease and the plaintiff to whom the executors-lessors conveyed their interest in the premises would be bound by that estoppel. *Mackley* v. *Nutting* [1949] 2 K.B. 55 (C.A.); [1949] 1 All E.R. 413.

More than that the plaintiff herself and after she had attained her majority in clear and unambiguous terms endorsed on both the lease and the supplementary lease of her own free will and without any suggestion from anyone, that she agreed with the terms contained in each of these documents. Having thus originally approved these documents she cannot now be heard to say that she does not approve of them and that they must be set aside.

The plaintiff's claim therefore fails and is dismissed out of this court.

The order of the court is that the plaintiff's action is dismissed with costs to be paid by the plaintiff to the defendant—costs to be taxed.

[SUPREME COURT]

Freetown
June 5,
1961

Marke J.

A. J. G. WILLIAMS . . . . . *Plaintiff*

v.

SIERRA LEONE DEVELOPMENT COMPANY . . . *Defendant*

[C. C. 232/58]

Contract of employment—Period of employment—Damages for dismissal.

Plaintiff entered into a written agreement with defendant whereby he was to undergo training as laboratory technician in Scotland for 12 months at a salary of £450 a year payable monthly. The agreement further provided that on completion of his training plaintiff was to proceed to the Marampa Mines in Sierra Leone and take up duties as laboratory technician at defendant's hospital there and that he would sign an agreement for service with defendant in Sierra Leone when called upon to do so.

When he returned to Sierra Leone, no written agreement was signed, but plaintiff worked as a laboratory technician at defendant's hospital under an oral agreement for a salary of £450 a year. By a letter dated April 28, 1958, defendant's Senior Medical Officer terminated plaintiff's employment as from April 30, 1958. Plaintiff brought suit for damages for wrongful dismissal. Defendant counterclaimed for £72 3s. 11d. for money loaned to plaintiff and for stores supplied to him at his request.

Held, for the plaintiff on his claim and for the defendant on its counterclaim.

(1) Plaintiff's summary dismissal was wrongful.

(2) Plaintiff's contract of service was an engagement for an indefinite period subject to reasonable notice.

(3) As damages, plaintiff was entitled to recover his salary for April 1958 as well as three months' salary in lieu of notice.

Cases referred to: *Kallay* v. *United Africa Company Limited*, Sierra Leone Supreme Court, June 17, 1960; Sierra Leone and Gambia Court of Appeal, November 2, 1960; *Fisher* v. *W. B. Dick & Co. Ltd.* [1938] 4 All E.R. 467.