

FE.
G-1-1-1

19, 1961

IN THE PRIVY COUNCIL

No. 54 of 1959

ON APPEAL
FROM THE WEST AFRICAN COURT OF APPEAL

B E T W E E N :

THE ATTORNEY GENERAL OF THE GAMBIA

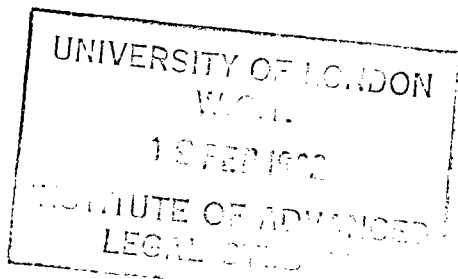
Appellant

- and -

PIERRE SARR N'JIE

Respondent

RECORD OF PROCEEDINGS



63679

CHARLES RUSSELL & CO.,
37, Norfolk Street,
Strand, W.C.2.

Solicitors for the Appellant.

A.L. BRYDEN & WILLIAMS,
53, Victoria Street,
Westminster, S.W.1.

Solicitors for the Respondent.

ON APPEAL
FROM THE WEST AFRICAN COURT OF APPEAL

B E T W E E N

THE ATTORNEY GENERAL OF THE GAMBIA Appellant

- and -

PIERRE SARR N'JIE Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

The Respondent has objected to the reproduction in this Record of the documents numbered in this Index 5, 6 and 8 to 24 inclusive and of the Exhibits marked 1 to 8 inclusive 11 to 21 inclusive 23 to 30 inclusive and 40 to 42 inclusive on the ground that they are unnecessary or are irrelevant to the subject matter of this Appeal.

No.	Description of Document	Date	Page
1	Notice of Motion for Enquiry	16th July 1958	1
2	Affidavit in support of Motion and Annexures	16th July 1958	2
	Annexure ("A") -- Statement of Superintendent J.R. Bray	3rd July 1958	5
	Annexure ("B") -- Statement of Farid Massry	31st March 1958	7
	Annexure ("C") -- Statement of Eugene Sigismund John	31st March 1958	9
	Annexure ("D") -- Statement of Salim Hamad	5th May 1958	12
3	Proceedings before Wiseham, C.J.	16th July 1958 19th July 1958	15 15
4	Proceedings before Abbott, D.J.	15th September 1958 and 16th September 1958	17 19

No.	Description of Document	Date	Page
	<u>Applicant's Evidence</u>		
5	Musa Abdou Jobe	16th September 1958	21
6	Dawooda Omar Sowe	16th September 1958	21
	<hr/>		
7	Further Proceedings before Abbott, D.J.	16th September 1958	24
	<u>Applicant's Evidence Resumed</u>		
8	Alieu Badara N'Jie	16th September 1958	25
9	Mam Babou Sowe	16th September 1958	25
10	Bai Drameh	16th September 1958	26
11	Paul Joseph Jabre	16th September 1958	26
12	Alieu Jeng	17th September 1958	28
13	Cusman Jeng	17th September 1958	28
14	Ebenezer Martin Sock	17th September 1958	31
15	Musa Alhaji Savage	17th September 1958	31
16	Salim Hamad Alhushin	17th September 1958	32
17	Prahladrai Chan	17th September 1958	33
18	Farid Masri	18th September 1958	34
19	Eugene Sigismund John	18th September 1958	35
20	Genevieve Brahim	18th September 1958	36
21	Samuel John Forster	18th September 1958	37
22	Sait Alasan Jagne	18th September 1958	37
23	Alieu Badara N'Jie - (Recalled)	18th September 1958	38
24	James Thomas Roberts	18th September 1958	39
	<hr/>		
25	Judgment of Abbott, D.J.	22nd September 1958	41
	<u>IN THE WEST AFRICAN COURT OF APPEAL</u>		
26	Notice of Appeal	6th October 1958	55
27	Notice of Application to amend Grounds of Appeal	27th December 1958	57

No.	Description of Document	Date	Page
28	Judgments:- (a) Bairamian, Ag.P. (b) Hurley, Ag.J.A. (c) Ames, Ag.J.A.	5th June 1959 5th June 1959 5th June 1959	59 66 72
29	Notice of Motion for Leave to Appeal to Her Majesty in Council	23rd June 1959	75
30	Affidavit in support of Motion for Leave to Appeal to Her Majesty in Council	23rd June 1959	76
31	Judgment refusing Leave to Appeal to Her Majesty in Council	6th July 1959	77
<u>IN THE PRIVY COUNCIL</u>			
32	Order granting Special Leave to Appeal to Her Majesty in Council	21st December 1959	79

E X H I B I T S

Exhibit Mark	Description of Document	Date	Page
1	History of Land Tenure in Bathurst relating to 62, Perseverance Street	-	82
2	History of Land Tenure in Bathurst relating to 63, Perseverance Street	-	82
3	Receipt No.232 for £150 given to Dawooda Sowe by P.S. N'Jie	5th May 1951	83
4	Receipt No.240 for £50 given to Dawooda Sowe by P.S. N'Jie	19th July 1951	83
5	Receipt No.247 for £50 given to Dawooda Sowe by P.S. N'Jie	6th August 1951	84

Exhibit Mark	Description of Document	Date	Page
6	Conveyance of 63, Perseverance Street by Dawooda Sowe to Ousman Jeng	25th November 1950	84
7	Cheque No. ^P / ₃₀ 081543 given to Dawooda Sowe by P.S.N'Jie	6th December 1950	86
8	Receipt No.186 for £50 given to Dawooda Sowe by P.S. N'Jie	14th November 1950	86
11	Particulars of Claim and Writ of Summons in Civil Suit No.S.97/58 Genevieve Brahim v. P.S. N'Jie	4th July 1958	87
12	Certified True Copy of Proceedings in Civil Suit No. S.13/54 - Paul Joseph Jabre v. Dawooda Sowe	22nd February 1954	88
13	Letter from P.S.N'Jie to Paul Joseph Jabre	12th February 1953	89
14	Conveyance of 63, Perseverance Street by the United Africa Company Limited to Dawooda Sowe	29th May 1941	90
15	Conveyance of 63, Perseverance Street by Marie Josephine Jagne to Ederisa N'Jie	2nd July 1936	91
16	Indenture of Mortgage of 63, Perseverance Street between Ederisa N'Jie and the United Africa Company Ltd.	12th October 1936	93
17	Indenture of Mortgage of 62, Perseverance Street between Papa Bundu Camara and Dawooda Sowe and Alieu Jeng	14th January 1950	95
18	Indenture of Mortgage of 63, Perseverance Street between Dawooda Sowe and Ousman Jeng	28th December 1949	97
19	Cash Debit of £400 to Ousman Jeng by S.Madi	16th November 1950	98

Exhibit Mark	Description of Document	Date	Page
20	Receipt No.188 for £350 given to Ousman Jeng by P.S. N'Jie	17th November 1950	99
21	Statement of Alagi Ousman Jeng	25th January 1956	99
23	Un-numbered Receipt given to Salim Hamid by P.S. N'Jie	17th February 1958	100
24	Telegram No.203 from Salim Hamid to Farid Massry		100
25	Accounts of Genevieve Brahim and her debtors	(1954)	101
26	Same as Exhibit Mark 11		101
27	Gambia Government Official Receipt No.3204 (sic)	1st June 1954	101
28	Gambia Government Official Receipt No.3371	24th June 1954	102
29	Gambia Government Official Receipt No.337?	24th June 195_?	102
30	Gambia Government Official Receipt No.284?	23rd April 1954	102
31	Letter P.S. N'Jie to Chief Justice	17th August 1958	102
32	Telegram P.S. N'Jie to Chief Justice	28th August 1958	103
33	Telegram Chief Justice to P.S. N'Jie	30th August 1958	103
34	Telegram P.S.N'Jie to Chief Justice	3rd September 1958	104
35	Telegram Chief Justice to P.S.N'Jie	11th September 1958	104
36	Letter P.S.N'Jie to Chief Justice	2nd September 1958	104
37	Letter P.S.N'Jie to Chief Justice	4th September 1958	105
38	Letter P.S.N'Jie to Chief Justice	12th September 1958	106

Exhibit Mark	Description of Document	Date	Page
39	Letter P.S.N'Jie to Attorney General	25th July 1958	109
40	Record of Proceedings in Civil Appeal No.W.A.C.A. 2/57 - Dawooda Sowe v. Alhadji Ousman Jeng & Alhadji B.S.O. Jeng		109
41	Repayment of deposit voucher No.7865 made payable to P.S.N'Jie	9th July 1954	111
42	Repayment of deposit voucher No.7866 made payable to P.S.N'Jie	9th September 1954	111

DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

Exhibit Mark	Description of Document	Page
9	Record of Appeal in Dawooda Sowe v. Alhadji Ousman Jeng & Alhadji B.S.O. Jeng before Miles, C.J.	86
10	Record of Proceedings in Dawooda Sowe P.J.Jabre v. Alhaji Ousman Jeng & Alhadji B.S.O. Jeng before Wiseham, C.J.	86
22	Book of stopped and returned cheques of the Bank of West Africa	100

1.

IN THE PRIVY COUNCIL

No.54 of 1959

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL

B E T W E E N

THE ATTORNEY GENERAL OF THE GAMBIA Appellant

- and -

PIERRE SARR N'JIE

Respondent

RECORD OF PROCEEDINGS

No. 1.

No. 1.

10

NOTICE OF MOTION FOR ENQUIRY

Before the Honourable the Chief Justice of the
Gambia.

Notice of
Motion for
Enquiry.

16th July, 1958.

IN THE MATTER of Pierre Sarr N'Jie barrister and
solicitor of the Supreme Court

and

IN THE MATTER of Rule 7 of Order IX of the First
Schedule to the Rules of the Supreme Court, 1928

NOTICE OF MOTION

20

TAKE NOTICE THAT the Honourable the Chief Jus-
tice of the Gambia will be moved on the 19th day of
July, 1958, at 9 o'clock in the forenoon or so soon
thereafter as Counsel can be heard by the Attorney
General of the Gambia that the Honourable the Chief
Justice may be pleased to make an order -

30

- (a) that enquiry be made by the Honourable the
Chief Justice into the allegations against
Pierre Sarr N'Jie of Bathurst barrister
and solicitor of the Supreme Court con-
tained in the Affidavit which supports
this notice of motion, and that the said
Pierre Sarr N'Jie be required to attend at
such enquiry and to answer the said alle-
gations; and
- (b) that if reasonable cause be thereby shewn
the name of the said Pierre Sarr N'Jie be
struck off the Roll of Court or such other

No. 1.

Notice of
Motion for
Enquiry.

order made by the Honourable the Chief Justice as to him may seem fit in accordance with the provisions of Rule 7 Order IX of the First Schedule to the Rules of the Supreme Court, 1928.

16th July, 1958
- continued.

DATED the 16th day of July, 1958.

(Sgd.) L. WESTON

ATTORNEY GENERAL.

To the Registrar,
Supreme Court,

10

and

Pierre Sarr N'Jie, Esq., B.L.,
Bathurst.

No. 2.

Affidavit in
Support of
Motion for
Enquiry and
Annexures.

No. 2.

AFFIDAVIT IN SUPPORT OF MOTION FOR ENQUIRY AND
ANNEXURES

Before the Honourable the Chief Justice of the
Gambia

16th July, 1958.

IN THE MATTER of Pierre Sarr N'Jie Barrister and
solicitor of the Supreme Court

20

and

IN THE MATTER of Rule 7 of Order IX of the First
Schedule to the Rules of the Supreme Court, 1928

I, LAURENCE WESTON one of Her Majesty's
Counsel Attorney General of the Gambia make oath
and say as follows :-

1. That I am Attorney General of the Gambia.
2. That Pierre Sarr N'Jie is a barrister and solicitor of the Supreme Court of the Gambia.
3. That to the best of my knowledge information and belief the said Pierre Sarr N'Jie is guilty of the following acts of professional misconduct that is to say -
 - (a) On or about 17th November, 1950 at Bathurst Pierre Sarr N'Jie utilised for his own purpose the sum of £350 held and received by him on behalf of one Ousman Jeng.

