KALLON and WURIE *v.* STEVENS and OTHERS

SUPREME COURT (Dobbs, J.): January 4th, 1966
(Civil Case No. 389/65)

[1] **Civil Procedure—declaratory action—plaintiff's interest—action challenging validity of election in City Council of Freetown—Minister of Interior may maintain action:** The Minister of the Interior, as the Minister exercising the powers of the Governor-General in relation to the Council of the City of Freetown, has more than a mere academic interest in the question whether a mayor of Freetown has been properly elected and may maintain an action for a declaration that the election was irregular and void (page 314, lines 14–26).

[2] **Civil Procedure—declaratory action—plaintiff's interest must be real and not merely academic:** The plaintiff in an action for a declaration must have some real interest in the ruling asked for, not merely an academic one (page 314, lines 2–4).

[3] **Civil Procedure—parties—action for enforcing public rights—when Attorney-General is necessary party:** In an action to restrain interference with a public right, whether committed or threatened, or to compel the performance of a public duty, the Attorney-General is a necessary party except (a) where interference with the public right is at the same time an interference with some private right or is a breach of some statutory provision for the protection of the plaintiff and (b) where special damage is suffered over and above that suffered by the general public though no special private right is also interfered with (page 314, lines 31–39).

[4] **Civil Procedure—parties—plaintiffs—action challenging validity of proceedings in Freetown City Council—non-resident of Freetown cannot maintain action:** A person who is not resident within the limits of the City of Freetown cannot in his ordinary personal capacity be a plaintiff in an action for a declaration and an injunction in regard to an election to the office of Mayor of Freetown (page 305, lines 22–25; page 306, lines 1–3).

[5] **Civil Procedure—parties—plaintiffs—declaratory action—action challenging validity of election in City Council of Freetown—Minister of Interior may maintain action:** See [1] above.

[6] **Civil Procedure — parties — plaintiffs—declaratory action—plaintiff's interest must be real and not merely academic:** See [2] above.

[7] **Civil Procedure—pleading—objections—objection in point of law—objection may be vitiated by failure to object to allegations in opening address:** A failure on the part of the defence to object that the plaintiff's opening address alleges something that has not been pleaded may deprive the defence of the benefit of an objection that no cause of action has been disclosed in the statement of claim (page 305, lines 31–38).

[8] **Civil Procedure—pleading—setting out party's case—opening address —failure to object to allegations in address may vitiate objection to statement of claim:** See [7] above.

[9] **Constitutional Law — legal officers — Attorney-General — necessary party to action for enforcing public rights:** See [3] above.

[10] **Injunction—enforcement of public rights—when Attorney-General is necessary party:** See [3] above.

[11] **Local Government—central government's functions—legal proceedings against local government body—Minister of Interior may maintain action challenging validity of proceedings in Freetown City Council:** See [1] above.

[12] **Local Government — legal proceedings — proceedings against local government body—who may maintain proceedings—Minister of Interior may maintain action challenging validity of proceedings in Freetown City Council:** See [1] above.

[13] **Local Government — legal proceedings — proceedings against local government body—who may maintain proceedings—non-resident of Freetown cannot maintain action challenging validity of proceedings in Freetown City Council:** See [4] above.

[14] **Local Government—meetings and proceedings—chairman—invalidly appointed chairman cannot conduct election:** An election by a local government council under a chairman who has not been validly appointed, is invalid (page 308, lines 24–31; page 313, lines 17–20).

[15] **Local Government—meetings and proceedings—election and appointment of officers—voting unnecessary when candidates nominated unopposed:** A local government council empowered to elect a mayor or appoint a member to preside at a meeting may do so without taking a vote if only one candidate is nominated (page 308, lines 4–23).

[16] **Local Government — meetings and proceedings — standing orders — Freetown City Council standing order authorising suspension not limited to orders which precede it:** Standing order 35 of the Standing Orders of the Council of the City of Freetown, 1964, which gives power to suspend "these standing orders," applies not only to the standing orders which precede it but to all standing orders except those whose suspension would be inconsistent with the Freetown Municipality Act (*cap.* 65) (page 312, lines 4–18; page 313, lines 8–11).

