Fourah Bay Road. In my view, where a trustee has committed a breach of trust, fraudulent or otherwise, any beneficiary can bring an action to question the validity of the acts of the trustee. As I have already found, Ransolina Patience Cromanty was not only an executrix *de son tort* of the estate of Jacob Williamson Sawyerr as regards that part of his estate in Sierra Leone but also a trustee who in the manner in which she disposed of No. 98 Fourah Bay Road committed a fraudulent breach of her trust. In those circumstances I think the plaintiff has properly brought this action.

Taking all the circumstances of this case into consideration, I would grant the plaintiff's claim. I order that the deed of gift Exhibit M be set aside and I also order that the property in question No. 98 Fourah Bay Road be dealt with in the manner laid down in the will of the said Jacob Williamson Sawyerr, deceased.

The plaintiff will have the costs of this action, such costs to be taxed.

Order accordingly.

SAWYER and FOUR OTHERS *v.* OLUWOLE and OLUWOLE

SUPREME COURT (Cole, Ag. C.J.): January 7th, 1966
(Mag. App. No. 42/64)

[1] **Courts — magistrates' courts—procedure—record—reading of charge not recorded—omnia praesumuntur rite esse acta applies if plea taken:** Where, in a trial in a magistrate's court, the magistrate records that the accused has pleaded to the charge but does not record that he read the charge to the accused, the presumption *omnia praesumuntur rite esse acta* applies in the absence of positive evidence that the charge was not read (page 332, line 37—page 333, line 10).

[2] **Criminal Procedure—record—contents—reading of charge not recorded—omnia praesumuntur rite esse acta applies if plea taken in magistrate's court:** See [1] above.

[3] **Evidence—presumptions—presumption of law—omnia praesumuntur rite esse acta—presumption applies where reading of charge not recorded but taking of plea recorded in magistrate's court:** See [1] above.

The appellants were charged in a magistrate's court with assaulting the respondents.

The magistrate recorded the appellants' pleas but did not record that the charge was read to them before the pleas were taken. They were convicted and fined.

On appeal they contended that the magistrate had not read the charge to them and that he was wrong in law not to have read the charge to them.

Case referred to:

(1) *Commissioner of Police* v. *Bangali* (1961), 1 S.L.L.R. 224, not followed.

Statute construed:

Criminal Procedure Act (Laws of Sierra Leone, 1960, *cap.* 39), s.86:

"The substance of the charge shall be stated to the accused, and he shall be asked if he admits or denies the truth of the charge.

If he admits the truth of the charge the Court may convict him thereof, or refuse to accept a plea of guilty, as it thinks fit."

E. L. Luke for the appellants;
Cole for the respondents.

COLE, Ag. C.J.:

The appellants appealed to this court because they were aggrieved by the decision of the magistrate's court which on September 22nd, 1964 convicted them of assaulting the respondents and fined each of them Le4 with one month's imprisonment in default. In their petition of appeal dated October 10th, 1964 their grounds of appeal were: "(i) that the magistrate did not adequately consider your petitioners' defence; (ii) that the decision is unwarranted and unreasonable having regard to the evidence." At the hearing of the appeal they sought and obtained leave to argue two additional grounds of appeal, namely:

"1. That the learned magistrate was wrong in law in failing to read the charge to the defendants before recording their pleas.

2. That the learned magistrate was wrong in law in applying the wrong standard of proof in determining the case."

I shall dispose of these additional grounds of appeal at once. I find no evidence before me that the magistrate did not read the charge to the appellants. On the contrary I find evidence from which it can properly be presumed that he did. It is recorded that each of the appellants pleaded to the charge. It is true that it is

not recorded that the charge was read to the appellants before their pleas were taken. Mr. Luke relied for support on the provisions of s.86 of the then Criminal Procedure Act (*cap.* 39), now repealed. There is nothing in that section which makes it obligatory for the magistrate to have recorded the fact that he read the charge to the appellants before their pleas were taken. I do not think the omission to record this fact necessarily means that it was not done. On the contrary, in the absence of positive evidence of the charge not having been read to the appellants the maxim *"omnia praesumuntur rite esse acta"* applies. Learned counsel referred to the case in the Court of Appeal of *Commissioner of Police* v. *Bangali* (1). I have carefully considered that case and I do not think it applies to the facts of this case. I find no substance in this ground of appeal.

As regards the second additional ground the magistrate in my view applied the right standard of proof. This ground fails also.

With regard to grounds (i) and (ii) of the grounds of appeal contained in the petition it is clear even from the respondents' case that there was evidence in support of the defence of self-defence of their parent, the first appellant, by the second to the fifth appellants. To this aspect of the defence it did not appear that the magistrate gave due consideration. It is true that he found that these appellants assaulted the respondents, but that is not enough. He should have considered the defence of self-defence in the sense I have described it above. The facts of the case show that had the magistrate considered this defence he might not have convicted these four appellants. In the circumstances I think it will be unsafe for the convictions of the second, third, fourth and fifth appellants to stand. As regards the first appellant, there is abundant evidence which, if found satisfactory, supports the conviction. The magistrate said he was so satisfied. I shall therefore not interfere with that conviction.

In the result this appeal is allowed as regards the second, third, fourth and fifth appellants. I hereby order that their convictions be quashed, the sentences set aside and a verdict of acquittal and discharge be entered in their favour. If the fines imposed on them have been paid, I order that they be refunded to those appellants.

The appeal as regards the first appellant is dismissed.

Order accordingly.