30

- 10 (b) On 25th November, 1950 at Bathurst Pierre Sarr N'Jie with intent to deceive induced one Dawooda Sowe to execute a document purporting to be a conveyance by the said Dawooda Sowe to the said Ousman Jeng of the said Dawooda Sowe's property at 63 Perseverance Street Bathurst by falsely representing that the said document was a document the effect of which was to extend the time of payment of a debt of £200 then due by the said Dawooda Sowe to the said Ousman Jeng.
- 20 (c) On 25th November, 1950 at Bathurst Pierre Sarr N'Jie with intent to deceive induced the said Ousman Jeng to execute a document purporting to be a conveyance by the said Dawooda Sowe of the said Dawooda Sowe's property at 63 Perseverance Street Bathurst (and being the document referred to in subparagraph (b) above) by falsely representing that the said document was a document the effect of which was to convey the said property to the said Ousman Jeng.
- (d) On or about 5th May, 1951 at Bathurst Pierre Sarr N'Jie utilised for his own purposes the sum of £150 held and received by him on behalf of the said Ousman Jeng.
- 30 (e) On or about 19th July, 1951 at Bathurst Pierre Sarr N'Jie utilised for his own purposes the sum of £50 held and received by him on behalf of the said Ousman Jeng.
- 40 (f) On or about 27th February, 1953 at Bathurst Pierre Sarr N'Jie as solicitor of the said Dawooda Sowe the mortgagor of the property at 63 Perseverance Street Bathurst with intent to deceive induced one Paul Joseph Jabre as mortgagee to accept the title offered to him by concealing from the said Paul Joseph Jabre two several incumbrances, namely, a mortgage of the said property to the said Ousman Jeng dated 27th December, 1949 and a document purporting to be a conveyance of the said property to the said Ousman Jeng dated 25th November, 1950 (and being the document referred to in subparagraphs (b) and (c) above).
- (g) On or about 9th August, 1954 at Bathurst Pierre Sarr N'Jie utilised for his own purposes the sum of £203.9.0d. held and received by him on behalf of one Genevive Brahim.

No. 2.

Affidavit in Support of Motion for Enquiry and Annexures.

16th July, 1958
- continued.

No. 2.

Affidavit in
Support of
Motion for
Enquiry and
Annexures.

16th July, 1958
- continued.

- (h) On or about 31st July, 1957 at Bathurst Pierre Sarr N'Jie utilised for his own purposes the sum of £1,360 held and received by him on behalf of one M.A. Karim.
- (i) On or about 17th February, 1958 at Bathurst Pierre Sarr N'Jie utilised for his own purposes the sum of £200 held and received by him on behalf of one Salim Hamad.

4. I am enabled to make this statement from the facts brought to my attention -

10

(a) as to the allegations contained in subparagraphs (a) to (f) inclusive of paragraph 3 hereof in the records of the proceedings in Civil Suit No. S/80/1956 and Civil Suit No. S/80/1958.

(b) as to the allegations contained in subparagraph (g) of paragraph 3 hereof in the record of the proceedings in Civil Suit No. S/97/1958.

(c) as to the allegations contained in subparagraph (h) of paragraph 3 hereof by the statement which is now produced and shown to me and marked "A".

20

(d) as to the allegations contained in subparagraph (i) of paragraph 3 hereof by the statements which are now produced and shown to me and marked "B", "C" and "D" respectively.

(Sgd.) L. WESTON

ATTORNEY GENERAL.

SWORN by the above-named
Laurence Weston at Bathurst
this 16th day of July, 1958

Before me,

(Sgd.) A.B. N'Jie

COMMISSIONER OF OATHS.

ANNEXURE ("A") - STATEMENT OF SUPERINTENDENT
J.R. BRAY.

No. 2.

Police Headquarters,
Bathurst.

Confidential.

3rd July, 1958.

Annexure "A" to
Affidavit in
Support of
Motion for
Enquiry.

16th July, 1958.

I have to report that on Monday 28th April, 1958, Mr. M.A. Savage came to see me in my office and as a result of what he told me I asked him to return with his father and mother.

10 A few days later Mr. M.A. Karim together with his wife and Mr. Savage returned to my office. I called in Mr. H. Lloyd Evans, Assistant Superintendent of Police to be a witness.

The story given to me was as follows :-

20 In 1951 Mr. Karim was desirous of purchasing a house in Bathurst. He approached Mr. P.S. N'Jie and asked him to let him know if anything came on the market. A certain property was, according to N'Jie likely to become available and Mr. Karim said he was interested in the proposition. However nothing further developed in the matter.

30 In July 1956, Mr. P.S. N'Jie approached Mr. Karim and told him that he knew of a property which would become available for sale in a few days time. The price mentioned was in the region of £1,200 and the property was situated at 13 Hill Street, Bathurst. Karim said he was interested and would look at the property and let N'Jie know of his decision. A day or so later Karim again saw N'Jie and said he would like to buy the property, if possible. N'Jie agreed to act for him and Karim gave N'Jie £160 in cash. £10 of this was for N'Jie's fees and the £150 was a deposit which was to be refunded if the deal did not materialise. A few days later N'Jie again saw Karim and told him everything was going on all right and that the owner required £1,350 for the property. Karim said he would think about it. N'Jie produced a copy of the deeds of the property made out in the name of Karim and said as soon as
40 the money was forthcoming the house would be his. Karim then went up river and arranged for his son Savage to complete the deal. £1,200 was paid over to N'Jie and he issued a receipt for the total amount of £1,360. Nothing further was heard and after several weeks Mr. and Mrs. Karim together

No. 2.

Annexure "A" to
Affidavit in
Support of
Motion for
Enquiry.

16th July, 1958
- continued.

with their son approached N'Jie. He said that the owner was not now willing to dispose of the property. Karim then asked for the refund of his money. N'Jie said the money was not then available but he would refund it within a few days. Constant demands were made for the return of the money but without success. In July 1957, N'Jie offered to give them a cheque for the money and accordingly a cheque No. 088274 was issued by N'Jie for £1,360. This was dated 31.7.57. At the same time N'Jie asked for the return of his receipt and this was given back to him. The cheque was passed to the Bank of British West Africa a few days later and was returned marked 'refer to drawer'. Karim and Savage saw N'Jie and he said the money was not available but he would pay them back by instalments. From time to time money was paid by N'Jie to Savage chiefly by instalments of £100. At the end of January 1958, £460 was still outstanding and N'Jie gave Savage a cheque No. 098519 for £460. Either later that day or the following day Savage received a letter from N'Jie telling him not to present the cheque as he had had a number of cheques stolen from his office. Further amounts were repaid by N'Jie until at the time of my interview £360 was outstanding.

10

20

The cheques mentioned above and the letter from N'Jie were shown to me.

I then asked the three of them to record statements. This they would not do. Mr. Karim was anxious to get his money back but did not want to appear in a criminal case as he thought it might be bad for his good name. Mrs. Karim was keen to pursue the matter and referred to N'Jie as a swindler. The son also wanted to pursue the matter but was obviously guided by his father. All three departed from my office taking with them the documents mentioned and promising to think over the matter and see me again. They did not do so.

30

From information received I learned that a further £100 was paid over to Savage a few days ago by someone on behalf of N'Jie.

40

I understand the balance of £260 was paid over to Savage on the 2nd July, again by someone on behalf of N'Jie and that the Cheques and the letter were handed back at the same time.

The above is reported to you in view of the serious nature of the matter.

(Sgd.) J.R. BRAY
Superintendent C.I.D.

The Honourable
The Attorney General.

This is the Exhibit marked "A" referred in the Affidavit of Laurence Weston sworn before me this 16th day of July, 1958.

10

(Sgd.) A.B. N'Jie
A COMMISSIONER FOR OATHS.

No. 2.

Annexure "A" to
Affidavit in
Support of
Motion for
Enquiry.

16th July, 1958
- continued.

ANNEXURE ("B") - STATEMENT OF FARID MASSRY

C.I.D., H.Q.,
Bathurst.
31st March, 1958.

Annexure "B" to
Affidavit in
Support of
Motion for
Enquiry.

16th July, 1958.

Farid MASSRY states as follows:-

I live at 60 Wellington Street, Bathurst and I am a trader by occupation. Mr. Salim HAMAD is a trader at Bansang, MacCarthy Island Division.

20

On Saturday 16th February, 1958 about 6 p.m. I went with Salim Hamad to Lawyer N'JIE'S house at 19 Buckle Street. We went upstairs to Mr. N'Jie's room. Salim Hamad told N'Jie that he had brought £200 to give to N'Jie for him to pay Vezia's as part of the amount of £480 odd which he Salim Hamad owed to Vezia and for which the Court had made an order. Salim Hamad brought the £200 out of his pocket and kept it in his hand. Mr. N'Jie said he had no safe to keep the money and told me to keep the money with me till Monday morning. Then I should bring the money and N'Jie would go with me to Vezia's to pay over the money. Salim Hamad gave me the £200 and we left N'Jie's house.

30

Salim Hamad went back up river on Sunday 16th February.

40

On Monday 17th February about 8 a.m. I went to Lawyer N'Jie's house. I took the money with me. I saw N'Jie. He told me he couldn't go to Vezia's because he had to go to Court and that I should go myself and pay in the money. I went to Vezia's and saw the Agent - Mr. Rey I believe - Mr. Rey refused

No. 2.
Annexure "B" to
Affidavit in
Support of
Motion for
Enquiry.

16th July, 1958
- continued.

to accept the £200 and said he wanted all the amount. I went back to Mr. N'Jie and told him Vezia's wouldn't take the £200. Then he said to me "Give me the money. Me I go paid it to the Court and will give you a receipt". I gave him the £200 and he gave me a receipt for £200 (Produced). Then I left him.

On 16th March I received a telegram from Salim Hamad (produced) On 17th March - Monday - I went to see N'Jie. I showed him the telegram and asked him if he had paid the money in. He said "No but I will paid it". He said he would send a telegram to Salim Hamad about the money. He made out a telegram and I took it to the post office. As far as I remember the telegram said "Tell Mr. Jagne £200 available here". I left Mr. N'Jie's house after he had given me the telegram. 10

On Friday 21st March I received a telegram from Georgetown signed Salim (produced). Later that day I went to see N'Jie at his house. I showed him the telegram and asked him for the money. He said he would collect it and I should go back next day. 2

On Saturday 22nd March in the morning I went to N'Jie's house with Mr. Eugene John. I saw N'Jie and asked him for the money. He told me he had sent someone to the Bank to collect it and I should come back in the afternoon. I went back with Mr. John in the afternoon and asked for the money. He said he hadn't got the money but would give me a cheque. Mr. N'Jie wrote out a cheque for £200 payable to me. He gave it to me and we left. After we left I saw that on the cheque was written in red ink "Clients Account". I am not a client of N'Jie. I didn't like the cheque and after about half an hour I went back to N'Jie's place with Mr. John. I saw N'Jie and told him I didn't like the cheque and he should give me the cash. When N'Jie first gave me the cheque I had handed the receipt back to him. This is the one I had got on 17.2.58. 30

N'Jie took back the receipt, wrote cancelled across it in red ink and kept it. 40

Mr. N'Jie took back the cheque crossed through the "Cancelled" on the receipt and initialled it and gave me back the receipt. He said he hadn't got the money but would give me another cheque. I refused and said I wanted ready cash. We then left Mr. N'Jie's house. As we came out N'Jie's

younger brother Sheriff N'Jie met me and said he would pay me if his brother didn't. He showed me his Bank statement and said he had only got about £160 in the Bank but he expected some money from Vezia's in four days time. I went to him four days later and asked him about the money. Sheriff N'Jie said his brother had told him he had given me a cheque but I had refused it and he wasn't going to pay me cash.

No. 2.

Annexure "B" to Affidavit in Support of Motion for Enquiry.

16th July, 1958
- continued.

10 Since then I haven't seen N'Jie.

When I gave N'Jie the £200 I gave it to him on behalf of Salim Hamad to be paid to Vezia's in part settlement of Hamad's debt to Vezia. The receipt N'Jie gave me at the time shows that the money was to be paid to Vezia's. He had no right to use the money for any other purpose.

This statement has been read over to me and it is true.

Signed Farid Massry.

20 Statement taken and signature witnessed by J.P. Bray
Superintendent of Police
C.I.D.
31.3.58.

This is the Exhibit marked "B" referred to in the Affidavit of Laurence Weston Sworn before me this 16th day of July, 1958

(Sgd.) A.B.N'Jie
A COMMISSIONER FOR OATHS.

ANNEXURE ("C") - STATEMENT OF EUGENE SIGISMUND JOHN

30 Police Headquarters.
31st March, 1958.

Eugene Sigismund John of 29 Allen Street, Bathurst aged 53 years. Writing Clerk states:-

On the 22nd of March, 1958 at about 11.30 a.m. Mr. Farid Massry of 19 Leman Street, whose business place is 60 Wellington Street, Bathurst, met me at the Transit Depot in Wellington Street and told me that he got some difficulties in collecting back the sum of £200 - (Two hundred pounds) being the

Annexure "C" to Affidavit in Support of Motion for Enquiry.

16th July, 1958.

No. 2.
Annexure "C" to
Affidavit in
Support of
Motion for
Enquiry.

