February 13, 1959, plaintiff wrote, Ex. "F," to Mr. Rogers-Wright, to the effect that he would accept £2,700 if that sum was paid on that date. No payment was made and so on February 14, 1959, plaintiff wrote, Ex. "G," to Mr. Rogers-Wright withdrawing his acceptance of £2,700 and claiming full payment of £3,120. A cheque for £2,100 was sent plaintiff by Mr. Rogers-Wright which plaintiff cashed and for which a receipt was sent. He then instituted these proceedings claiming the sum of £1,020 being the difference between his bills for £3,120 and the amount of £2,100 already received. The plaintiff having completely done the work which he was required to do is certainly entitled to demand and be paid reasonable remuneration. I find this case to be one in which the plaintiff did work for the defendant under a contract that it should be paid for; but the price for the work was not agreed upon. That being the case the plaintiff can recover only what is reasonable value. The plaintiff based his charges at the rate of 3 per cent. Evidence was led for the plaintiff that the rate payable in Sierra Leone was 3 per cent. I refer to the evidence of Percy Richmond Davies whose evidence I accept. It appears from the defendant's case that 3 per cent. was in all the circumstances considered reasonable and that the payment by defendant to plaintiff of the sum of £2,100 was calculated at the rate of 3 per cent. I find that in all the circumstances 3 per cent. was a reasonable charge. The last issue that remains to be disposed of is should the percentage have been on the whole valuation or on only a third which represents the share of the estate of Abraham J. Milhelm Haroun, decd.? The answer to this question hinges on the answer to the question "what was the contract?" I find this to be that the plaintiff was instructed to inspect and value the whole of all the properties afore-mentioned. I do not consider the purpose for which the valuation was required material in this case. The plaintiff completely performed this work and submitted his certificates of valuation. I consider £3,120 to be a fair and reasonable remuneration for the work performed by the plaintiff for the defendant and I assess on a quantum meruit basis plaintiff's remuneration at that figure. He has already been paid £2,100 by defendant. He is now therefore entitled to £1,020.

There will therefore be judgment for plaintiff for £1,020 and costs, such costs to be taxed.

Freetown
May 23,
1961
Luke Ag.J.

[SUPREME COURT]

H. J. MACFOY, GLADYS LEBBIE, FODAY H. KAMARA, CHARLES TAYLOR AND MADAM NYEMA G. LEWIS . *Plaintiffs*

v.

A. F. F. P. NEWNS (ACTING GOVERNOR) AND DURAMANI SESAY . . . . . *Defendants*

[C.C. No. 435/60]

Suit challenging validity of recognition of person as Tribal Headman—Recognition by Acting Governor—Jurisdiction of court to review Acting Governor's action—Whether person of different tribe can be recognised as Tribal Headman—Meaning of "any person" in section 2 (2) *of Tribal Administration (Colony) Ordinance (Cap.* 244, *Laws of Sierra Leone,* 1946).

The first defendant, who was Acting Governor at the time, recognised the second defendant as Mende Tribal Headman for Bonthe pursuant to section 2 (2) of the Tribal Administration (Colony) Ordinance (Cap 78, Laws of Sierra Leone, 1960), which provides: "The Governor may, in his discretion, recognise any person as the Headman of any members of a tribe resident in or temporarily staying in Freetown, who have previously had a recognised Tribal Headman." This Ordinance was extended to Bonthe by the Tribal Administration (Colony) (Bonthe, Sherbro) Order in Council (P.N. 13 of 1959).

Plaintiffs commenced a suit challenging the validity of the Acting Governor's action on the ground that second defendant was not a Mende. They argued that the words "any person" in section 2 (2) of the Ordinance meant any person belonging to the tribe for which the Governor is recognising a Headman.

Held, for the plaintiffs. "The words 'any person' used in section 2 (2) of the Tribal Administration (Colony) Ordinance should be read with the whole context of the Ordinance and mean 'any person belonging to the particular tribe for which an election for a Tribal Headman is being held."

Note: This decision was affirmed by the Court of Appeal on November 7, 1961 (Civil Appeal 3/61).

Cases referred to: *Sheka Kanu and others* v. *Sullay Sesay* (1959) 16 W.A.C.A. 86; *Metropolitan Board of Works* v. *London and North Western Railway Co.* (1880) 14 Ch. 521.

Berthan Macaulay for the plaintiffs.
John H. Smythe (Solicitor-General) for the defendants.