[17] **Local Government — meetings and proceedings—standing orders—Freetown City Council standing order governing corporation contracts cannot be suspended under standing orders:** Standing order 35 of the Standing Orders of the Council of the City of Freetown, 1964, which gives power to suspend the standing orders, does not authorise the suspension of standing order 47, which contains provisions as to contracts by the corporation (page 312, lines 5–11).

[18] Local Government — meetings and proceedings — standing orders— Freetown City Council standing order governing selection of chairman cannot be suspended under standing orders: Standing order 35 of the Standing Orders of the Council of the City of Freetown, 1964, which gives power to suspend the standing orders, does not authorise the suspension of standing order 6, which regulates who shall preside at meetings of the Council (page 313, lines 8–11).

[19] Local Government — meetings and proceedings—standing orders— power to suspend subject to chairman's view of situation to be exercised after chairman's recorded ruling on situation: Where a local government council has power to suspend its standing orders provided the chairman deems the situation one of sufficient importance to warrant it, then for the proper exercise of the power the chairman must apply his mind to the question whether the situation is of sufficient importance and give a ruling which should be recorded in the minutes (page 309, lines 36–41).

[20] Local Government—residents—rights and duties—non-resident of Freetown cannot maintain action challenging validity of proceedings in Freetown City Council: See [4] above.

The first plaintiff brought an action, in which the second plaintiff was later joined, against the defendants for a declaration that the election of the first defendant as Mayor of Freetown was irregular and void and for an injunction.

The plaintiffs held the office of Minister of the Interior in succession. The defendants other than the first defendant were sued as the second defendants, being collectively the Corporation of Freetown.

The first defendant was Mayor of Freetown for a term which expired on November 8th, 1965. On November 5th, he sent notice of an extraordinary meeting of the Council of the City of Freetown to be held on November 9th for the election of mayor. On November 8th, there was an ordinary meeting of the Council presided over by the first defendant. One of the members present was nominated unopposed, and declared elected, to preside at the extraordinary meeting to be held the following day. The members then voted a month's suspension of two standing orders, one of which provided that meetings should be presided over by the Mayor or in his absence the Deputy Mayor and that in the absence of both the Council should appoint one of the members present to preside. At the extraordinary meeting on November 9th, presided over by the member elected the previous day for that purpose, the first defendant

was the sole nominee for election as mayor and the member presiding declared him duly elected.

The facts alleged in the statement of claim did not on their face show how the election of the first defendant was contrary to law and the second defendants pleaded that the statement of claim disclosed no cause of action. The Attorney-General in his opening address for the plaintiffs elaborated on the facts alleged in the statement of claim and explained their significance.

The Attorney-General contended that the suspension of standing orders, the election of the chairman for November 9th and the election of mayor were invalid because the provision for the suspension of standing orders was *ultra vires* and because no vote had been taken for either election. The first defendant contended that he was elected mayor according to law. The second defendant contended that the plaintiffs were not entitled to sue because they did not reside in Freetown and that the second plaintiff had no responsibility for the procedure at meetings of the Council.

Cases referred to:

(1) *Gilbey Construction Co. Ltd.* v. *Bangura* (1957), 16 W.A.C.A. 37, *dicta* of Verity, P. followed.

(2) *Merricks* v. *Nott-Bower*, [1965] 1 Q.B. 57; [1964] 1 All E.R. 717, *dictum* of Lord Denning, M.R. applied.

Statutes, Rules and Orders construed:

Freetown Municipality Act (Laws of Sierra Leone, 1960, *cap.* 65), s.16:

"(1) If at any time the Governor-General is of the opinion that the Council is no longer exercising any of its powers or performing any of its duties under the Act in a manner conducive to the welfare of the City, he shall issue a Commission of Inquiry . . . and after receiving the report of the Commissioners, may appoint a Committee of management forthwith if the matter of inquiry related to public health, and in all other cases after failure of the Council to rectify . . . any default in the exercise of its powers and duties established by the Commissioners.