16th July, 1958
- continued.

property of Salim Hamad which he, Farid Massry, had paid in to Lawyer P.S. N'Jie since the 17th of February, 1958. This amount was paid to settle part of an account owing by Salim Hamad to Ets. Vezia. He then asked me to accompany him to P.S. N'Jie's office. I joined him. When we got to Mr. N'Jie, Mr. Farid said to him I have come for the £200. Mr. N'Jie then said O.K. he then took up a cheque which was lying on his table and already drawn and handed it to Mr. Farid. I looked at the cheque, it was drawn in Mr. Farid's name, for the sum of £200 and there was a foot-note in red which reads "Clients Account". Mr. N'Jie then demanded the return of a receipt which he had previously handed to Mr. Farid when the £200 was paid. This receipt was drawn by P.S. N'Jie in the name of Salim Hamad for £200 to be paid to Ets. Vezia. When Farid handed him the receipt, in our presence he wrote across the face of the receipt in red ink Cancelled. We left the receipt with him and went away with the cheque. We left his office, I should say the time was about 12.30 p.m. We could not cash the cheque that day as it was a Saturday and the Bank had closed at 11 a.m.

10

20

On the 24th March, a Monday at about 9 a.m. Mr. Farid met me at the Transit Depot and asked me to accompany him again to Lawyer N'Jie because he wanted the cheque to be drawn not in his name, but on Salim Hamad's name, because he was no client to N'Jie, as this may bring some confusion. I joined him. When we got to Mr. N'Jie he handed Mr. N'Jie the cheque and told him to draw it in Salim Hamad's name, as he was the owner of the amount of £200. Mr. N'Jie said it made no difference whether it was in Farid's name or Hamad, but that being the case he will take the cheque and cash it for him, and asked Farid to return to his office at 2 p.m. that day for the amount. Farid then asked for the return of the receipt which he had previously handed to him. N'Jie produced it and before handing it over crossed out the word cancelled, and initialed it. Farid accepted it and we left. We returned at 2 p.m. but could not see him. We waited in his office for about one hour and then left. We returned to his office at 4 p.m. the same day. We met him. Farid then said to him, I was here at 2 p.m. but could not see you, then N'Jie said the woman had gone to collect the money, but has not yet returned. He further said I do not see any reason why you refuse to accept the cheque. Farid then said, it is not my money and I do not see why

30

40

50

it should be in my name. N'Jie then said, in any case you can go and come back for the money. As we were going out of the compound Lawyer Sheriff N'Jie (the brother of P.S. N'Jie) stopped Farid and told him that if he failed to get the £200 from P.S. N'Jie that day he should look up to him for payment. He, Sheriff, then asked Farid to accompany him to the Bank to collect his Bank Savings Book, so that he could deposit it with Farid as a guarantee up to Thursday 27th March, 1958, when he would make the payment of the £200. All of us walked up to the Bank. Sheriff received the Book opened it and showed Farid his balance. I also saw it, it was about £150 (One hundred and fifty pounds). He Sheriff then asked Farid to accept the Book and on Thursday 27th he would be in a position to pay in the balance to bring it up to £200. Farid refused to accept the book and said that he was quite satisfied and as he was in possession of P.S. N'Jie's receipt he was willing to wait till Thursday.

On Thursday morning 27th March, 1958, at about 10 a.m. Farid and I were at the Bank on business when we saw Sheriff N'Jie coming from the Supreme Court Yard. Farid left me in the Bank and went and spoke to Sheriff. After speaking to him he returned and told me that Sheriff said that he was not going to pay him, because P.S. N'Jie had told him that he had given Farid a cheque for the amount and that he refused to accept it.

Farid then decided that the proper thing to do in the circumstances was to report the matter to the Sheriff so that the £200 can be refunded.

Farid told me that he has been in telegraphic communication with Salim Hamad about the matter. He showed me one telegram dated 21.3.58 from Salim Hamad, of Bansang in which he instructed Farid to collect back the £200 from P.S. N'Jie.

Signed Eugene S. John

Statement taken down by me and after reading it over to him he signs his name as correct.

(Sgd.) H.L. Evans. A.S.P.

31.3.58.

This is the Exhibit marked "C" referred to in the Affidavit of Laurence Weston sworn before me this 16th day of July, 1958.

(Sgd.) A.B. N'Jie
A COMMISSIONER FOR OATHS.

No. 2.

Annexure "C" to Affidavit in support of Motion for Enquiry.

16th July, 1958

- continued.

No. 2.

ANNEXURE "D" - STATEMENT OF SALIM HAMAD

Annexure "D" to
Affidavit in
Support of
Motion for
Enquiry.

Police Headquarters,
Bathurst.

5th May, 1958.

16th July, 1958.

SALIM HAMAD, Dealer for U.A.C., age 42 years residing at 4, Lancaster Place, Bathurst, Lebanese by tribe, States :-

In 1951 and 1952 trade season I took on credit from Etbs. Vezia goods to the value of about £1,500. I paid up until there remained a balance of £489. This year 1958 the firm summons me for the amount outstanding (£489). The summons was in fact over and above the actual sum of £489 I owed them. The summons was served on me at Bansang by the Commissioner's Clerk, Georgetown. I came down to Bathurst three days before the case was due to be heard in the Supreme Court. I actually arrived here on a Saturday. I went to see the Agent, Vezia, but they had closed. I then went to see Lawyer P.S. N'Jie for him to try and settle the matter out of Court. I showed him all the documents I had in my possession which relate to this debt. After reading the documents he telephoned to Mr. Rey, the Agent, in my presence. He said to Mr. Rey "Mr. Hamad is here now and he states the amount he owes you is £489 and he is quite ready to pay £200 now and the balance he could settle next year". After speaking he told me that Mr. Rey says he was not going to accept part settlement, but they required the whole amount. This was on a Saturday. As I was in a hurry to return to my station, Bansang, Mr. N'Jie suggested that I was to deliver the £200 to one of my friends and he would try and see Mr. Rey again and get him to accept the £200. I then left his office and went and called Mr. Farid Massry. Farid and I went together to Mr. P.S. N'Jie and in his presence I handed the £200 to Farid Massry and asked him to accompany Mr. N'Jie to Vezia on Monday morning to make the payment of the £200. I left the Sunday evening and returned by road to Bansang.

10

20

30

40

In March, 1958 whilst at my station, Bansang, the Sheriff's Clerk, Mr. Jagne came to me and said that he had come to attach my property for an account of £511.9.8. I owed to Vezia, I said to him that I had already paid £200 and there ought to be a balance of £289 only, but he said that no amount had been paid and his instructions were to attach

for the sum of £511.9.8. except I paid in full. I had no alternative but to pay the full sum he stated, £511.9.8. and my property was not attached.

10 I immediately sent a telegram to Mr. Massry and Mr. P.S. N'Jie informing them of the matter and asked that they telegraph the number of the receipt number in respect of the £200 I had paid. Mr. P.S. N'Jie's telegram I added the words "The Sheriff's Clerk is waiting for your reply". I received a reply from Mr. N'Jie which read "The £200 with me tell Mr. Jagne". Before I received this reply from Mr. N'Jie the Sheriff's Clerk had left with the full amount of £511.9.8.

20 After this I wrote to Mr. N'Jie and instructed him to pay over the £200 to Mr. Massry, I also wrote a letter to Massry informing him to call on Mr. N'Jie and demand the £200. I received other letters from Massry that he had not received the amount. I then wrote a letter to Mr. N'Jie again informing him to pay the amount to Mr. Massry. He replied and said he had given Mr. Massry a cheque for the amount, but he had refused to accept it, and as such I was not to write him such letters.

30 I came down on 1.5.58 by the Lady Wright. On the morning of the 2.5.58 I went to Mr. P.S. N'Jie's and demanded the refund of my £200. He gave me a cheque drawn in the name of K. Chelleram on Salim Hamad account. I took this cheque to Mr. Chan, the Manager of K. Chelleram to pay into my account with them. Mr. Chan accepted the cheque and then called his clerk and instructed him to present it to the Bank for payment. The Clerk left with it to the Bank. Soon after he left, I and Mr. Chan went to meet him at the Bank, it was 12 m.d. There we were informed by one of the Bank clerks that the cheque was not accepted. In the afternoon the cheque was returned to Mr. Chan. On Saturday morning I took the cheque back to Mr. N'Jie and told him that the cheque was not accepted but was returned. He appeared to be in doubt why the cheque was returned and he asked me why was it returned, I replied I do not know. He then said alright, I will write to the Bank and find out why they returned the cheque and after he has received their reply he would pay me. I retained the cheque and left his office. I then went up to his brother Sheriff N'Jie and told him that I am having some difficulties with his brother and as we have been friends for a long time I do not want any palaver.

40

No. 2.

Annexure "D" to Affidavit in Support of Motion for Enquiry.

16th July, 1958
- continued.

No. 2.
Annexure "D" to
Affidavit in
Support of
Motion for
Enquiry.
16th July, 1958
-- continued.

He said to me alright if he does not pay you up to Monday come to me and I will pay you.

Today Monday 5.5.58 I went to P.S. N'Jie together with Sheriff N'Jie and Hassan Farage and I again asked for my money, but he replied that he had not yet received a reply from the Bank. As he said this Sheriff N'Jie asked me to go with him and he would pay me. I went with him and we joined by car to the Bank and there he drew £160 and handed it over to me. I returned to his house and he joined me there later. When he came I was alone, Hassan Farage had gone.

10

As I had retained Sheriff N'Jie to collect some of my debts I was owing him about £80 or £90 for his work and he asked me to pay him £50 as an advance. I agreed and gave him £10 out of the £160 I had received from him plus the £40 balance he was to hand over to me to make up the £200. I then gave him the cheque drawn by Mr. P.S. N'Jie.

Signed S. Hamid
5.5.58.

20

Statement continued on 6.5.58.

As I have already said I am not making a complaint and do not wish to prosecute as I can see no cause for it, as I have already received my £200. Mr. Massry reported the matter, but when I came down to Bathurst I was paid and that is the end of the matter. If Mr. Massry had accepted the cheque this matter may have been settled long before my arrival in Bathurst.

30

Signed S. Hamid.

Statement taken down by me and read over to him after which he signs as correct.

H.L. Evans
6.5.58.

This is the Exhibit marked "D" referred in the Affidavit of Laurence Weston sworn before me this 16th day of July, 1958

(Sgd.) A.B. N'Jie
A COMMISSIONER FOR OATHS.

No. 3.

No. 3.

PROCEEDINGS BEFORE WISEHAN, C.J.

IN THE MATTER of PIERRE SARR N'JIE, Barrister and
Solicitor of the Supreme Court

Proceedings
before Wisehan,
C.J.

and

16th July, 1958.

IN THE MATTER OF RULE 7 ORDER IX OF THE FIRST
SCHEDULE TO THE RULES OF THE SUPREME COURT, 1928

16th July, 1958 Misc. Civil Cause No.S.63/58.

Weston, Attorney General, present

10 Weston: 'I appear to move Court. There is a
slight error in notice served on P.S. N'Jie.
Error of Court. My copy states 16th July, Court's
copy has 16th July. Two minutes I received a com-
munication which I read " ... " His copy states
'16th Wednesday'. He wants eight weeks notice.
Phototake copy of notice shows '16th Wednesday' and
N'Jie is quite right. Letter placed on record.
20 Matter is before Judge in person. N'Jie will have
requests to make. I wish to refile notice of mo-
tion today returnable Friday morning".

Order: Heard Attorney General. Let fresh notice
be filed and duly served on Respondent for Satur-
day the 19th.

(Sgd.) J.A.L. Wiseham.

19th July, 1958.

19th July, 1958.

Attorney General as before.

S.A. N'Jie for Respondent.

30 Weston: "No errors in new motion. I have a letter
here which indicates my friend will make an appli-
cation. Letter says he will object to C.J. holding
this enquiry".

S.A.N'Jie: "I am asking for 3 things.

- (1) an order may be made for enquiry.
- (2) that it be held by someone other than your-
self.
- (3) reasonable time - for counsel from England
- say November.

40 Weston: "I agree to (1)
I appreciate (2)
as to (3) I object strongly. There is a
record that Respondent is guilty of deceiving his

No. 3.
 Proceedings
 before Wisehan,
 C.J.
 19th July, 1958
 - continued.

client. For him to stout about this Court till then it is highly insulting and embarrassing. Justice is sweetest when freshest".

Order: Given orally and taken down by shorthand writer.

This is a motion by the learned Attorney General for an enquiry to be held into the conduct of the Respondent as a practising barrister and solicitor of this Court. It is not a case. It is not a trial. It is an enquiry of a disciplinary character. 10

Mr. S.A. N'Jie who appears for the Respondent now makes three points in his application. The first is he consents that an order be made for this enquiry to be held. I agree to that on the strength and basis of the facts and reasons set out in the Affidavit of the learned Attorney General. The second point he makes is that this enquiry should be held by somebody other than myself. The question in these cases is whether the Respondent has an apprehension that he will not get a fair and impartial enquiry before me and in view of the fact that in civil suit No.S.80/1956 I have already found the Respondent to be blameworthy of deceit to two of his clients and of not accounting for monies he received from them, in view of that finding, I think the Respondent has every cause to have a reasonable apprehension that he may not get a fair and impartial enquiry from me. In these circumstances I shall recommend that someone other than myself be appointed as a Deputy Judge to hold this enquiry and to exercise all the powers vested in the Chief Justice. 20 30

The third application is that time be granted right up to say November. I cannot agree more than with the remarks put forward by the learned Attorney General that it is highly embarrassing for the hearing of this enquiry to be delayed any further than is necessary and at the same time I cannot bind the person who is to try this enquiry with any particular date. In the circumstances somebody would be designated and be appointed and a fresh application to be made as regards to the time. A fresh notice will be given to the Respondent. 40

(Sgd.) J.A.L. Wisehan,
 C.J.

