It is true that according to the notes there is no specific mention by the learned trial judge that the onus of proving the charge against appellant was on the prosecution, but when one reads the evidence and the judge's notes as a whole the defect is not at all fatal.

The learned Solicitor-General quoted the case of *Reg.* v. *Attfield* [1961] 3 All E.R. at pp. 243–247 and we can do no more than respectfully follow it:

> "This court would wish to reiterate what has been laid down now in several cases, that the proper form of direction is that the jury should be directed that the burden of proof is on the prosecution, and that the standard of proof required before a verdict of guilty can be returned is that the jury should be satisfied, that they should feel sure. If that simple formula is used, no criticism can be made. In the absence of the use of that formula, in this case when one considers the summing-up as a whole, it is not, in our view, such a defect as would satisfy this court in interfering with the conviction."

In this appeal our view is the same. The case for the appellant was simple and the judge and assessors could not have possibly come to any other conclusion that that appellant was guilty of murder and we are satisfied that appellant was rightly convicted and the appeal is dismissed.

[PRIVY COUNCIL]

London
April 1,
1963.

Lord Evershed,
Lord Jenkins,
Lord Guest

SULAY SEISAY . . . . . *Appellant*

v.

PA SHEKA KANU AND OTHERS . . . . . *Respondents*

[Privy Council Appeal No. 2 of 1962]

Claim for declaration that election of appellant as Paramount Chief invalid—Evidence—Whether sufficient evidence that appellant direct grandson of Paramount Chief.

Plaintiffs-respondents (hereafter referred to as plaintiffs) sought a declaration in the Supreme Court of Sierra Leone that the election of defendant-appellant (hereafter referred to as defendant) as Paramount Chief was invalid and an injunction restraining him from functioning as Chief. The Supreme Court held that it had no jurisdiction, and plaintiffs appealed to the West African Court of Appeal which held that there was jurisdiction and remitted the suit for hearing. At the hearing, the trial judge allowed defendant to amend his defence. From this interlocutory decision, plaintiffs appealed to the Court of Appeal for Sierra Leone and the Gambia, which again sent the case back to the Supreme Court for determination.

At the trial, the issue was whether defendant was a descendant in the male line of Bai Komp Othernip, a previous Paramount Chief. A witness for the defendant, Alhaji Souri, testified: "I know defendant. I knew his father Kaba Seisay. I knew him as a child. I knew his mother. I did not know of their marriage. The father of Kaba Seisay was Nana Seisay. I do not know him. . . . He told me that his father was Nana Seisay and that he had died in the war. He told me Nana's father was Bai Komp Othernip. . . . Defendant

is my son-in-law." The Supreme Court gave judgment for defendant, and plaintiffs appealed on the ground that the trial judge had wrongly admitted in evidence the testimony of Alhaji Souri in so far as it purported to prove that defendant was the direct grandson of Bai Othernip.

The Sierra Leone Court of Appeal allowed the appeal, holding (Ames P. dissenting) that the testimony of Alhaji Souri was insufficient to prove the descent of defendant from Bai Othernip. Defendant appealed to the Judicial Committee of the Privy Council.

Held, allowing the appeal, that there was sufficient evidence to prove the descent of defendant from Bai Othernip.

Cases referred to: *In re Berkeley* (1811) 4 Camp. 401, 171 E.R. 128; *Monkton* v. *Att.-Gen.* (1831) 2 Russ. & M. 147, 39 E.R. 350.

Joseph J. Dean for the appellant.
No appearance for the respondents.

LORD JENKINS. This is an appeal from a judgment of the Court of Sierra Leone dated July 21, 1961, allowing by a majority of two to one the appeal of the plaintiffs/respondents against a judgment of the Supreme Court of Sierra Leone dated July 21, 1960, which dismissed their claim for a declaration that the election of the defendant/appellant as Paramount Chief of the Bonkolenken Chiefdom was invalid, he not being descended from a ruling house within the said Chiefdom and for an injunction restraining him from acting as such Paramount Chief. The defendant/appellant is hereinafter referred to as the defendant and the plaintiffs/respondents are hereinafter referred to as the plaintiffs.

Under section 5 of the Protectorate Ordinance (Cap. 60 of the Laws of Sierra Leone, 1960) it is the duty of the tribal authority to elect a Chief to be in charge of a Chiefdom. In this case it was common ground between the parties that the present Bonkolenken Chiefdom had been formed out of an amalgamation of the former Bonkolenken, Yele, Masakong, Mayopo and Poli Chiefdoms, that the Paramount Chief was required to be a descendant in the male line of or the full brother of a former Chief of one or other of these Chiefdoms, that each of the plaintiffs possessed the required qualification, and that on or about February 6, 1959, the tribal authority elected the defendant as Paramount Chief of the Bonkolenken Chiefdom. The sole issue in the case was, therefore, whether the defendant was proved to be qualified as the duly elected Paramount Chief.

The present suit was begun by a writ of summons dated February 16, 1959. The respective contentions of the parties appear from paragraph 3 of the amended statement of claim and paragraph 3 of the amended defence. Paragraph 3 of the amended statement of claim is as follows:

> "3. The defendant was and is not a descendant in the male line nor the full brother of any Paramount Chief who has previously been recognised as a Paramount Chief of the Bonkolenken Chiefdom or of one or other of the Bonkolenken, Yele, Masakong, Mayopo and Poli Chiefdoms which were, by an act of Union dated the 15th day of December, 1956, amalgamated to form the present Bonkolenken Chiefdom and therefore does not descend from a ruling house within the Chiefdom."

