respondent left it. I refuse to believe that Abigail Cole is a woman of such an abandoned and wanton character as to step into the shoes of the respondent on the very day the latter left her home and begin sharing a bed with the petitioner. Unless I am a bad judge of character, I consider her to be a woman of some shame and pride. I accept her evidence that the only relationship which subsisted between herself and the petitioner was that of landlord and tenant and nothing more. I find that neither she nor the petitioner committed adultery each with the other.

I now come to the question of the several prayers sought by each party. On the whole of the evidence, I have come to the conclusion that, because of the cruelty committed by each party, each is entitled to the dissolution of the marriage. I have also come to the conclusion that because of the adultery committed by the respondent, the petitioner is, as well, entitled to a decree on this ground. The respondent has, however, asked the court to exercise its discretion in her favour notwithstanding her adultery. I must say that this was a bad adultery on her part, one which produced three children, the first a little over a year after she had been deserted. The court, in exercising its discretion, has to take into consideration the whole of the circumstances in any particular case, including the discretion statement: see *Anstey* v. *Anstey* [1962] 1 All E.R. 741 at 744. In doing so in the present instance, I will, rather reluctantly, exercise my discretion in favour of the respondent. It follows, therefore, for the reasons given, that I grant the decree sought to either party and I order that the marriage had and solemnised on June 9, 1943, be dissolved by reason first of the cruelty of each party one to the other, and secondly by reason also of the adultery of the respondent in whose favour this court has exercised its discretion notwithstanding such adultery. On the question of the custody of the child of the marriage, only the respondent has prayed for this, and I grant her such custody. Under her prayer for any other relief as may be found just by this court, I order that the petitioner do pay to the respondent a monthly sum of £2 towards the maintenance and education of the child until he attains the age of 21 years, or until such an age as he leaves school, whichever event first occurs. Liberty to apply on the question of such maintenance. The suit against the party cited is dismissed.

[SUPREME COURT]

Freetown
Dec. 14,
1962
Bankole Jones J.

MRS. RAIFE MAHMOUD DARWISH BASMA . . . *Plaintiff*

v.

THE OFFICIAL ADMINISTRATOR OF SIERRA LEONE AND MRS. NAJIBI BASMA . . . . . *Defendants*

[C.C. 349/62]

Administration of Estates—Landlord and tenant—Lease of land in provinces—Buildings erected by non-native tenant on land in provinces—Status of buildings on death of tenant—Whether buildings personalty or realty.

Administration of Estates Act (*Cap.* 45, *Laws of Sierra Leone*, 1960), *ss.* 1, 14, 15, 21, 22—*Provinces Land Act* (*Cap.* 122, *Laws of Sierra Leone*, 1960), *ss.* 2, 11 (*a*)—*Interpretation Act*, 1961 (*No.* 46 *of* 1961), *s.* 3.

On May 1, 1952, Mahmoud D. Basma (the deceased) obtained a 50-year lease of certain land in Kabala from the tribal authority of Wara Wara Yagala chiefdom. The lease provided, inter alia, "That the landlord should permit the tenant to erect buildings on the premises and on the determination of the tenancy to remove all such buildings . . ." and "That in the event of the tenant's death during the continuation of the lease his interest should devolve on his executors, administrators or assigns. . . ."

The deceased died on November 25, 1961, intestate, having erected buildings on the land worth £8,000. The estate was administered by the Official Administrator, who, in the course of administration, sold what he described as the "bare buildings" on the leasehold to one Ibrahim Basma. The deceased's daughter, claiming to be a person "beneficially interested" in the estate within the meaning of section 21 of the Administration of Estates Act, then brought suit against the Official Administrator asking that the sale by him of deceased's buildings be set aside.

Plaintiff argued that the buildings should not have been sold, because they were "chattels real" and, therefore inseparable from the land. The Official Administrator argued that the buildings were personalty.

Held, for the plaintiff, (1) where a lease of land in the provinces has been granted to a non-native for a term of years and he erects buildings on the land, such buildings cannot, until the expiration of the lease, be regarded as personalty but must be regarded as realty.

(2) The sale of the buildings was improper because the Official Administrator failed to obtain the consent of all persons beneficially interested or the order of a court or judge as required by section 21 (1) of the Administration of Estates Act.

Cyrus Rogers-Wright for the plaintiff.

The Official Administrator appeared for himself.

Arthur B. Wellesley Cole, John E. R. Candappa and *Shahib N. Basma* for the second defendant.