LUKE AG. J. This is an action in which the plaintiffs are asking:

(i) for a declaration that the recognition of second defendant as Tribal Headman for the Mende Tribe of Bonthe by the first defendant as published in three issues of the "Sierra Leone Gazette" on the dates therein mentioned by virtue of section 2 (2) of the Tribal Administration (Colony) Ordinance (Cap. 244) is invalid and ultra vires;
(ii) for an injunction restraining the second defendant from acting as Headman of the Sherbro Tribe in Bonthe and from exercising jurisdiction over the members of the Mende Tribe in Bonthe;
(iii) for an injunction restraining the second defendant from acting as Headman of either the Sherbro or Mende Tribes in York Island.

At the hearing both counsel agreed to dispense with oral evidence and take the pleadings as filed as the basis of their legal arguments. The facts briefly are that all the plaintiffs and second defendant live at Bonthe and the first defendant at the time was Acting Governor of Sierra Leone and lived at Fort Thornton, Freetown. There was an election for a Headman on March 3, 1960, at which all the plaintiffs and second defendant stood as candidates but before the election there was a written protest to the candidature of second defendant protesting that he was neither of the Sherbro nor Mende Tribe but of the Madingo Tribe. The D.C. did not take any notice of the protest but allowed second defendant to contest and on the same date the D.C. Bonthe declared him as the winner. On March 4, 1960, four of the plaintiffs protested in writing to the Ministry of Internal Affairs through the D.C. and a reply was received by the plaintiffs from the Ministry that they were unable to accede to their request. On April 28, 1960, the first defendant by virtue of his powers under section 2 (2) of the Tribal Administration (Colony) Ordinance (Cap. 244)

published in the "Gazette" his recognition of the second defendant. That since April 28, 1960, the second defendant has been performing the functions of and acting as Tribal Headman not only of the Mendes in Bonthe but also of the Sherbros in Bonthe and of both the Mendes and Sherbros of York Island.

The defendants admitted all that plaintiffs have alleged but contend that what they have done was done by legal authority. Defendants' solicitor, however, in a paragraph in his defence stated that second defendant has ceased to act as such Headman for the Sherbro Tribe in Bonthe and as Headman of either the Sherbro or Mende Tribes in York Island. He also stated that he will contend that the jurisdiction of the courts is ousted until the provisions of section 3 of the said Ordinance have been complied with.

Before starting their arguments both counsel stated that the gravamen of their contention centres around the words "any person." Plaintiffs' counsel said that these words could only be construed with reference to the Mendes and Sherbros the people for whom the election was held, and that they (plaintiffs) having pointed out that the second defendant is neither a Mende nor a Sherbro but a Madingo who hails from Guinea, in the first instance the D.C. should neither have allowed second defendant to register as a candidate nor allowed him to contest at the election. And, if these facts were made known to first defendant he should not have recognised him as Tribal Headman. Defendants' counsel has, however, maintained that first defendant under section 2 (2) can recognise anyone under the description "any person."

In passing I should deal with the last ground of the statement of defence, para. 5, which dealt with the ouster of jurisdiction. For a considerable length of time after the passing of this Ordinance cases have been brought to the courts under this Ordinance and the defence invariably set up by the Crown, who represents the defendants, is that the courts have no jurisdiction. This point was raised in the West African Court of Appeal in the case of *Sheka Kanu and others* v. *Sullay Sesay* (1959) 16 W.A.C.A. 86, where the Acting President Nihill stated the following in his judgment at p. 88:

> "It has been argued for the respondent in very general terms that the Supreme Court should not entertain an action when other means of redress are available. Our short answer to that is, that because of the scanty provision made by the statute governing the election of Paramount Chiefs and Chiefs, no other remedy in law in fact exists for a person aggrieved save recourse to the Supreme Court.
>
> This brings us to section 11 of the Courts Ordinance, Cap. 50, which we will now cite without the proviso:
>
> > '11. In addition to the jurisdiction conferred by this or any other Ordinance, the Supreme Court shall, within Sierra Leone and subject as in this Ordinance mentioned, possess and exercise all the jurisdiction, powers and authorities, excepting the jurisdiction and powers of the High Court of Admiralty, which are vested in or capable of being exercised by His Majesty's Court of Justice in England.'
>
> The problem is now reduced to very simple terms. If this was an action maintainable in the High Court of Justice in England then the Supreme Court of Sierra Leone has the jurisdiction to try it. We consider that the

question put thus can only be answered in one way. It is a hallowed maxim of English law that a right must have its reciprocal remedy 'Ubi jus ibi remedium.'"

This disposes of the contention raised in the fifth paragraph of the statement of defence that the jurisdiction of the courts is ousted until the provisions mentioned have been complied with.