(2) Any such Committee of Management may be appointed . . . to exercise . . . any specified powers and duties of the Council and the Council shall forthwith cease to exercise and perform such powers and duties accordingly."

s.48: The relevant terms of this section are set out at page 310, lines 28–36.

Interpretation Act, 1965 (No. 7 of 1965), s. 23:

The relevant terms of this section are set out at page 311, lines 15–21.

Supreme Court Rules (Laws of Sierra Leone, 1960, *cap.* 7), O.XXI, r.5:
The relevant terms of this rule are set out at page 313, lines 34–38.

City of Freetown, Standing Orders of the Council, s.o.6:
The relevant terms of this order are set out at page 308, line 39—page 309, line 1.

s.o.7(1): The relevant terms of this order are set out at page 307, lines 13–19.

s.o.35: The relevant terms of this order are set out at page 309, lines 16–21.

B. Macaulay, Q.C., Att.-Gen., for the plaintiff;
Smythe and *Johnson* for the defendants.

DOBBS, J.:

In this case the plaintiffs are successively the holders of the office of Minister of the Interior in the government of Sierra Leone. At the commencement of the action the first plaintiff held that office and during the course of the proceedings was replaced by the second plaintiff who was then by order of the court joined in the action as a plaintiff.

The plaintiffs claim (a) a declaration that the purported election of the first defendant on February 9th, 1965 as mayor by the City Council of Freetown is irregular, void and of no effect; and (b) an injunction restraining the first defendant from performing any of the functions, or acting in the office, of Mayor of the City of Freetown. The second defendants are the Mayor, Aldermen, Councillors and Citizens of Freetown or in other words "the Corporation."

The defence of the first defendant is, briefly, a denial that his election is contrary to law or irregular and an assertion that he was according to law elected mayor by the aldermen and councillors of the Freetown City Council at a meeting of the Council held on November 9th, 1965.

The defence of the second defendants is briefly that the plaintiffs as Ministers of the Interior have no responsibility whatsoever for the conduct of meetings of the Freetown City Council or any responsibility at all for fixing or supervising or controlling or directing the fixing of the date for the holding of meetings by the second defendants for the election of the Mayor of the City of Freetown.

The second defendants do not specifically deny that the election was irregular. To quote verbatim, para. 4 of the amended defence reads:

> "The second defendants admit that they elected the first defendant Mayor of the City of Freetown at their meeting of November 9th, 1965 but state that such election did not

constitute and is not in the nature of a crime as seems to be alleged in para. 5 of the statement of claim."

I do not think this form of pleading is very helpful but as it has not been objected to I shall treat it as being an assertion that the first defendant was duly elected.

Paragraph 5 of this defence merits setting out in full and is as follows:

"As to the reliefs sought and as to para. 5 of the plaintiffs' statement of claim, the second defendants will object that in respect of both the first and the second plaintiffs, the statement of claim is bad in law and discloses no cause of action against them on the grounds that:

(a) no fact, circumstance or matter precluding the second defendants from holding their meeting of November 9th, 1965 under the chairmanship of Alderman Hadson Taylor and from electing the first defendant as Mayor of Freetown, is alleged;

(b) no procedural irregularity or otherwise and/or no fact or matter capable of vitiating and/or rendering or making to no effect the election of the first defendant as mayor in support of the declaration sought are alleged;

(c) the said Maigore Kallon and the said Amadu Wurie, not being citizens of Freetown, that is, not residing within the limits of the said City of Freetown, cannot in law be plaintiffs in this action;

(d) standing orders of the second defendants governing the conduct and procedure at meetings are not matters requiring the consent of the Governor-General and therefore not matters for which the second plaintiff can be said to have any responsibility."