Paragraph 3 of the amended statement of defence is as follows:

"3. The defendant admits paragraphs 1 and 4 of the plaintiffs' statement of claim and contends as regards paragraph 3 of the statement of claim that he is a descendant in the male line of Bai Komp Othernip (deceased) who was recognised as Paramount Chief of the Bonkolenken Yele Chiefdom, which was by an act of Union dated the 15th day of December, 1956, amalgamated as set out in the said paragraph 3 of the statement of claim with the other Chiefdoms as set out therein, and, therefore, does descend from a ruling house within the Chiefdom."

The case was heard on July 14 and 15, 1960, and judgment was delivered on the 21st of the same month.

The learned judge clearly considered the matter with great care and in great detail and at the end of his judgment he expressed his conclusions thus:

"I have approached this case in the expectation that every witness called would tend to be prejudiced in favour of the side calling him and I have come to the conclusion that the defendant and Alhaji" (one of the defendant's principal witnesses) "are truthful witnesses. They gave their evidence in manner which seemed to display that they had nothing to conceal. The plaintiffs' witnesses, on the other hand, appeared to be evasive. I am left in no doubt that the defendant is descended from the house of Othernip. The fact that he has spent much of his life away . . . may have disposed persons to regard him as something of an alien but this action is nothing but a plot to establish false grounds for his removal. I therefore refuse to grant to the plaintiffs the relief which they claim and I shall enter judgment for the defendant with costs."

From this judgment (albeit dealing with matters eminently within the province of the trial judge) the plaintiffs appealed to the Court of Appeal for Sierra Leone. They raised in the first instance five grounds of appeal of which in the end one only became effective. That ground was stated in these terms:

"II. That the learned trial judge wrongly admitted in evidence the evidence of the second defence witness Alhaji Souri in so far as it purported to prove that the defendant was the direct grandson of Bai Komp Othernip."

On this part of the case their Lordships prefer the views contained in the dissenting judgment of Ames P.Ag.P. to those adopted in the judgments of the majority of the court (Marke J. and Luke J.), which give (as it seems to their Lordships) an unduly restrictive effect to the *Berkeley Peerage Case* (1811) 4 Camp. 402, on which they are based—see also *Monkton* v. *Att.-Gen.* (1831) 2 Russ. & M. 147 at p. 156 which was held open to criticism on similar grounds.

It is, however, to be observed that the plaintiffs (now respondents) have not thought fit to appear or be represented in the present appeal, and although Mr. Dean presented the respondents' side of the argument as fairly as possible, their Lordships cannot regard this ex parte hearing as an appropriate occasion for saying more than is strictly necessary for the purpose of disposing of the actual case now in hand. As to that, it seems to their Lordships to be plain on the facts that there was amply sufficient evidence (including, be it observed, the oral evidence of the defendant and other witnesses who were alive and present at the trial) to make good the appellant's case, whether the *Berkeley Peerage Case* is or is not applicable to native titles.

For these reasons their Lordships are of opinion that this appeal should be allowed and the judgment of the trial judge should be restored, and would humbly advise Her Majesty accordingly. The respondents must pay the costs of this appeal and of the appeal to the Court of Appeal for Sierra Leone.

Freetown
April 26,
1963.

Marke J.

[COURT OF APPEAL]

MOHAMED S. MUSTAPHA AND ANOTHER (Executors of E. J. Speck, deceased) . . . . . *Appellants*

v.

GBESSAY KEISTER . . . . . *Respondent*

[S.L.C.A. 13/61 (Civ.)]

Practice—Appeal—Application for leave to appeal to Privy Council—Whether application made in time—Notice of motion lodged but not filed within time allotted—Sierra Leone (Procedure in Appeals to Privy Council) Order in Council, 1961 (*P.N. No.* 79 *of* 1961), *s.* 3.

On June 23, 1961, respondent recovered judgment against E. J. Speck in the Supreme Court. Speck died on July 17, and, on October 31, a motion was filed asking that his two executors (appellants) be substituted for him for the purpose of taking an appeal. In November, the Court of Appeal extended the time within which to appeal, and, in February, 1962, the appeal was set down for hearing. At the hearing, counsel for respondent objected to the hearing of the appeal on the ground that no copy of the order granting the enlargement of time had been annexed to the notice of appeal as required by rule 14 (4) of the West African Court of Appeal Rules, 1950. The appeal was struck out on March 9, 1962.

On March 29, 1962, counsel for appellants lodged with the registrar a notice of motion for leave to appeal to the Privy Council with the intention that the registrar should fill in the return day. The registrar filled in "30th April, 1962" as the return day for the motion, and on that day the notice of motion was filed and served.

Section 3 of the Sierra Leone (Procedure in Appeals to Privy Council) Order in Council, 1961, provides: "Applications to the court for leave to appeal shall be made by motion or petition within 42 days from the date of the judgment to be appealed from. . . ."

Held, dismissing the motion, that the date of the filing of the notice of motion for leave to appeal to the Privy Council is to be regarded as the date of application, not the date of the lodging of the notice of motion with the registrar.

Case referred to: *Duvat and another* v. *Orcel* (1931) 1 W.A.C.A. 105.

Cyrus Rogers-Wright for the appellants.
Edward J. McCormack for the respondent.

R. B. MARKE J. This is an application by the appellants for leave to appeal to the Judicial Committee of Her Majesty's Privy Council against a decision of this court dated March 9, 1962, and for stay of execution of a