Weston: "I understand Respondent is going away to England. Great expense may be caused by bringing someone here and delay caused. Public moneys will be used and there must be an assurance that Respondent will appear".

S.A.N'Jie: "I am willing to give that assurance"

Order: Respondent to give security in the sum of £500 to appear whenever called upon. Mr.S.A.N'Jie agrees to do so.

10

(Sgd.) J.A.L. Wiseham.

No. 4.

PROCEEDINGS BEFORE ABBOTT, D.J.

15th September, 1958.

Motion for (a) an enquiry into allegation against P.S. N'Jie contained in affidavit in support of notice of motion and for an order that P.S. N'Jie be required to attend to answer the allegations, and (b) for an order that name of P.S. N'Jie be struck off the Roll of Court or for such other order as the Court thinks fit.

20

Weston, Attorney General, (Bridges, Asst. Attorney General with him appears to move.) No appearance by or for Respondent.

Weston asks that matter be proceeded with in absence of Respondent. His absence is misconduct. Original date was 16.7.58. Notice of motion filed 7.7.58. Notice to Respondent contained clerical error so Respondent did not attend. Respondent's brother attended as Counsel of Respondent.

30

C.J. ordered refiling of application and notice. This done on 16.7.58 made returnable on 19.7.58.

19.7.58 Respondent again appeared by Counsel and asked for another judge to try the matter. This order made. Order made by consent for enquiry to be held.

Hearing then fixed for early August. Respondent notified verbally, not in Court, through his Counsel. Soon after 19.7.58 Respondent left for U.K. avowed purpose being to brief leading U.K.Counsel.

No. 3.

Proceedings
before Wischan,
C.J.

19th July, 1958
- continued.

No. 4.

Proceedings
before
Abbott, D.J.

15th September,
1958.

No. 4.
 Proceedings
 before
 Abbott, D.J.
 15th September,
 1958
 - continued.

Respondent wrote to A.G. asking for date early in September. Hearing fixed for 15.9.58 and this communicated to Respondent's Counsel in Bathurst on 30.7.58 by way of handing to him a copy of a registered air letter from C.J. to Respondent in London.

Court sees Respondent's letter of 17.8.58 promising to attend on 15.9.58.

Weston on hearing during vacation.

Respondent is a barrister of experience. 10

Matter began during term time. Delays due to Respondent entirely. Vacation days are not dies non.

There is urgency. Date fixed to suit Respondent's convenience. He asked for it to be heard early in September. Nothing to prevent hearing in vacation except desire to postpone evil day.

Bar here very small. See last paragraph of C.J.'S order of 19.7.58.

Respondent's objection not of substance - merely delaying tactics - no other purpose whatsoever. This is unprofessional conduct. Every assistance and information afforded to Respondent. He has been supplied with all the facts. 20

Hearing fixed to suit Respondent's convenience. Sudden raising of technicality applicable in England (not here) should be treated with contempt.

If there were substance in objection I would not oppose it.

Rule made re solicitors in England do not apply here. 30

I agree objections though made ex parte should be dealt with.

Court: Para.4(a) of Affidavit. Is this correct?

Weston: I agree that reference to S.80/58 is in error. I would like to file a further affidavit on this point. I agree it is capable of correction.

Court: Para.4(b) - does this support para.3(g)

Weston: Proceedings include particulars of claim

Court: Are paras.4(c) and (d) not supported by hearsay. 40

Weston: I agree but I propose to call the persons named.

Court: Do you propose to apply to me to take oral evidence?

No. 4.

Weston: Yes, I have all the witnesses here.

Proceedings
before
Abbott, D.J.

Court: Have I power to hear oral evidence on a motion?

15th September,
1958

Weston: Yes, leave can be granted under Sch.II O. 25 r. 23 and 24.

- continued.

Court: Why were records of suits mentioned not exhibited?

10 Weston: I don't consider it was necessary - records were available to Respondent.

Court: I suggest an adjournment till tomorrow at 9 a.m. to enable Weston to consider his position.

Weston: I would ask for that.

Order: Adjourned accordingly. Witnesses ordered to return at 9 a.m. 16.9.58.

(Sgd.) M.J. Abbott, D.J.

15.9.58.

16th September, 1958.

16th September,
1958.

20 Resumed. Weston and Bridges as before.

Respondent absent and unrepresented.

Weston: No necessity to amend affidavit in support of motion. Affidavit in support of a motion for order that enquiry be held. Allegation fully detailed. I could have shortened paragraph 4 by saying the source of information came to me in my official capacity. Paragraph 4 is in present form in order to be fair to Respondent - to acquaint him exactly with what evidence would be adduced to support allegations. Affidavit not evidence against Respondent. Only object to set enquiry going. Inquiry now in progress. Had there been any objection to Affidavit, this would have been and should have been taken on 19.7.58. No objection was taken. Order for enquiry made by consent.

30

Affidavit's purpose accomplished in part.

Affidavit can be amended Schedule 1 O.7 r.23.

40 If evidence taken and Respondent says he was misled or embarrassed no doubt Court would consider this but I submit would not uphold such a contention by the Respondent.

No. 4.
 Proceedings
 before
 Abbott, D.J.
 16th September,
 1958
 - continued.

Court: Various points were raised by me yesterday as I considered the Respondent being absent, and unrepresented, that some particulars should be observed to ensure that the Respondent should not feel hereafter that he had been misled or embarrassed. These points have now been dealt with to my satisfaction by the learned A.G. I shall set out the matters raised and the reasons for my being now satisfied with the explanations advanced when I give my decision on the whole matter. I accordingly order that the hearing of this enquiry do now proceed.

10

(Sgd.) M.J. Abbott
 16.9.58.

Weston: I ask for (i) leave to adduce oral evidence (ii) for an officer of B.B.W.A. to be ordered to produce entries, books etc. in his possession relating to cheque No.088274 for £1,360 dated 31.7.57 payable to either Mr. Karim or Mr. Savage and drawn by the Respondent and to give evidence of the state of the Respondent's clients' account on that date, and to produce same information regarding cheque for £200 drawn in favour of Chellarams or Salim Hamid a/c by the Respondent and dated on or about 1st or 2nd May, 1958.

20

Order: Both applications are granted.

(Sgd.) M.J. Abbott.

Court: I direct registrar that, subject to views of C.J., formal order embodying C.J.'s decision of 19.7.58 should be drawn up.

30

Weston opens: Respondent acting as Counsel for 2nd Defendant in S.80/56 filed a defence which did not relate to the defence of his client to the claim but consisted of a defence by him, the Respondent, against allegations made against him in the particulars of claim. Trial became a trial of the Respondent in effect - Respondent gave evidence from the bar, unsworn, pleading not on behalf of his client, but on his own behalf, with highlights of Gilbertian incongruity e.g. Respondent cross-examined 1st Defendant for whom he had acted at material time, to show that 1st Defendant was lying. Further Respondent asked leave to treat his own witness as hostile because witness refused to tell lies to support Respondent's own defence filed as a pleading on behalf of 2nd Defendant.

40

Weston calls evidence.

No. 5.

EVIDENCE OF MUSA ABDU JOBE

A.W.1. MUSA ABDU JOBE, sworn on Koran

Chief Clerk, Crown Law Office, Bathurst. In charge Registry section which includes History of Land Tenure in Bathurst and of all plots of land in Bathurst. These (Exhibits 1 & 2) are certified true copies of extracts from official record book of land tenure in Bathurst. These relate to Nos. 62 and 63 Perseverance Street, Bathurst respectively.

10

No. 5.

Applicant's Evidence.

Musa Abdou Jobe.
16th September, 1958.

Examination.

No. 6.

EVIDENCE OF DAWOODA OMAR SOWE

A.W.2. DAWOODA OMAR SOWE, sworn on Koran

63, Perseverance Street, Bathurst, Butcher. I know Ousman Jeng. In 1949 I had dealings with him. On 28.12.49 I mortgaged No.63 to him. Mortgage drafted by Respondent. Amount £200.1.0. worth of goods. Jeng gave me an invoice when I received the goods. The mortgage deed is still with Jeng. Money due under mortgage on 30.6.50. I failed to pay at that time. Jeng called me and my brother and Bai Drameh and we went and met him and Respondent in latter's office. That was on 25.11.50. We (I, my brother and Drameh) begged Jeng to give me more time to pay the £200.1.0. and he agreed on a further 6 months. After that I signed a document - at that meeting, relating to the extension of time. I can't read English. I assumed document related to extension of time and nothing else. Document handed to me for signature by Respondent. He did not read it to me nor did anyone else.

20

30

I repaid the £200.1.0 - don't remember date - but at end of 6 months I took £150 to Jeng. Now I say I gave it to my brother to take to Jeng. I got a receipt for it. This is it (Exhibit 3). It is Respondent's receipt. My brother knows how the money got to Respondent. Now I say my brother returned the money to me. Next day I took it to Respondent and he gave me the receipt.

40

I told Respondent money was in part payment of mortgage loan. I paid balance later. I paid it to Respondent direct. He gave me a receipt. This is it (Exhibit 4).

No. 6.

Dawooda Omar Sowe.

16th September, 1958.

Examination.

Applicant's
Evidence.

No. 6.

Dawooda Omar
Sowe.

16th September,
1958.

Examination
- continued.

Respondent lent me money in December 1950. £50 for my trade. He gave me a cheque. I went to the bank and drew the money. I paid him back after paying the £150 and £50 to discharge the mortgage. I got a receipt from Respondent. This is it (Exhibit 5) I could not read it. By date of Exhibit 5 I owed Jeng nothing. I owed Respondent nothing. Property not reconveyed to me. I asked Respondent for my title deeds. He said he had them. I was satisfied.

10

In 1952, I went to Respondent and told him I wanted to mortgage my property 63 Perseverance Street again. That was in November or December, 1952. Respondent said that any time I wanted to mortgage this property I could come to him.

I had doubts about Exhibits 3, 4 and 5 because in 1952 when I wanted to mortgage my property again, Respondent kept putting me off, with one excuse or another. I took Exhibits 3, 4 and 5 to Momodou Jagne. He told me something about them. As a result I went to Respondent and asked him why the receipts were in their present form. Respondent said "That is nothing". I said "I want my property. I want to mortgage it".

20

Respondent said "All right, you must come and we will mortgage it elsewhere - to Paul Joseph Jabre". I agreed. Respondent gave me a letter to Jabre - in an envelope. I didn't see the letter. I took the letter to Jabre and he read it. We went, not the same day, to No.63. His clerk went also. He inspected the property. I wanted £300 but got £250 from Jabre in the form of goods. I signed a paper which was given to Jabre - a mortgage of 63, Perseverance Street. It is still with Jabre so far as I know. I paid only £30 in reduction of loan. Jabre summoned me, judgment was given against me. Respondent appeared for Jabre. I appeared in person. I gave evidence. Respondent cross-examined me. I did not contest the case. I told the Court I owed the money under the mortgage of No,63 which I then regarded as my own property. I told the Court that, in answer to Respondent. Respondent then said No.63 did not belong to me but to Ousman Jeng. I objected, saying I had only mortgaged it to him.

30

40

Respondent did not ask me about the ownership of No.63, but I said I was the owner. Respondent said someone else owned it. I said "No. I am the owner".

I did not pay whole of judgment debt, Jabre issued execution against No.63. It was not sold. Five days before the proposed sale day I took £50 to a lawyer and gave him certain instructions. As a result of what he said to me, I went to Crown Law Office. I there found in 1949 No.63 was mortgaged to Jeng and in 1950 it was sold to him. I asked for a copy of the 1950 document. I got it.

Applicant's
Evidence.

No. 6.

Dawooda Onar
Sowe.

16th September,
1958.

Examination
- continued.

Adjourned 10 minutes.

10 Resumed. Counsel as before.

Witness continues:-

I got the copy in 1956. Now I say I got two copies. One in 1955 and one in 1956. Now I say I got only one. This is it (Exhibit 6). I was surprised when I learnt its contents. I consulted Mr. Bridges, who was then Land Officer. He said it was nothing to do with him. I went to Police, Mr. Maydon, the Sheriff who was going to sell No.63. I told him all about it and signed a statement. The property was not sold. I left documents with him. I later heard something about the property and as a result I went to Crown Law Office again and obtained confirmation of what I had heard. I was asked to return in 2 days. I did so and obtained a copy of a conveyance from O. Jeng to his son. I showed it to Maydon. I summoned O. Jeng. Case tried by Miles, C.J. I did not sell No.63 to O. Jeng on 25.11.50 or at any other time.