With regard to (a) and (b), I am prepared to agree that the facts alleged in paras. 3, 4 and 5 of the statement of claim do not on the face of them show how the purported election was contrary to law. The Attorney-General, however, in his opening elaborated on these facts and explained their significance. Counsel for the defendants made no objection during the opening that the Attorney-General was alleging anything not pleaded. I therefore think they are precluded from taking this point of defence. For authority I would refer to the judgment of the West African Court of Appeal in the case of *Gilbey Construction Co. Ltd.* v. *Bangura* (1) and particularly to the penultimate paragraph (16 W.A.C.A. at 40).

With regard to para. (c) I think it is conceded by the Attorney-General that the only standing the plaintiffs could have is as Minister of the Interior. This leads on to para. (d), which I propose to deal with later in my judgment.

I shall now briefly deal with the law relating to the office of mayor and with the facts leading up to the disputed election. The facts are mostly set forth in the minutes of the meetings of the Council which took place on November 8th, 1965 and November 9th, 1965, these minutes having been put in evidence and marked respectively E and F.

The Act governing the matter is the Freetown Municipality Act (*cap.* 65) and I shall hereafter refer to it as the Act. Section 7 of the Act provides for the establishment of the City Council of Freetown and s.8 thereof says "the Council shall consist of the Mayor, Aldermen and Councillors elected and appointed as hereinafter provided." Sub-sections (2) and (3) of s.11 provide for a mayor to be elected by the aldermen and councillors after the election of aldermen and thereafter whenever the office of mayor shall become vacant. The person elected shall either be one of the aldermen or councillors or a person qualified to be elected as councillor. Sub-section (2) of s.13 of the Act provides that the mayor shall hold office for one year and shall then retire.

It seems clear therefore that in any event there must be an election of mayor after the completion of a year from the date of the previous election of mayor. The first defendant was elected on November 9th, 1964, so his term of office expired at midnight on November 8th, 1965. On November 5th, 1965 the first defendant caused notice of an extraordinary meeting of the Council to be held on November 9th, 1965 to be sent to members, the business of such meeting to be the election of mayor for 1965–1966. On Monday, November 8th, 1965 the normal monthly meeting required by standing orders to be held on the second Monday in each month was duly held. There were present the first defendant as mayor and chairman, five aldermen and 15 councillors, making a total of 21. After the ordinary business a motion was put by Alderman Hadson Taylor. I think I should read from the minutes.

[The learned judge read from the minutes and continued:]

On Tuesday, November 9th, 1965 the extraordinary meeting was held under the chairmanship of Alderman J. Hadson Taylor and there were also present four other aldermen and 14 councillors, making a total of 19. I shall read the relevant portion of the minutes.

[The learned judge read from the minutes and continued:]

As I understand the Attorney-General's argument, he maintains that (a) despite the fact that provision appears to be made in standing order 35 of the Standing Orders of the Council for the suspension of standing orders, this provision is void as being *ultra vires* so that the purported suspension of standing orders 10(1)(a) and 6 on November 8th, 1965 was invalid and (b) that in any event, in the election of chairman for the meeting of November 9th, 1965 and in the actual election of mayor standing order 7(1) was not followed since in neither case was there any voting but merely nomination and declaration of due election.

I shall deal with these points in reverse order, point (b) first. Standing order 7(1) reads as follows:

> "Quorum. All acts whatsoever authorised or required by the Freetown Municipality Act or any other Act to be done by the Council and all questions that may come before the Council shall be done or decided by a majority of votes. No business except that of adjournment shall be transacted, or resolution except into Committee shall be passed unless there be present at least seven members of Council."