BANKOLE JONES J. Mahmoud Darwish Basma, otherwise called Mohamed Basma, now deceased (hereinafter referred to as "the deceased"), regularly obtained during his lifetime a lease of a certain piece or parcel of land situate at Kabala in the then Protectorate of Sierra Leone (now known as the Provinces of Sierra Leone) from Paramount Chief Alimamy Yembe and certain principal men on behalf of the tribal authority of Wara Wara Yagala chiefdom. The lease was dated May 1, 1952, and was registered in the Register of Leases kept in the office of the Registrar-General, Freetown. The land was demised to the deceased as tenant, and it was stipulated that the expression "tenant" included, "where the context so admits, his executors, administrators and assigns" for a term of 50 years with an option of another 50 years. There were other stipulations in the lease, the most important of which, for the purposes of this case, are:

> "(1) That the landlord should permit the tenant to erect buildings on the premises and on the determination of the tenancy to remove all such buildings and fixtures thereon within three months from the date of such expiration subject to and in accordance with the provisions of section 11 of the Protectorate Land Ordinance (now styled the Provinces Land Act, Cap. 122).
>
> "(2) That in the event of the tenant's death during the continuation of the lease his interest should devolve on his executors, administrators or assigns as the case may be."

The deceased died on November 25, 1961, intestate. Before his death he had erected buildings on the land, including shops, to the total value, it is said, of at least £5,000, worth at his death at least £8,000. He lived and carried on business on these premises. These facts were alleged in the statement of claim and not refuted in the defence. On the date of the deceased's death he was, therefore, seised of an unexpired term of at least 40 years in the leasehold created in his favour, and was the owner of the buildings erected on the land. He was survived by three brothers, all in Freetown, a mother and a married daughter, both in Lebanon. The married daughter is the plaintiff in this action. After his death and on April 19, 1962, the Official Administrator was moved by the Chargé d'Affaires of the Lebanese Embassy in Sierra Leone to take necessary steps to secure and administer the deceased's estate. The Official Administrator discovered that the deceased's eldest brother of full age according to Mohammedan law had constituted himself an executor de son tort. The name of this brother is Hamed Basma. He had sold the deceased's trade goods for over £3,000 to one, Ibrahim Hassan Basma, who was in occupation of the buildings. He had also rented the buildings to this same person at £500 per annum. The Official Administrator rightly called for an account of his dealings with the property. This was submitted to him. He then went through the mechanics of administration, which is said to be provided for under the Administration of Estates Act, Cap. 45. In the course of such administration he sold to the same Ibrahim Hassan Basma what he described as the " bare buildings " on the leasehold for the sum of £1,150. At the close of the administration of the estate, the Official Administrator deposited the residue, including the said sum of £1,150, in the Treasury for transfer to Lebanon for the benefit of the deceased's mother and daughter and informed the Lebanese Embassy of this. I am told that all this money is still in the Treasury and has not yet been transferred to Lebanon.

The plaintiff, who sues by her attorney, her husband, is the lawful daughter of the deceased according to Mohammedan law and custom and claims to be a person " beneficially interested " in the deceased's estate within the meaning of section 21 of the Administration of Estates Act, Cap. 45. She sues the Official Administrator, claiming a declaration that the sale by him of the deceased's buildings to one, Mrs. Najibi Basma (the second defendant) is statutorily bad and of no effect, and prays that the said sale be set aside as being ineffective, bad and void in law. At the close of the plaintiff's case, it transpired on the evidence, that the Official Administrator, who is the first defendant, had not sold to the second defendant but to Ibrahim Hassan Basma as stated above. She was, accordingly, dismissed from the action. Her dismissal, however, does not, I think, affect the case brought against the first defendant, who sold the buildings, it does not matter, in my view, to whom. I think I ought to make it clear that this action relates only to the sale of the deceased's buildings in the course of the first defendant's administration of the deceased's estate and nothing else.

The issue in this case, as I see it, resolves itself into a question which has never been decided in our courts. The question being, what is the position of any buildings erected by a non-native tenant on land in the provinces for which he holds a lease for a term of years, when he dies, especially in the case where the lease stipulates that he could erect such buildings? The first defendant submitted that such buildings must in law be regarded as personalty and, therefore, be sold on the demise of the tenant in the course of the

administration of his estate. Mr. Rogers-Wright, on the other hand, submitted that the buildings are to be regarded as chattels real, that is, chattels which savour of the realty and which run with the land and are inseparable therefrom during the pendency of the lease.

If the first defendant's contention is right, then he was entitled to proceed under the provision of section 22 of the Administration of Estates Act, Cap. 45, which reads:

> "The Official Administrator shall convert into money all the personalty of every estate which he administers . . . and shall pay all moneys received by him from time to time in the course of administration . . . into the Treasury to the account of the estate from which they arise."