30 I now produce Respondent's cheque for £50. This is in respect of his loan of £50 to me about which I have already given evidence. (Admitted as Exhibit 7).

I am part owner of No.62 Perseverance Street with Papa Bundu Camara. No. 63 I own by myself.

40 When I was negotiating loan from Jabre I did not mention No.62. Perhaps Jabre did. Perhaps he wanted me to mortgage No.62 but my share in it was already mortgaged in 1950 to Alieu Jeng or had been. I had paid him off and mortgaged it again to a Lebanese called Ali. I paid Alieu Jeng £134 in full settlement of mortgage debt. Mortgage deed said £200 but I only got £134. I paid £50 in November 1950 by giving it to Respondent. I got a receipt. This is it (Exhibit 8). That left a balance of £84 which I paid to Alieu Jeng and retrieved my documents.

Mortgage to Ali not conveyed. I mortgaged my share in No.62 to C.F.A.C. in 1954.

50 I signed Exhibit 6 because I was asked. Nobody told me what it contained.

No. 7.

Further
Proceedings
before
Abbott, D.J.
16th September,
1958.

No. 7.

FURTHER PROCEEDINGS BEFORE ABBOTT, D.J.

At this point Mr. E.D. N'Jie announces that he now appears for the Respondent, and hands up a telegram as follows :-
"Appear tomorrow say am instructed appear under protest relying order four rules five and six ask adjournment November certificate available week-end surgeon at Exeter take no further part proceedings - N'Jiesol".

10

Court: This Respondent in one breath protests against this matter being dealt with during the vacation, and, in the next, in effect, says he would be here but is too ill. I therefore ask Mr. N'Jie if I am to regard what he first says or what he secondly says.

N'Jie: I rely on the ground of Respondent's health.

Court: Then do you abandon any protest at matter proceeding during vacation?

20

N'Jie: That is abandoned.

N'Jie: I now ask adjournment on the ground that the Respondent is too ill to attend.

Weston: I am flabbergasted. I don't know what to say. I don't understand telegram.

N'Jie: Nothing to add.

Order: This application for adjournment on the ground of the sickness of the Respondent must be refused. The telegram is much too vague on this subject to enable me, at the present time, to grant Mr. N'Jie's application. If and when a proper medical certificate is produced I will consider a further application if made.

30

(Sgd.) M.J. Abbott
15.9.58.

N'Jie: I am now withdrawing entirely from the proceedings.

Court: Very well.

Hearing proceeds.

No. 8.

EVIDENCE OF ALIEU BADARA N'JIEA.W.3. ALIEU BADARA N'JIE sworn on KoranApplicant's
Evidence.

No. 8.

Alieu Badara
N'Jie.16th September,
1958.

Examination.

10

Registrar of the Supreme Court of the Gambia. I produce certified true copy of record of appeal in W.A.C.A. Civil Appeal 2/57 - appeal against judgment of Miles, C.J. in Civil Suit S/80/56 (Exhibit 9). I also produce certified true copy of retrial of same suit before Wiseham, C.J. (Exhibit 10). I produce writ, particulars of claim in Suit S/97/58 (Exhibit 11). I produce certified true copy of proceedings in Suit 13/54 (Exhibit 12).

No. 9.

EVIDENCE OF MAM BABOU SOWEA.W.4. MAM BABOU SOWE, sworn on Koran

No. 9.

Mam Babou Sowe.

16th September,
1958.

Examination.

20

63, Perseverance Street, Bathurst, Butcher. A.W.2 is my full younger brother. I know O. Jeng. I know A.W.2 had business with him. I remember going with A.W.2, and Bai Drameh to Respondent's office. Respondent was there alone. Now I say O. Jeng was there. That was a few years ago. O. Jeng said A.W.2 owed him £200.1.0. and had done so for a long time and now he wanted me and Drameh to intervene. Drameh begged O. Jeng to extend time for repayment by 6 months "when we will all try to see the amount is settled". O. Jeng agreed to 6 months but no longer.

30

There was a paper on the table in front of Respondent who said "This is the paper made when Dawooda owed Ousman the goods. If he fails to pay after the 6 months Ousman will take him to Court". Nothing else happened. Respondent asked Dawooda to sign the paper. He did sign it. I think I signed it also. Nobody read it aloud.

I believed the paper was the document made between A.W.2 and O. Jeng at the time when A.W.2 borrowed the money.

40

I thought A.W.2 was signing the paper this time in relation to the 6 months' extension. A.W.2 gave £150 to take to O. Jeng. I took it to him and gave it to him as part payment of the loan. O. Jeng told me to take the money to Respondent who would issue

Applicant's
Evidence.

No. 9.

Mam Babou Sowe.
16th September,
1958.

Examination
- continued.

a receipt. I did so but Respondent said he had closed for that day and told me to give the money to A.W.2 to bring the next day. I gave the money to A.W.2.

By Court: If A.W.2 says nobody said anything about the paper perhaps he has forgotten or perhaps I have.

No.10.

Bai Drameh.
16th September,
1958.

Examination.

No. 10.

EVIDENCE OF BAI DRAMEH

A.W.5. BAI DRAMEH sworn on Koran

29, Lancaster Street, Bathurst, Butcher. I know A.W.2, O. Jeng. I know they had business together. A.W.4, I, went to Respondent's office with A.W.2 and there met Respondent and O. Jeng. O. Jeng wanted A.W.2 to repay a loan of £200.1.0. A.W.2 asked for more time but O. Jeng refused, three times. I then begged O. Jeng myself and O. Jeng agreed to an extension - I don't remember for what period. I then went out by myself.

There were some papers on Respondent's table. I saw none of them handled.

10

20

No.11.

Paul Joseph
Jabre.
16th September,
1958.

Examination.

No. 11.

EVIDENCE OF PAUL JOSEPH JABRE

A.W.6. PAUL JOSEPH JABRE, sworn on Bible

11, Buckle Street, Bathurst, Merchant. I know A.W.2. In 1953 he mortgaged to me No.63 Perseverance Street. This began by my receiving this letter from Respondent (Exhibit 13). A.W.2 brought the letter. That evening I went with him to inspect No.63. He wanted a loan of £400. I did not agree, and asked him to mortgage No.62 as well but he said this was already mortgaged to C.F.A.O. So we parted.

A day or two later Respondent and I went to No.63 again. He showed me the place and said it was worth £800. He confirmed No.62 was in pledge to C.F.A.O. I was still unwilling to lend on No.63.

30

10 Finally I agreed to lend £250. Respondent suggested I should make the loan to A.W.2 in goods. I agreed to do so. A.W.2 was in a hurry and Respondent suggested I should hand over the goods at once. I said I would not do so until the mortgage was signed. Respondent told me to attend at his office next day. I went and Respondent gave me 3 title deeds of No.63. There are they. U.A.C. to Sowe - conveyance - 29.8.41 (Exhibit 14) conveyance
 20 Jagne to N'Jie - 2.7.36 (Exhibit 15). Mortgage - N'Jie to U.A.C. - 12.10.36 (Exhibit 16). Then Respondent said I should hand over the goods. I did not agree and said A.W.2 must sign a mortgage first. Same day A.W.2 came to me with a mortgage deed and Respondent's clerk, Mr. Fowlis. Fowlis read out the deed - a mortgage of No.63 Perseverance Street. A.W.2 signed and so did Fowlis. I handed over the goods. Fowlis took mortgage deed for registration. I never saw the deed again though I asked Respondent for it many times.

I went on leave to Lebanon for 2 months and when I came back asked again but never got the deed.

A.W.2 was supposed to repay in 12 months but only paid in £30 on account.

I instructed Respondent to commence proceedings. He did so and got judgment. I did not go. I was never told the case was coming on. I only heard about it afterwards - that instalment order had been made. I protested to Respondent about this.

30 A.W.2 paid only £30. I told Respondent to issue execution. Respondent issued execution against No.62. I said this was wrong and got execution issued against No.63. Execution later stopped. Still had no money.

So far as I know, when I lent the money, No.63 was unencumbered. Respondent never told me to the contrary.

40 Adjourned 17.9.58. Witnesses ordered to return.

(Sgd.) M.J. Abbott
 D.J.
 16.9.58.

17th September, 1958.

Resumed. Weston and Bridges as before.

No appearance by or for Respondent.

Applicant's
 Evidence.

 No.11.

Paul Joseph
 Jabre.

16th September,
 1958.

Examination
 - continued.

Applicant's
Evidence.

No. 12.

EVIDENCE OF ALIEU JENG

No.12.
Alieu Jeng.
17th September,
1958.
Examination.

A.W.6A. ALIEU JENG, sworn on Koran

68, Dobson Street, Bathurst, Trader. Member of Legislative Council. Ousman Jeng is my father. I know A.W.2 very well. I remember lending him some money 4 or 5 years ago, on mortgage of a house in Perseverance Street. No.62. Sum secured by mortgage £200 but I only gave him £134. Respondent drafted the mortgage. This is it (Exhibit 17). Camare and A.W.2 mortgaged as joint owners. I was repaid the £134. A.W.2 paid me about £84 in cash and I think he gave me an authority to collect £50 from Respondent. I was satisfied. Repayment effected in October or November, 1950. I reconveyed the property. I signed the reconveyance at the same time when the money was paid. I don't know why the reconveyance was not registered until February, 1954.

10

I gave evidence before Miles C.J. in Suit 80/56. I was not called at the retrial before Wiseham C.J. My brother Baboucar was joined as co-defendant with my father in the trial before Miles, C.J.

20

I remember Respondent suggesting to me what I was giving evidence that it was he who had paid me the £200 and that I did not agree that was what happened. Respondent did not give me £200. I remember Respondent asking Miles, C.J. to treat me as a hostile witness.

No.13.

No. 13.

30

Ousman Jeng.
17th September,
1958.
Examination.

EVIDENCE OF OUSMAN JENG.

A.W.7. OUSMAN JENG, sworn on Koran

76, Lancaster Street, Bathurst, Trader. I am one of the elders of the Moslem community. I was first Muslim member of Legislative Council. I deal extensively in land transactions. I am still having litigation with A.W.2. I was before Miles, C.J. but lost appeal on which retrial was ordered. At retrial before Wiseham, C.J., I lost and I have now lodged an appeal.

40

I lent A.W.2. £200.1.0. in December, 1949. Respondent drew a mortgage, as security, on 63 Perseverance Street. This (Exhibit 18) is the mortgage deed.

Applicant's
Evidence.

No.13.

Ousman Jeng.
17th September,
1958.

Examination
- continued.

10 In November 1950 I borrowed £400 from S.Madi. This is a note or cash debit showing this (Exhibit 19). I borrowed this sum in order to buy No.63. A.W.2 had in November, 1950 offered to sell No.63 to me and we had agreed the price at £400. This agreement was made in Respondent's office so he knew all about it. I took the £400 to Respondent's office and asked him to send for A.W.2. He came. I put the £400 on the table and said "here is the money for the purchase of No.63 Perseverance St." Only three of us present, myself, A.W.2 and Respondent. I see this receipt (Exhibit 20). It relates to the £400 I put on the table plus £50 for lawyer's fees etc. I agree that I then paid £350 on account of the purchase price of this house. I got the house when the conveyance was signed. That was about a week after I had deposited the money. It was signed by A.W.2 and myself and one Coron witnessed it. Present were myself, A.W.2, Respondent and Coron. The deed was retained by Respondent. I asked him for it and he said it had been burnt. The deed was read and interpreted in Wollof before A.W.2 signed it.

20

When A.W.2 and I agreed about the sale to me of the house there was a condition that if A.W.2 repaid me the £400 within 6 months I would transfer the property back to him.

30 I see Exhibit 6. It is a copy of the conveyance to which I have referred and correctly sets out the transaction agreed upon between A.W.2 and myself. I was satisfied with it. I cannot explain why, the price agreed being £400, I only hold a receipt for £350 and the conveyance states a price of £360. (I have read this answer over to the witness who agrees it is correct. M.J.A.).

40 Before Exhibit 6 was signed - on 25.11.50, A.W.2 had repaid this mortgage debt. I instructed Respondent to send the title deeds back to A.W.2 but I never signed any reconveyance, although I knew that was necessary.

Mr. Forster is now my lawyer. He prepared my defence. I never told him, as averred in paragraph 4 of my defence, that A.W.2 approached me for a loan of £360. Mr. Forster made a big mistake in putting this in my defence.

I remember making a statement, which I signed, to the Sheriff, Mr. Maydon on 25.1.56. This is it (Exhibit 21). The averment in Exhibit 21 that

Applicant's
Evidence.

No.13.

Ousman Jeng.

17th September,
1958.

Examination
- continued.

A.W.2 approached me for another loan is true. He asked for £360. Later he told me that he wanted, instead, to sell the house for £400 for which price I agreed to buy it. I forgot to tell Mr. Forster about this change of mind by A.W.2. That is why, I suppose, there is nothing in my defence about it. I ask this Court to accept that I forgot this most important circumstance in my instructions to Mr. Forster.