The Attorney-General says that one of the acts required by the Freetown Municipality Act is the election of a mayor; standing order 7(1) requires this to be done by a majority of votes. Mr. Smythe contends that standing order 7(1) only applies to the number to constitute a quorum and that the remainder of it is only directive and not mandatory. He submits that the first part of the standing order does not need to be invoked unless there is a question of choosing between two persons. I have had cited to me a passage from Jackson, *Secretarial Practice of Local Authorities*, at 13 (1953), under the heading "Election of chairman or mayor." I quote:

> "This is the first business to be transacted at the annual meeting of a council. There are no special formalities required by law." [So far as I can ascertain this is so also in Sierra Leone.] "The person presiding at the meeting, usually the outgoing chairman or mayor, calls for a nomination, which is made orally by a member of the council and seconded. If there are no other nominations the nominee is declared elected, and no vote need be taken. If there are other nominations (which is most unlikely, since the election is usually pre-arranged) a vote will have to be taken in the usual way."

I know from my own experience that this is a common practice and

we have evidence from the Town Clerk that to his recollection without referring to records it has been followed by the City Council in the case of the election of Alderman Taylor Cummings as Mayor. I have given this matter anxious consideration and have come to the conclusion that the practice is quite a sound one. My reasoning is as follows. The meeting has as its business the election of a mayor. The question to be decided is not : "Shall we or shall we not elect a mayor?" but: "Whom shall we elect as mayor?" If one has the system of nomination and only one person is nominated then it must be presumed that the members either wish him to be mayor or are indifferent as to whether he is elected or not. It is up to those who do not want him to nominate someone. If they do not there is nothing to vote about. If they do there is then something to vote about. If more than one person is nominated the question on which voting takes place is: "Whom of these persons do we want as mayor?" not: "Do we want any of these persons to be mayor?" In the case of only one nomination the only question which could be put to the vote is: "Do we want him as mayor?" I do not see why the principle should be different according to whether one person or more than one are nominated. I would therefore hold that this head of objection fails both in respect of the election of mayor and the election of Alderman Hadson Taylor as chairman for the meeting of November 9th.

This does not dispose of the matter, however. It now is necessary to consider the Attorney-General's first objection. It seems clear to me that if it was wrong for Alderman Hadson Taylor to have been elected on November 8th to be chairman of the meeting of November 9th his actual taking of the chair on November 9th was invalid and he had no power to declare the first defendant duly elected. If he had no such power then the first defendant was not validly elected on November 9th.

I should say right away that I do not consider the purported suspension of standing order 10(1)(a) of very much significance. If standing order 6 was validly suspended and a chairman for the next day's meeting validly elected it would logically follow by implication that standing order 10(1)(g) was automatically suspended.

I think the important point to be decided is whether standing order 6 was validly suspended or not. Standing order 6 is as follows:

> "Presiding Members. At every meeting of the Council, the Mayor or in his absence the Deputy Mayor shall preside. In the absence of both the Mayor and the Deputy Mayor the

Council shall appoint one of the members present to preside."

Now it is clear that on November 9th, 1965 the first defendant would no longer be mayor and so could not preside. It also appears clear from the minutes that there was no Deputy Mayor. So in the normal course of events the members present on November 9th would have had to appoint one of themselves to be chairman at that meeting. A perusal of the relevant portion of the minutes shows why certain members thought it expedient to circumvent this standing order and purport to elect a chairman on November 8th for the meeting of November 9th. They did so by invoking standing order 35 which provided for suspension of standing orders although I should remark that even this they did in the wrong sequence having already resolved to appoint a chairman before having resolved to suspend standing order 6. I think it convenient at this stage to set forth the text of standing order 35, which is as follows:

> "Suspension of Standing Orders. These standing orders or any one or more of them may be suspended on motion by a majority of the members present at the meeting at which such motion is proposed provided that the situation is deemed by the chairman one of sufficient importance to warrant the suspension of the standing order."

Before dealing with the Attorney-General's argument I think I should deal with certain points that have arisen in my mind independent of what has been said by counsel.