If, however, Mr. Rogers-Wright's contention is right, then the Official Administrator ought to have proceeded under the provision of section 21 (1) of the Act, which reads as follows:

> "No land forming part of the estate of an intestate shall be sold by the Official Administrator . . . without the consent of all persons beneficially interested, or the order of the court or judge thereof for that purpose first obtained."

Now, the first defendant submitted that English land law cannot apply to lands in the provinces because such lands are governed both by statute law and customary law. He, however, conceded that there is no written authority on customary law, nor has he called evidence to prove such customary law. This, therefore, leaves the court with such statutory law as exists, and the only law that does exist is the Provinces Land Act, Cap. 122. By section 2 of this statute, I find that the expression "lease" is defined as meaning "a grant of the possession of land by the tribal authority as lessor to a non-native, as lessee for a term of years or other fixed period with the reservation of a rent." The expression "land" is not defined in this statute and so we have to look for its definition elsewhere. It is defined in the Interpretation Act, No. 46 of 1961, which applies to the provinces as follows:

> "Land includes land covered by water, any house, building or structure whatsoever and any estate, interest or right into or over land or water."

It is, therefore, my opinion that where a lease of land in the provinces has been granted to a non-native, as in this case, for a term of years and he erects buildings on the land, such buildings cannot, until the expiration of his lease, and apart from breaches, be regarded as personalty: see section 11 (*a*) of Cap. 122. Until such time, the buildings, in law, I opine, must be regarded as realty, that is, chattels real, and cannot be sold as if they did not belong to the land. One only has to look at the lease between the parties—Exhibit "A"—to come to the same conclusion. In paragraph 4 of the lease it is provided as follows:

> "It is mutually agreed between the parties hereto as follows: In the event of the tenant's death during the continuation of this lease his interest shall devolve on his executors, administrators or assigns as the case may be."

What, then, was the legal position of the first defendant when, as Official Administrator, he undertook to administer the estate of the deceased which included his leasehold interest created under Exhibit "A." The answer is to be found in sections 14 and 15 of the Administration of Estates Act, Cap. 45. These read:

Section 14—"The title of the Official Administrator . . . shall relate back to, and be deemed to have arisen upon the death of, the owner of such estate as if there had been no interval of time between such death and appointment."

Section 15—"The Official Administrator . . . shall be deemed a trustee within the meaning of any imperial statute or local Ordinance, now or hereafter to be in force, relating to trusts and trustees."

I apprehend all this to mean that the first defendant, immediately after the death of the deceased, stepped into his shoes as a statutory trustee with no power whatever of sale unless in compliance with section 21 (1) of the Act referred to above.

It must be remembered that the Administration of Estates Act applies to the provinces in respect of the estates of deceased non-natives: see section 1. I, therefore, find that the first defendant acting in his capacity as Official Administrator ought not to have sold the buildings of the deceased, which I have held formed part of the land, without the consent of the plaintiff or an order of court or a judge having first been obtained. In doing so, I find, with respect, that he was wrong and I accordingly declare the sale to be of no effect and I order that it be set aside. The plaintiff will have the costs of this action as only relates, of course, to the first defendant.

[SUPREME COURT]

PRINCESS JAMES . . . . . *Plaintiff*

v.

HUGO CHARTERIS, W. SPEAIGHT & SONS AND GEORGE NEWNES LTD. . . . . *Defendants*

[C.C. 472/59]

Tort—Libel—Imputation of smuggling, adultery and violation of insurance law—Damages.

Plaintiff was a married woman and a trader carrying on business in Koindu, Sierra Leone, near the Guinean and Liberian borders. First defendant was a journalist. Second defendant was the printer and third defendant the proprietor and publisher of "The Wide World," a monthly magazine with a wide circulation in Sierra Leone and elsewhere. In the issue of that magazine for July 1959, a story appeared which contained, inter alia, the following passages:

> "Every Saturday she ran a market single-handed. All the stalls were hers and her monthly turnover in cash was about £10,000. Yet the store she lived in and her personal effects . . . would scarcely fetch £100. She had six children all by different husbands, receiving the best private education in Freetown. . . . She also ran a fleet of lorries on which no company would grant an insurance policy. Every week or so she would simply write one of them off and get another—and the one that was lost would become another landmark, upside-down . . . at the bottom of a watercourse, or skewed sideways into the bush. . . . Such misfortunes counted as less than nothing by Mrs. James.