Exhibit 21 was made a long time after all this happened. 10

After I had put my £400 on the table in Respondent's office, £350 of it was handed to A.W.2.

I was prepared for A.W.2 to take away £350 of my money without signing anything for it. All I had was Exhibit 20 and I was content with this.

I swear that Respondent handed £350 to A.W.2.

I remember the trial of S/80/56 before Miles C.J. Respondent then appeared for my son Baboucar. He cross-examined me. I remember Respondent suggesting I did not pay the £400. 20

I can't remember that Baboucar's defence was ever sent to me. Now I say I remember that I did see it. (After S/D and amended S/D are put to witness he says that the averment in the "..... after the extent of his indebtedness to the first plaintiff (sic) was agreed at £360" is untrue. M.J.A.). I have given a true account this morning.

At retrial before Wiseham C.J., Baboucar was represented by Sheriff N'Jie. 30

Where Respondent said at page 29 line 46 of Exhibit 10 that he did not know what happened to the £350, he was lying. I am telling the whole truth.

By Court: I lied in telling Mr. Maydon I was sure the first mortgage had been reconveyed to A.W.2.

Adjourned 15 minutes. (Sgd.) M.J. Abbott.

By Weston (with leave): When I told Mr. Maydon, and this Court today, that A.W.2 had repaid the £200.1.0. before 25.11.50 that was true. When I said before Miles C.J. at p.30 of the record, lines 4, 5 and 6 that "He had not finished paying me. In order to help him out I bought the property. Nothing had been paid of the £200.1.0" that was a lie. 40

By Court: I realise that I have admitted to this

Court today that I committed flagrant perjury before Miles, C.J.

(I direct the Attorney General to note this admission and to take such steps as he may think fit. M.J.A.).

By Weston (with leave): Nothing of the kind, such as suggested by A.W.2 - that Exhibit 6 was a document for extending the time for repayment of the £200.1.0. ever happened.

10 There had been a question of extending the time raised about May, 1950.

Applicant's Evidence.

No.13.

Ousman Jeng.
17th September, 1958.

Examination
- continued.

No. 14.

EVIDENCE OF EBENEZER MARTIN SOCK

A.W.8. EBENEZER MARTIN SOCK, sworn on Bible

Supervisor, B.W.A., Bathurst. This (Exhibit 22) is a record of stopped and returned cheques. This shows a record of a cheque No.D/5 088274 drawn by P.S. N'Jie in favour of M.A. Savage for £1,360. It was marked "referred to drawer" and returned to payee. P.S. N'Jie had two accounts. Record does not show why it was "R.D." Cheque presented for payment on 5.8.57. At that date, balance to credit of the account on which cheque was drawn was £76.7.1. Cheque was drawn on 31.7.57. On that date credit balance was £76.7.1.

20

I have a record of a cheque for £200 drawn by P.S. N'Jie on 2.5.58. No. ⁵ 100297, in favour of Chellaram & Sons, on "Client's account". This cheque was presented on 2.5.58 at 12.15 p.m. and was returned to payee marked "refer to drawer" because credit balance on the appropriate account was only 2s.6d. at time cheque presented.

30

No.14.

Ebenezer Martin Sock.

17th September, 1958.

Examination

No. 15.

EVIDENCE OF MUSA ALHAJI SAVAGE

A.W.9. MUSA ALHAJI SAVAGE sworn on Koran

33 New Street, Bathurst, Storekeeper, U.A.C. My father is Muktal Adji Karim Savage but he calls himself M.A. Karim. At the moment he is in Freetown

No.15.

Musa Alhaji Savage.

17th September, 1958.

Examination.

Applicant's
Evidence.

No.15.

Musa Alhaji
Savage.

17th September,
1958.

Examination
- continued.

having medical treatment. I remember Respondent giving me a cheque for £1,360 in July, 1957. I went to the bank to cash it but it was returned to me marked "Refer to drawer". I did not get my money. There was a transaction between Respondent and my father.

My father authorised me to receive the money from Respondent. He had paid it to Respondent to buy some property. My father and I went to Respondent and as my father was going out of town he told Respondent to make the cheque payable to me. My father had a receipt from Respondent which he gave to me. 10

My father gave the receipt back to Respondent when he issued the cheque in my presence.

When cheque could not be cashed I reported to my father. Nothing more happened. Nothing was done.

2 or 3 days later I saw Respondent and told him his cheque had been dishonoured.

The money was repaid by instalments. Some were paid to me as follows:- £300 on 24.8.57 (cash), £200 on 2.9.57 (cash), £200 on 7.9.57 (cheque), £260 on 2.7.58 (cash). I don't know if the £400 balance has been paid or not. 20

I gave the instalments paid to me to my father. I have no idea how much was owing to my father on 31.1.58.

Respondent gave me a cheque for £460 either this year or last year. I did not cash this cheque because Respondent asked in writing to my father - I saw the letter - not to present it, because certain amounts had been stolen from his wardrobe. 30

I returned both the letter and the cheque to Respondent sometime in June or July this year. That was when I got the £260. One of Respondent's cousins paid me the £260.

No.16.

Salim Hamad
Alhushin.

17th September,
1958.

Examination.

No. 16.

EVIDENCE OF SALIM HAMAD ALHUSHIN

A.W.10. SALIM HAMAD ALHUSHIN, sworn on Koran

I am known as Salim Hamad. I live at 4 Lancaster Place, Bathurst. Lebanese. I have been in Gambia 22 years. I have done business with Vezia of Bathurst. At one time I owed them some money - 40

10 £469. They sued me and got judgment against me. I was served with summons out in bush and came down to Bathurst to settle the matter. I went to Respondent and asked him to help me. He phoned to Mr. Ray of Vezia and said I wanted to pay £200 then and there and the balance next season. Respondent told me Ray would decide on Monday - date of hearing. I was in a hurry to return to bush so I asked a relative Farid Masri to Respondent's office and gave Masri £200 to pay to Vezia on the Monday. Respondent was present. Respondent promised to go on Monday to Vezia with Masri and pay the £200. I went back to bush. Bailiff Jagne called to levy execution on my business in the bush for non-payment of £469 and costs. I paid him a total of £511 odd and then I made enquiries to see what had happened to my £200. I asked Masri for the money and he told me something about it. I wrote to Respondent after I had paid the bailiff and told him to pay the £200 back to Masri. Respondent said he had the money. I came down to Bathurst at end of April, 1958. I asked Respondent for the money and he gave me a cheque payable to me. I owed Chellarams some money. I gave the cheque to Chellarams after I had endorsed it. Agent of Chellarams and I went together to the bank but we did not get the money. I went back to Respondent and told him the cheque was bad. Respondent said he would write the Bank to find out why they had dishonoured his cheque. I left Respondent and saw Sheriff N'Jie and had a talk to him. Later he gave me a cheque for £160. I cashed this and at his office Sheriff gave me this balance of £40. I had retained him for other work and paid him altogether £110.

Applicant's Evidence.

No.16.

Salim Hamad Alhushin.

17th September, 1958.

Examination - continued.

No. 17.

EVIDENCE OF PRAHLADRAI CHAN

A.W.11. PRAHLADRAI CHAN, sworn on Bible

40 Agent for Chellarams, Bathurst. I know A.W.10. He has been a customer of ours for some years. In May, 1958 he owed us some money. He brought a cheque for £200 payable to himself, drawn by Respondent. I think A.W.10 endorsed it. It was sent to the Bank, but returned marked "Refer to Drawer".

Adjourned 18.9.58. Witnesses ordered to return.
(Sgd.) M.J. Abbott, D.J.

18th September, 1958

Resumed. Weston, and Bridges as before.

Respondent absent and not represented.

No.17.

Prahladrai Chan.

17th September, 1958.

Examination.

Applicant's
Evidence.

No. 18.

EVIDENCE OF FARID MASRI.

No.18.

Farid Masri.

18th September,
1958.

Examination.

A.W.12. FARID MASRI, sworn on Koran

19, Leman Street, Bathurst, Trader. I know A.W.10. He is a relation of mine. I remember going with him to Respondent's office on 15.2.58, at A.W.10's request. We saw Respondent. A.W.10 had £200 with him and wanted to give it to Respondent for payment to Vezia. Respondent said he had nowhere to keep the money and told A.W.10 to give it to me to keep until Monday morning. That was on Saturday evening. On Monday morning I went to Respondent with the money. He said he was busy in Court that morning and told me to go to Vezia but payment was refused. I returned to Respondent and said Vezia refused to take the £200 and wanted the whole debt of something over £400 paid together in one sum. Respondent said "give me the money: I will pay it into Court: I will give you a receipt". I gave him the money and he gave me this receipt. It had then no red ink writing on it. This is receipt (Exhibit 23). About a month later 20 or 21.3.58 I had a cable from Salim from bush. As a result I took cable and showed it to Respondent. This is the cable (Exhibit 24). Respondent said "Tell your relative I am going to pay the £200 here". I did so, by telegram. Before I received Exhibit 24 I had received an earlier telegram from A.W.10. It was after that that I went to Respondent. When I got Exhibit 24 I went and saw Respondent again and asked him for the £200. He promised to pay the next day. I went. He said he had sent somebody to collect the money. That was in the morning. I went back in the afternoon and Respondent said "No money now. Come tomorrow".

I went the next morning with one Eugene John to Respondent. He said "I will give you a cheque". He did so - for £200, payable to me.

I took the cheque. I gave him back Exhibit 23 and he wrote "Cancelled" on it in red ink. I then noticed that he had drawn the cheque on "Clients' Account". So John and I returned to Respondent and asked why he had written "Clients' Account" when I was not his client and the money belonged to A.W.10 and not to me. I gave him back the cheque and he returned the receipt Exhibit 23 to me having first cancelled the cancellation. I told Respondent if he did not pay the money I should sue

10

20

30

40

him. Then I left with Exhibit 23. I met Sheriff N'Jie and I told him what happened. Sheriff N'Jie took me to the Bank and there showed me a Savings account book showing a credit of £160. I did not get any money, that day. I saw him again next day, spoke to him, but got no money.

Applicant's Evidence.

_____ No.18.

Farid Masri.

18th September, 1958.

Examination - continued.

No. 19.

EVIDENCE OF EUGENE SIGISMUND JOHN

A.W.13. EUGENE SIGISMUND JOHN, sworn on Bible

No.19.

Eugene Sigismund John.

18th September, 1958.

Examination.

10

29, Allen Street, Eathurst, Merchant's clerk. I know A.W.10 and A.W.12. I know Respondent. I remember going to his office with A.W.12 in March, 1958. A.W.12 asked for payment of £200 from Respondent who gave him a cheque for the amount. I saw the cheque. A.W.12 gave Respondent a receipt. Respondent wrote "Cancelled" on it in red ink. A.W.12 and I left and we parted. Later same morning A.W.12 came to me and we both went again to Respondent's office and saw Respondent. A.W.12

20

told Respondent cheque should have been drawn in name of A.W.10 instead of in his (A.W.12's) name and that Respondent had written "Clients account" on the bottom of the cheque when he, A.W.12, was no client of Respondent. Respondent took the cheque and gave A.W.12 Exhibit 23 having first cancelled the cancellation. Respondent promised to pay the money next day and told A.W.12 to come back then. We went next day and Respondent said the money had not been cashed and that we should call back in

30

the afternoon. We did so but Respondent said the money was still not cashed, and told us to return next day. We went back twice next day but got no money.

As we left, we met Sheriff N'Jie. They spoke. I went with them to the Bank. Sheriff N'Jie collected a Savings Book and showed amount he had to me and A.W.12. There was £160 odd in credit of the Savings account. There was further conversation and then we parted.

Applicant's
Evidence.

No. 20.

EVIDENCE OF GENEVIEVE BRAHIM

No.20.

Genevieve
Brahim.

18th September,
1958.

Examination.

A.W.14. GENEVIEVE BRAHIM (F) sworn on Bible

11, Buckle Street, Bathurst, Trader. I know Respondent. He used to be my lawyer. In 1954 I was up river in Gambia. I instructed Respondent to do some legal work. I asked him to sue one man Kelantan Sabele who owed me money - about £625, and another, Kamara, who owed me £200 odd. Respondent undertook the work. Before summons against Sabele was issued he paid £200 on account and I gave him a receipt. Respondent summoned Sabele for the balance. The case was heard by Miles, C.J. up river. Respondent appeared for me. I got judgment. I took out a judgment summons and issued execution. The Bailiff went to levy execution. I came to Bathurst. Respondent gave me no money. When I approached Sabele for the balance due he showed me a receipt given by Respondent showing he had paid Respondent on my behalf £200. £200 was paid to me direct, £200 to Respondent on my behalf. What bailiff collected I had nothing from him.

10

20

Respondent made account with me. This is it (Exhibit 25). The figures at the top are the account.

Respondent took out a judgment summons against Kamara. Kamara was arrested. I did not collect any money from the Court.