From what appears in the minutes to have been said by Alderman Hadson Taylor, I am satisfied that the true reason for the urgency expressed by him was to ensure that on the morrow the chairman should be one of his political party and so under standing order 9 entitled to a casting vote in the event of the votes for and against their nominee being equal. This may have been a matter of urgency to himself and members of his political party but I do not think it was a matter of urgency looked at from the point of view of the Council as a whole. It is interesting to note that in the events that happened the members present at the meeting of November 9th, *viz.*, 19, would have enabled standing order 6 to have been followed in any event. However, assuming that standing order 35 was fully effective, the ground for invoking it was not urgency but "sufficient importance" as deemed by the chairman. Now it does not appear from the minutes whether or not the chairman applied his mind to the proviso. In my view he should have done so and given a ruling which should have been recorded in the minutes. I do not

think it sufficient proof of this that he allowed the motion to be voted on and recorded as a resolution.

The resolution which was passed was that standing order 6 be suspended for one month as from that day. Again, assuming that the power to suspend was valid, the resolution on the face of it was absurd. The logical result would be that even after a mayor had been elected the next day he would not be able to take the chair at meetings for a whole month because his authority for doing so would be standing order 6 which had been suspended. Again, even on the next day, suppose Alderman Hadson Taylor had not been present to take the chair: if standing order 6 was validly suspended, how could a chairman be appointed in his stead?

This leads me on to the view that a valid power of suspension should not give power to suspend in advance. I am reinforced in this view by perusing the model Standing Orders on Proceedings and Business issued by the British Ministry of Housing and Local Government which appear as Appendix I in Jackson, *Secretarial Practice of Local Authorities* (1953). It is No. 46(1) and is on p. 238 and reads as follows: "Subject to part (2) of this standing order, any of the preceding standing orders may be suspended so far as regards any business at the meeting where its suspension is moved." Now in the present case, none of the business at the meeting of November 8th demanded the suspension of standing order 6. What I have said here will also be subject to something I shall have to say on the matter of *ultra vires* and the effect of the Interpretation Act, 1965.

I shall now come to the point of *ultra vires* raised by the Attorney-General. Section 48 of the Act provides as follows:

> "(1) The Council may from time to time make, amend or revoke Standing Orders not inconsistent with the provisions of this Act to regulate the proceedings of the Council:
>
> (2) Until varied or revoked by Standing Orders made under sub-section (1), the Standing Orders contained in Part II of the First Schedule hereto shall be in force.
>
> (3) The Standing Orders for the time being in force shall at all times be followed and observed, and shall be binding upon the Council."

Standing orders have been made presumably under the authority of s.48(1) in 1949 and in 1964. These do not specifically revoke those contained in Part II of the First Schedule but they certainly cover the same ground and more.

Now it will be noticed that although the section gives power to

make, amend or revoke, it does not give power to suspend. As I understand the Attorney-General's argument, he says that the effect of the section is to render *ultra vires* any provision for suspension of standing orders. To suspend means to render inoperative for a time; to make a standing order which enables Council to render other standing orders inoperative for a time is an attempt to whittle down the mandatory provisions of s.48(3). With respect, although I appreciate the force of his argument, I do not entirely agree. If the Council has power to suspend standing orders then I think the expression "the Standing Orders for the time being in force" can be construed as meaning—"the Standing Orders for the time being in force including the Standing Order providing for suspension of Standing Orders."

Now s.23 of the Interpretation Act, 1965, provides as follows:

> "Where an Act confers power on any authority to make Orders, Proclamations or Regulations, unless the contrary intention appears, the following provisions shall apply—
> (a) any Order, Proclamation or Regulation may at any time be amended, varied, rescinded, suspended or revoked by the same authority, and in the same manner by and in which it was made."

The Attorney-General says this does not apply because, there being no specific power to suspend given by s.48 of the Act, the "contrary intention" appears. With respect, I do not agree with him. In my view the contrary intention would appear if s.48 contained a provision specifically negativing power to make a standing order suspending standing orders.