I now turn to consider the meaning of the words "any person" as used in section 2 (2) of the said Ordinance. Plaintiffs' solicitor in his submission stated that in order to enable the court to construe those words it will first be necessary to look at the objects and intentions of the legislature in passing this Ordinance. Was it passed in order that it may enure for the benefit of any particular tribe or people or is it simply to allow anybody who happens to live and dwell in any area where people are electing someone as their Tribal Headman to put forward himself as a candidate and thus ultimately to be not only elected but to be recognised by the Governor as the elected Tribal Headman?

Defendants' solicitor on the other hand says that the words as they stand in the enabling clause are clear and unambiguous, and that as such there is no necessity to look at the objects and preamble and that they must be given the meaning which on the face of it they bear.

In order that the court will be able to express an opinion on the words "any person" it seems impossible for it to do so without recourse to the preamble. Section 2 (2) as it stands does violence to the entire Ordinance. By its violence it has allowed the D.C. who was responsible for the conduct of the election of this Tribal Headman to disregard the protests of the people and allow something which should not have taken place to happen. By that I mean the nomination and election of the second defendant. Reading the preamble of the Ordinance these words are found "An Ordinance To Promote A System Of Administration By Tribal Authority Among The Tribes Settled In Freetown And In Other Places Within The Colony." It is a settled canon of construction that where a context or words do violence to the objects of the statute the preamble is a guide. Maxwell on Interpretation, 10th ed., p. 44, reads:

> "The preamble of a statute, even after repeal, has been said to be a good means of finding out its meaning, and, as it were, a key to the understanding of it; and, as it usually states, or professes to state, the general object and intention of the legislature in passing the enactment, it may legitimately be consulted to solve any ambiguity, or to fix the meaning of words which may have more than one, or to keep the effect of the Act within its real scope, whenever the enacting part is in any of these respects open to doubt."

This Ordinance was passed to encourage and see that the tribes who reside in Freetown and have no Headman may be able to elect one, who, according to the customs and desires of the members of the tribe concerned, is deemed suitable by the majority of such members.

According to defendants' solicitor's argument the meaning of the words "any person" in section 2 (2) is absolute and as such bears no relevance to the other portions of the Ordinance. And being so, no reference should be made to any other portions of the Ordinance, e.g., preamble or sections dealing with members of a tribe. If that is so then it cuts across what the author of

Maxwell on p. 81 describes as "Presumption against Implicit Alteration of Law" which reads:

> "One of these presumptions is that the legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares, either in express terms or by clear implication, or, in other words, beyond the immediate scope and object of the statute. In all general matters outside those limits the law remains undisturbed. . . . General words and phrases, therefore, however wide and comprehensive they may be in their literal sense, must, usually, be construed as being limited to the actual objects of the Act."

If that is so, then the words "any person" found in section 2 (2) of the Tribal Administration (Colony) Ordinance should be read alongside the whole Ordinance, including the preamble and not limited to the one section. I have been unable to find any judicial interpretation of the words "any person" in our judicial decisions and, therefore, I shall refer to English decisions, and the case which seems to lend itself as a guide is *Metropolitan Board of Works* v. *London and North Western Railway Co.* (1880) 14 Ch. 521, 528, decision of Hall V.-C., which reads:

> "It is said that the Act of Parliament uses language wide enough to embrace anybody, and that the words 'any person' apply to and include the defendants. But I must read these words 'any person' with reference to the scope and provisions of this Act of Parliament as a whole; and 'any person' must, in my judgment, be taken to mean throughout all these sections any person entitled to participate in or make arrangements with the board with regard to the user of the drainage system and the benefit of the Act of Parliament. I feel no difficulty whatever in saying that that is the true construction of the Act of Parliament."

Having read the dicta of Hall V.-C. as to the meaning of the words "any person" I hold that the words "any person" used in section 2 (2) of the Tribal Administration (Colony) Ordinance should be read with the whole context of the Ordinance and mean "Any person belonging to the particular tribe for which an election for a Tribal Headman is being held." In the case before the court this was not observed as the D.C. allowed a Madingo not only to register but to be elected. Under the circumstances it is declared that the recognition of the second defendant as Tribal Headman for the Mende Tribe of Bonthe by the first defendant is invalid and ultra vires. There will be an injunction as prayed restraining him from acting as such Headman. Plaintiffs to have the taxed costs of the action.

Freetown
May 25, 1961
Cole J.

[SUPREME COURT]

BRIMA KORMOR . . . . . *Plaintiff*

v.

NICHOLAS COOSAH AND ASINU K. LAMIN . . . . *Defendants*

[C. C. No. 20/60]

Real property—Action for possession—Conveyance executed by illiterate man—Whether he had full knowledge of effect of document—Native law and custom—