I told Respondent to collect all money due to me and to pay it to Madi for the credit of my account.

30

I agreed with Respondent that total amount he had collected for me was £364. Respondent credited my account with Madi with £100. That left £264. Out of this I agreed to pay him £57.10.0. for his fees. We agreed he then owed me £206.9.0.

When I asked for the money he kept putting me off. I waited $3\frac{1}{2}$ - 4 years. Then I sued him for the £206.9.0. When I came down from up river I found the money had been paid to my credit at Madi's.

40

No. 21.

EVIDENCE OF SAMUEL JOHN FORSTERA.W.15. SAMUEL JOHN FORSTER, sworn on Bible

10 11/12, Buckle Street, Bathurst, Barrister and Solicitor of this Court. I acted for A.W.14 in July this year, and took action for her against the Respondent. This is the original particulars of claim prepared by me (Exhibit 26). As a result of information received I withdrew this action. I had spoken to Respondent before then and he told me he had arranged for A.W.14's account with Madi to be credited with the £206.9.0.

Applicant's
Evidence.No.21.

Samuel John
Forster.
18th September,
1958.
Examination.

No. 22.

EVIDENCE OF SAIT ALASAN JAGNEA.W.16. SAIT ALASAN JAGNE, sworn on Koran

20 Clerk of Courts and bailiff. I executed a writ of fi. fa. against Sabele at the instance of A.W.14. I collected £128.1.0. and paid the money into Court. These are the receipts (Exhibits 27 and 28).

I executed a writ of fi. fa. against Kamara at the instance of A.W.14. I attached both movable and immovables. Movables fetched £10.19.0. The immovables fetched £18.0.0. I paid the money into Court. These are the receipts (Exhibits 29 & 30).

I remember executing a writ of fi. fa. in bush against A.W.10. I collected £511.9.0. I paid that into Court.

30 I have been an officer of this Court for 7 years. I know Respondent's handwriting. I see Exhibit 25. The figures at the top are in my handwriting. I made out these figures when I went to do the execution against Sabele. After checking with his receipts I found I must collect from him £128.1.0.

I saw two different receipts for £100 each shown me by Sabele, each receipt was signed by Respondent.

No.22.

Sait Alasan
Jagne.

18th September,
1958.
Examination.

Applicant's
Evidence.

No. 23.

EVIDENCE OF ALIEU BADARA N'JIE (Recalled)

No.23.

Alieu Badara
N'Jie
(recalled)

A.W.3. RECALLED AND REMINDED OF HIS FORMER OATH.

I produce correspondence, written and telegraphic between Respondent and Wiseham, C.J., as follows:-

18th September,
1958.

Further
Examination.

Letter	-	17.8.58	-	Respondent to Chief Justice Exhibit 31.	
Telegram	-	28.8.58	-	Respondent to Chief Justice Exhibit 32.	
Telegram	-	undated	-	Chief Justice to Respondent Exhibit 33.	10
Telegram	-	4.9.58	-	Respondent to Chief Justice Exhibit 34.	
Telegram	-	undated	-	Chief Justice to Respondent Exhibit 35.	
Letter	-	2.9.58	-	Respondent to Chief Justice Exhibit 36.	
Letter	-	4.9.58	-	Respondent to Chief Justice Exhibit 37.	
Letter	-	12.9.58	-	Respondent to Chief Justice.	20

This letter (Exhibit 39) was handed by Attorney General to Chief Justice in my presence - it is from Respondent to Attorney General.

I am well acquainted with handwriting of Respondent.

I produce certified true copy of W.A.C.A. judgment in appeal No.2/57 (Exhibit 40).

Adjourned 15 minutes. (Sgd.) M.J.Abbott.

Resumed. Weston and Bridges as before. 30

Witness continues:-

On 9.7.54 I gave Respondent's clerk, Miss N'Jie, two payment out vouchers drawn on the Treasury. Miss N'Jie signed for them. One was for £28.19.0. No.7865 and the other for £128.1.0. No.7866.

These are her receipts for the vouchers. In fact they are the carbon copies. The top copies are kept by the Treasury.

No.7865 - Exhibit 41, No. 7866 - Exhibit 42.

No. 24.

Applicant's
Evidence.

EVIDENCE OF JAMES THOMAS ROBERTS

No.24.

A.W.17. JAMES THOMAS ROBERTS, sworn on Bible

James Thomas
Roberts.
18th September,
1958.

Cashier of the Supreme Court. I see these receipts Exhibit 27 - 30. They are in my handwriting. I received the money from A.W.16 and gave him these receipts.

Examination.

Case in support of motion.

Weston addresses Court:

10 Allegations - para. 3(a) of Affidavit. See Ex. 20. Shows Respondent had the money. A.W.7 says he saw Respondent give it to A.W.2. If that true no substance in allegation. A.W.7's evidence not worthy of credence. But see evidence of Respondent given at the trial and the retrial. At latter he gave sworn evidence. See foot of page 29 of Exhibit 10 Respondent's answer to Forster. See page 51 of Exhibit 9 - Miles C.J. asked same question in his judgment. Respondent appeared in first trial for 20 2nd Defendant. See amended defence Exhibit 9 p.7. This is in fact in defence of his own conduct as shewn up in the Statement of Claim and has nothing whatever to do with the case of 2nd Defendant. This Statement of Defence says no money passed. When Respondent cross-examined A.W.7 - his own former client - he suggested to him that no money passed - see Exhibit 9 page 36 lines 25 - 27.

Exhibit 10 page 29 line 20.

30 Paragraph 3(c) - only evidence is Exhibit 6 - fraudulent on its face - purports to pass fee simple from A.W.2 to A.W.7 when Respondent well knew A.W.2 had no fee simple to pass. Exhibit 6 is worthless. Legal estate already in A.W.7 by virtue of Exhibit 18. A.W.2 should have conveyed equity only. I do not press this allegation - this may be merely ignorance of conveyancing.

Paragraph 3(b) - I rely on Exhibit 6 - representation by conduct. A.W.7 admits there was a request for extension of time but made before 25.11.50.

40 Most likely request would be made round about November, 1950. Respondent does not clear this allegation in his evidence in Exhibit 10. See Exhibit 12 - A.W.2 says "I own 63 Perseverance"

Paragraph 3(d) & (e) - payment of £150 and £50 evidenced by Exhibits 3 and 4. A.W.2 says he paid the

Applicant's
Evidence.

No.24.

James Thomas
Roberts.

18th September,
1958.

Examination
- continued.

money in discharge of Exhibit 18. He could not read the receipts. Where did the money go? See 2nd Defendant's defence in 1st trial. This says money went to A.W.6A who denies that. A.W.6 had a mortgage on A.W.2's share of No.62 Perseverance Street. Exhibit 17 - says £200 but only £134 borrowed. Only £134 repaid. A.W.6A satisfied. A.W.6A got £50 from Respondent in respect of mortgage of No.62 Perseverance Street. A.W.6A called on behalf of 2nd Defendant at first trial - refused to support 2nd Defendant's Statement of Defence, whereat Respondent asked to treat witness as hostile. See Exhibit 9 page 44. A.W.6A not called at retrial. Respondent gives no explanation in his evidence at retrial. 10

Paragraph 3(f) - allegation of cheating - inducing A.W.6 to lend money on property already mortgaged and/or sold to A.W.7. See Exhibit 13. Respondent from the bar said at first trial that he was in Exhibit 13 referring to 62 Perseverance Street and not to No.63. Exhibit 9 page 47. Miles C.J. pointed out that amended Statement of Defence, filed by Respondent, says 63. 20

See Exhibit 9 page 52, line 7.

A.W.6 an honest witness - produced title deeds, Exhibits 14, 15 and 16.

See Exhibit 12 - how can Respondent say he was referring to 62.

Paragraph 3(h) - see evidence of A.W.9 and A.W.8.

Paragraph 3(i) - see evidence of A.W.8 and A.W.10. 30

Paragraph 3(g) - see evidence of A.W.16 - money paid into Court - money paid out to Respondent or his clerk. Respondent admitted money owing to A.W.14 - she demanded for years and then sued him see Exhibit 11.

Paragraph 3(a) £350 disappeared

(d) £150 disappeared

(e) £ 80 disappeared

(g) No cash available to refund.

(h) £1,360 recovered but only after considerable pressure. 40

(i) £200 recovered but not from Respondent.

Cause or matter - This is neither.

This is an enquiry merely - before the Chief Justice or the person discharging his functions. This is not a motion moving the Supreme Court.

Court: Do you suggest Respondent has offended against Sch.I 0.9 r.13.

Weston: I have not considered this but I think, yes. The allegations could form basis of criminal charges but I do not propose to bring these. If any one of allegations proved Respondent unfitted to be a barrister and solicitor of this Court.

C.A.V. to a date to be notified.

(Sgd.) M.J. Abbott
D.J.
18.9.58.

10

Applicant's Evidence.

No.24.

James Thomas Roberts.

18th September, 1958.

Examination - continued.

No. 25.

JUDGMENT OF ABBOTT, D.J.

IN THE SUPREME COURT OF THE COLONY OF THE GAMBIA
BEFORE

THE HONOURABLE MR. JUSTICE MYLES JOHN ABBOTT
DEPUTY JUDGE

MONDAY, THE TWENTY SECOND DAY OF SEPTEMBER,
1958

20

Misc. Civil Cause No.S.63/58.

JUDGMENT

These proceedings began with a Notice of Motion given by the Attorney General in the following form:-

"Before the Honourable the Chief Justice of the Gambia.

IN THE MATTER OF PIERRE SARR N'JIE Barrister and Solicitor of the Supreme Court

and

30

IN THE MATTER OF RULE 7 OF ORDER IX of the First Schedule to the Rules of the Supreme Court, 1928

NOTICE ON MOTION

TAKE NOTICE THAT the Honourable the Chief Justice of the Gambia will be moved on the 19th day of July, 1958 at 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard by the Attorney General of the Gambia that the Honourable the Chief Justice may be pleased to make an order -

No.25.

Judgment of Abbott, D.J.

22nd September, 1958.

No.25.
 Judgment of
 Abbott, D.J.
 22nd September,
 1958
 - continued.

- (a) that enquiry be made by the Honourable the Chief Justice into the allegations against Pierre Sarr N'Jie of Bathurst barrister and solicitor of the Supreme Court contained in the Affidavit which supports this notice of motion, and that the said Pierre Sarr N'Jie be required to attend at such enquiry and to answer the said allegations; and
- (b) that if reasonable cause be thereby shewn the name of the said Pierre Sarr N'Jie be struck off the Roll of Court or such other order made by the Honourable the Chief Justice as to him may seem fit in accordance with the provisions of Rule 7 Order IX of the First Schedule to the Rules of the Supreme Court, 1928.

10

DATED the 16th day of July, 1958.

(Signed) L. WESTON

ATTORNEY GENERAL"

This Notice of Motion is addressed to the Registrar of the Supreme Court and to Pierre Sarr N'Jie of Bathurst (in this judgment called "the Respondent").

20

It will be observed that the Notice of Motion does not seek to move the Supreme Court, but the Chief Justice of the Gambia. The reason for this is that it is the Chief Justice who is, by the Rules of the Supreme Court, vested with the control of barristers and solicitors.

The Motion came before the learned Chief Justice on 19.7.58 when the Attorney General appeared to move and the Respondent was represented by Counsel in the person of his brother, Mr.S.A.N'Jie.

30

Respondent's counsel then asked (i) that the Chief Justice make the order for the enquiry envisaged in the first prayer in the Motion paper (ii) that the enquiry be held by someone other than the Chief Justice and (iii) that the Respondent be given a reasonable time to prepare his defence to the allegations in the Affidavit filed in support of the Motion, November being suggested as a suitable time for the hearing.

40

The Attorney General did not oppose the first two applications of Respondent's counsel, but strenuously resisted the postponement of the enquiry until November. The learned Chief Justice

thereupon made the order for the enquiry and directed that it be held by a person other than himself, who would be appointed a Deputy Judge and vested with all the powers of the Chief Justice. Regarding the third application by Respondent's counsel, the Chief Justice fully agreed with the views of the Attorney General, but pointed out that until it was known who would hold the enquiry, it was impossible for him to give a date, and directed that a fresh application be made for a date.

10

On that order being pronounced, the Attorney General said he had heard that the Respondent was going to England and asked for an assurance that the Respondent would appear on the date fixed because expense would have to be incurred in bringing here a person to be appointed Deputy Judge and, if that person were to make a fruitless journey, owing to the failure of the Respondent to appear, much public money would be wasted. Respondent's counsel gave an assurance that the Respondent would appear.

20

Within a few days after 19.7.58 the Respondent left for England, the avowed purpose of his journey being, according to the Attorney General, to brief leading counsel in England to represent him here at the enquiry into his conduct.

On 25.7.58 the Respondent wrote to the Attorney General the following letter

"

Overseas League,
St. James's,
London, S.W.1.
25th July, 1958.