I do think, however, that the words—"may be . . . suspended . . . by the same authority and in the same manner by and in which it was made" have some significance. We have not had evidence as to the manner in which the standing orders were made but I think it safe to assume that they were not made on the spur of the moment without notice being given. That being so it would appear that standing order 13(f) would be inconsistent with the provisions of the Interpretation Act, 1965, as it provides that any motion for the suspension of these standing orders may be moved without notice. This would render the motion to suspend on November 8th out of order. I should like to say here that this point only struck me whilst I was writing this judgment and I have not had the opportunity of deep research; in particular I have not had the opportunity of studying how it comes about that standing orders

in England can contain provisions for summary suspension of standing orders.

This does not mean that I have finished with the question of *ultra vires*. Standing order 35, which deals with suspension, is one of 58 standing orders contained in the 1964 orders. Now included among the standing orders is standing order 47, "Provisions as to Contracts by Corporation." These provisions are taken word for word from s.77 of the Act. These provisions therefore are statutory and cannot be suspended by Council. Yet standing order 35 appears to give power to do so. In this respect it is clearly inconsistent with the Act and therefore bad. Does this mean it is therefore bad in respect of all the standing orders? What is meant by "these standing orders" in standing order 35? Does it mean all the standing orders or only those from 1 to 34? I do not think it can be restricted to those alone because there are others after standing order 35 which it might be expedient to suspend on occasion. If it means standing orders 1 to 34 the words "the preceding" or "the foregoing" or even "those" would have been more appropriate. If we are to give any validity to standing order 35 we must be able to decide what standing orders it applies to.

This brings us to the question "does it apply to standing order 6?" Now it seems to me that standing order 6 is vital to the proper running of the Council. I have been referred many times to the English Local Government Act and am interested to observe that the counterpart of standing order 6 is not made the subject of standing orders at all—it is a statutory provision and therefore cannot be suspended by any particular council. One can see why this should be so. Meetings cannot be properly conducted without a chairman. If you suspend this provision what have you to fall back on to get your meeting properly under way? In this country the legislature has not made such provision but has left it to the Council to make the provision. Admittedly it originally made provision word for word the same as standing order 6; at the same time however it did give power to vary or revoke this. However s.48 of the Act gave power to make standing orders to regulate the proceedings of the Council—I stress the word regulate. Now as I have said before it is vital to have a definite provision for deciding who should be chairman at a meeting of Council and if there is no such provision the proceedings cannot be said to be regulated. This does not mean that standing order 6 could not be duly amended or varied by the Council, as say for example by providing that in the absence

of the mayor or deputy mayor the aldermen present should appoint a chairman from among themselves or that if only one alderman were present he should take the chair. The effect of suspending as opposed to varying or amending would be that during the suspension you would have no means of deciding who should be chairman. The same reasoning would apply to revoking standing order 6. This would be objectionable unless some suitable standing order were made to replace it. I would therefore hold that whatever its effect may be with regard to other standing orders, standing order 35 is ineffective to suspend standing order 6 as being inconsistent with the provisions of s.48(1) of the Act.

By now it will have been clear that for the many reasons set forth above I consider that the purported suspension of standing order 6 on November 8th, 1965 was ineffective and that it was in full operation on November 9th, 1965 and should have been followed at that meeting. It was not so followed and accordingly Alderman Hadson Taylor had not been validly appointed chairman. That being so he had no right to conduct the mayoral election and declare the first defendant duly elected and therefore the first defendant was not duly elected.

I have now to decide whether it is in order for me to make the declaration in favour of the plaintiffs which they have asked for and to grant the injunction requested. The second defendants allege by paras. 1 and 5(d) of the defence, as I have already read, that the plaintiffs have no responsibility in connection with fixing the date for the holding of meetings by the second defendants for the election of the mayor and that standing orders governing the conduct and procedure at meetings are not matters requiring the consent of the Governor-General and therefore not matters for which the second plaintiff can be said to have any responsibility. With respect I do not think this is the true test. Order XXI, r.5 of the Supreme Court Rules, which copies word for word O.XXV, r.5 of the English Supreme Court Rules, applicable here provides as follows:

> "No action or proceeding shall be open to objection, on the ground that a mere declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether any consequential relief is or could be claimed, or not."

From this it would seem that whether or not I feel the plaintiffs entitled to the injunction claimed I am not precluded from considering whether they are entitled to the declaration. I have had

occasion before to study the authorities concerning the effect of this rule. It seems clear that the plaintiff must have some real interest in the ruling asked for: he must not have merely an academic interest. I think the following quotation from the judgment of Lord Denning, M.R. in the case of *Merricks* v. *Nott-Bower* (2) ([1965] 1 Q.B. at 67; [1964] 1 All E.R. at 721) expresses what I have to say better than I can do myself:

> "On this point we have been referred to a number of cases which show how greatly the power to grant a declaration has been widened in recent years. If a real question is involved, which is not merely theoretical, and on which the court's decision gives practical guidance, then the court in its discretion can grant a declaration."

Now the Attorney-General has shown us numerous instances where the Governor-General is concerned in the affairs of the City Council of Freetown and has also shown how these powers are in fact exercised by the Minister of the Interior. I shall not enumerate the instances but shall pick out one which I think is particularly in point. I refer to s.16 of the Act which in certain circumstances empowers the Governor-General to appoint a committee of management. I am not going so far as to say that the mere fact that the mayor has not been validly elected would justify the invocation of s.16; all I am saying is that the general tenor of s.16 gives the Minister more than a mere academic interest in the question whether the mayor was properly elected or not. I therefore grant the declaration prayed for.

With regard to the injunction: this is not so simple. It seems likely that if the Attorney-General had been a party to these proceedings he could have asked for an injunction. I quote from 30 *Halsbury's Laws of England*, 3rd ed., para. 570, at 310, as follows:

> "In an action to restrain interference with a public right, whether committed or threatened, or to compel the performance of a public duty, the Attorney-General is a necessary party except (1) where the interference with the public right is at the same time an interference with some private right, or is a breach of some statutory provision for the protection of the plaintiff, and (2) where the special damage is suffered over and above that suffered by the general public, though no special private right is also interfered with."

By quoting this I am not saying positively that even the Attorney-General would be entitled to ask for an injunction in the present

case but as it seems clear to me that the plaintiffs herein cannot be brought within the exceptions (1) and (2) they are not entitled to the injunction. I accordingly refuse to grant the injunction prayed for.

Declaration granted; injunction refused.

ENGLAND, ENGLAND, SMART and COSIER *v.* OFFICIAL ADMINISTRATOR, PRATT and BECKLEY

SUPREME COURT (Cole, Ag. C.J.): January 5th, 1966
(Civil Case No. 520/59)

[1] **Civil Procedure—judgments and orders—further and better relief—recovery of possession may be ordered as further and better relief claimed in action for declaration of title:** Under a claim for further and better relief in an action for a declaration of title to land against a defendant in possession, the court may make an order for the recovery of possession of the land in favour of the successful plaintiff (page 325, lines 32–35).

[2] **Civil Procedure—pleading—statement of claim—further and better relief—may support order for recovery of possession in action for declaration of title to land:** See [1] above.

[3] **Estoppel—record—res judicata—declaration of title to land—trespass judgment in action where ownership not in controversy does not estop:** A judgment in favour of the plaintiff in an action of trespass to land, in which the ownership of the land was neither in controversy nor open to controversy, does not support a defence of estoppel *per rem judicatam* to an action against him for a declaration of title to the land (page 325, lines 8–19).

[4] **Estoppel—record—res judicata—must be conclusive decision of same essential issues by competent court:** In order to support a defence of *res judicata* it is necessary to show that the subject-matter in dispute is the same, *i.e.*, that everything that is in controversy in the second action as to the foundation of the claim for relief was also in controversy in the first action; that it came in question before a court of competent jurisdiction; and that the result was conclusive so as to bind every other court (page 324, line 36—page 325, line 7).

[5] **Evidence — burden of proof—title to land—plaintiff in declaratory action must prove boundaries:** The plaintiff in an action for a declaration of title to land must prove satisfactorily the boundaries of the land claimed (page 322, lines 26–28).