30

Sir,

I shall be glad if you will be good enough to inform me of the date on which it will be possible to hold the enquiry "into my conduct". I had an idea that November was given but as I am anxious to finish with it I should like it held as early as possible, say, the first week of September next. I don't think it would take more than two - a Thursday and a Friday - at the outside. I believed you or rather Mr. S.A. N'Jie agreed to an early date.

40

After this week I shall be in the country after Saturday of next week I shall be in France and Italy for a fortnight.

Yours faithfully,
(Signed) P.S. N'JIE".

No.25.

Judgment of
Abbott, D.J.
22nd September,
1958
- continued.

No.25.
 Judgment of
 Abbott, D.J.
 22nd September,
 1958
 - continued.

As a result arrangements were made for me to come to the Gambia to begin the enquiry on 15.9.58 and the Respondent and his counsel were duly notified thereof in writing. That the Respondent received this notification is made plain by his so acknowledging in his letter to the Chief Justice, written from Italy on 17.8.58. This letter reads, in part, as follows:-

".....

I have noted that the hearing of the matter before the Court will take place (at Bathurst) on the 15th day of September, 1958 and I shall be present, God being willing.

10

Should there be any urgency about the hearing my whereabouts will be as follows"

and there follow two addresses, one in Italy and one in Germany.

Eleven days later, the Respondent had apparently changed his mind because on 28.8.58 he telegraphed the Chief Justice (see Exhibit 32) that he objected to the enquiry being held during the vacation. The Chief Justice immediately cabled him (see Exhibit 33) that he must attend on 15.9.58 and that the arrangements for my coming here had been finalised. Some 6 days later, he having been away from London, the Respondent cabled the Chief Justice (see Exhibit 34) that it was impossible for him to attend on 15.9.58, but not saying why. In reply, the Chief Justice cabled the Respondent (see Exhibit 35) informing him that I should sit to begin the enquiry on 15.9.58 but would be willing to consider an application for a day or two's adjournment if made, otherwise the hearing would proceed. During this interchange of telegrams, the Respondent was also writing letters to the Chief Justice (see Exhibits 36 and 37). These letters, in spite of the Respondent's own request in Exhibit 39, his undertaking to appear in Exhibit 31 and his counsel's undertaking on 19.7.58, protest violently at the enquiry beginning on 15.9.58 and, indeed, being held during the vacation at all.

20

30

40

In view of the above events, I sat for the first time on 15th September and asked the Attorney General to address me on the propriety, or otherwise, under the Rules of Court, of dealing with the matter during the vacation. It is not necessary here to detail the submissions of the Attorney

General Suffice it to say that he fully satisfied me that it was not only quite proper for me to proceed but even most necessary and urgent, in order that the serious allegations against an officer of this Court could be speedily disposed of one way or the other. Furthermore, Exhibits 39 and 31, in my view, estop the Respondent from successfully maintaining the objections voiced in Exhibits 32, 34, 36 and 37.

No.25.

Judgment of
Abbott, D.J.
22nd September,
1958
- continued.

10 It must be mentioned here that on 15.9.58 the Respondent was neither present nor represented. One would have thought that, if he really wished to pursue his objection to the enquiry being held during the vacation, he would have instructed counsel (he has two brothers in Bathurst who are both practising barristers here) to appear for him and advance his reasons and grounds for his objection. But he neither attended himself nor instructed anyone to appear on his behalf. That I regard
20 as behaviour grossly discourteous to the Court, on the part of an experienced officer of the Court. The Attorney General thought fit to stigmatise the absence of the Respondent, in the circumstances, as misconduct, and I am bound to say I consider he could not be criticised for applying that term to the Respondent's behaviour. Nevertheless, I wish to make it quite clear here and now that I shall not take into account or allow myself to be influenced by that behaviour in arriving at my decisions
30 on the questions before me.

 Another matter which I felt bound to raise with the Attorney General was the reference, in paragraph 4(a) of his Affidavit supporting the Motion, to Civil Suit S/80/58. The Attorney General frankly conceded that this was an error. At one time I considered that it was an error which might mislead or embarrass the Respondent but I later, on reconsideration, came to the conclusion that the Respondent had not been either misled or embarrassed. He could very easily have filed an
40 affidavit to show (as is the fact) that Civil Suit S/80/58 had absolutely nothing to do with this matter: he refers in Exhibit 36 to paragraph 4(b): and, I reiterate, he makes no attempt either to come here himself or secure representation to raise any such matter as the above.

 I think it would have been better to exhibit to the Attorney General's affidavit the records referred to in paragraphs 4(a) and 4(b) thereof

No.25.

but I am by no means prepared to say that the omission to do so is in any way vital.

Judgment of
Abbott, D.J.
22nd September,
1958
- continued.

The enquiry proceeded on 16.9.58 when the Attorney General called evidence. During that day's hearing, Mr. E.D. N'Jie announced that he appeared for the Respondent and handed to the Court a telegram from him in the following terms:-

"Appear tomorrow say am instructed appear under protest relying order four rules five and six ask adjournment November certificates available weekend surgeon at Exeter take no further part proceedings". 10

I thereupon asked Mr. N'Jie if his client's objection to the hearing continuing was raised on the grounds of the Court being now in vacation or on the ground of his client's ill-health. Mr. N'Jie chose the latter ground and abandoned the objection to the hearing during vacation. Mr. N'Jie then asked for an adjournment on the ground of his client's ill-health. For the reasons appearing on the record, I refused this application. Mr. N'Jie then withdrew from the proceedings and the hearing continued, as it had begun, with the Respondent being neither present nor represented. 20

It has been necessary to set out at some length the events leading up to 15th September in order that the holding of the enquiry in the absence of the person most concerned may appear in its correct perspective. In my view, it was most unfortunate that the Respondent absented himself -- it is idle to set out the many cogent reasons why his presence, or, at least, his representation, was desirable. And his behaviour really amounts to flouting the authority of this Court - he does not even file an affidavit in reply to that supporting the Motion. All he does is, in a completely *exparte* fashion, to write and cable to the learned Chief Justice. But, as I have said, I shall not allow this behaviour of the Respondent to affect my decision. 30 40

Two other items of correspondence must be mentioned. They are Exhibit 38 (again a letter to the Chief Justice) and a telegram which arrived after the taking of evidence had concluded. The former, in a lengthy paragraph on page 2, submits that as this is a "cause or matter" it cannot be heard during the vacation without an order made under Schedule I O. 4 r. 6 of the Supreme Court Rules. So far as that point is concerned, the

10 Attorney General has submitted that this is not a "cause or matter", because he is present, not as plaintiff but as "amicus curiae" and this is an enquiry and nothing more. At first, I was not sure of the soundness of this submission but I have now come to the conclusion that it is of substance. But, even if this is a "cause or matter" the Respondent himself asked, in Exhibit 31, for a hearing early in September - a period which he well knew was part of the vacation. How then can he now be heard to say, as he does in Exhibit 38, that he "cannot consent to this matter being heard in vacation". The telegram I do not profess to understand - it reads merely: "Objection is against hearing in vacation" - unless it has reference to Mr. E.D. N'Jie's abandonment of this point on the one occasion on which the Respondent was represented.

No.25.

Judgment of
Abbott, D.J.
22nd September,
1953
- continued.

20 To turn now to the allegations against the Respondent and the evidence adduced in support thereof, I desire to make it clear at the outset that, in weighing the evidence, I have at no time forgotten that the witnesses were not subjected to cross-examination. I have therefore listened to and scrutinised their evidence with extreme care before deciding upon the value to be attached to it.

30 The evidence occupied the time of the Court for three days - the 16th, 17th and 18th September. It must be remembered throughout that this is not a criminal trial and, therefore, I am not concerned to enquire whether or not the Respondent is guilty of the several criminal offences constituted by the allegations against him in the Attorney General's affidavit.

40 I propose to set out each allegation in full and to deal with each seriatim. The allegations are all set out in paragraph 3 of the affidavit in support of the Motion and the letter against each corresponds to the sub-paragraph lettering in the affidavit.

Allegation (a): On or about 17th November, 1950 at Bathurst Pierre Sarr N'Jie utilised for his own purpose the sum of £350 held and received by him on behalf of one Ousman Jeng.

There is no doubt, first of all, that the Respondent received this money. Exhibit 20 is his

No.25.

Judgment of
Abbott, D.J.
22nd September,
1958
- continued.

receipt for it. Ousman Jeng (A.W.7) gave evidence before me and says he saw the Respondent hand the money to one Dawooda Sowe (A.W.2) and that it was paid on account of the purchase price for 63, Perseverance Street, Bathurst, a house belonging to A.W.2, who, according to A.W.7, had agreed to sell it to him for £400. Any such agreement is strenuously denied by A.W.2 who also swears that no money at all passed to him that day from A.W.7. The events of that day the 25.11.50, are the subject of litigation between A.W.2 and A.W.7 and other persons who are concerned one way or another. This litigation first came before Miles C.J. when the Respondent appeared as counsel for one of the parties. Miles C.J. found for the Defendants, the Plaintiff (A.W.2) appealed and the West African Court of Appeal ordered a new trial. This was held before Wiseham, C.J. who found for the Plaintiff. The Attorney General asks me to say that I should find the evidence of A.W.7 not worthy of belief. I regret to say I do so find without the slightest hesitation. This witness had to admit to me that he had perjured himself in giving evidence before Miles C.J. He has given three or four different accounts of what happened on 25.11.50 and I say categorically that I utterly reject A.W.7's account of what went on in the Respondent's office on that day. In fact I find it impossible to accept any of his evidence, tainted as it was by his desire to bolster up his case in his litigation with A.W.2, except where it is fully corroborated. Exhibit 20 shows that he paid £350 to the Respondent on 17.11.50 so I believe A.W.7's evidence on this point. The question is, what happened to this £350? As long ago as 9.5.57, Miles C.J. was asking that question in giving judgment in the first trial (see Exhibit 9, p.51, l.50) and he goes on to remark: "There is only one person who can answer that question and that is Mr. N'Jie" (the Respondent). And what answer does the Respondent give, when, at the retrial before Wiseham, C.J., he is asked the specific question (see Exhibit 10, p.29, l.45): "What happened to that £350?" He answers: "I don't know". It is also important to refer to the defences filed in the two trials by counsel for the second defendant. At the trial before Miles C.J., the Respondent himself filed the defence as counsel for the second defendant. Exactly the same defence (with the exception of an additional paragraph not material at the time of the first trial) was filed for the retrial before Wiseham,

10

20

30

40

50

C.J., by Respondent's brother who was then acting for the second defendant. A glance at these two pleadings shows that they do not in any way represent the defence of the second defendant. They obviously seek to extricate the Respondent from a most awkward position. In that, in my view, they fail.

No.25.

Judgment of
Abbott, C.J.22nd September,
1958

- continued.

10 It must be a matter of mere speculation what would have been the Respondent's answer, had he appeared before me, when asked what had happened to the £350. I doubt if he would have been able to do any better than he did before Miles, C.J. and Wiseham, C.J. In any case it is grossly improper for a barrister and solicitor, who has charge of client's money, to be unable to account for it, and this behaviour, I am fully satisfied, comes under the heading of professional misconduct of a very serious nature.

20 I find that the Respondent has been guilty of professional misconduct in relation to the sum of £350 paid to him on 17.11.50 by A.W.7.

Allegation (b): On 25th November, 1950 at Bathurst Pierre Sarr N'Jie with intent to deceive induced one Dawooda Sowe to execute a document purporting to be a conveyance by the said Dawooda Sowe to the said Ousman Jeng of the said Dawooda Sowe's property at 63 Perseverance Street Bathurst by falsely representing that the said document was a document the effect of which was to extend the time of payment of a debt of £200 then due by the said Dawooda Sowe to the said Ousman Jeng.

40 This allegation relates to Exhibit 6 which is a most extraordinary document, drafted by the Respondent. It purports, on the face of it, to be a conditional conveyance, the condition being that the vendor shall have power to buy the property back at the same price within 3 months after 25.11.50. The covenant imposing this condition is drafted about as badly as anything I have ever seen, but I am not here to judge the Respondent's conveyancing ability. The question is what happened at this meeting on 25.11.50 to which I have previously referred. There were five persons present; A.W.2, his brother (A.W.4), Bai Drameh (A.W.5),
50 A.W.7, and the Respondent. The first four persons

No.25.
 Judgment of
 Abbott, C.J.
 22nd September,
 1958
 - continued.

have now given evidence three times about this meeting and the Respondent has given evidence once. I agree with the Attorney General that it would be unwise blindly to accept the evidence of A.W.2, standing by itself, as a true account of what happened at the meeting but I consider that his account, supported as it is in many material features by the evidence of A.W.4 and A.W.5, is much nearer the truth than is that of A.W.7, a self-confessed liar. Moreover, the evidence of A.W.2, A.W.4 and A.W.5 that A.W.2 was asking for an extension of time to repay the monies secured by a mortgage (Exhibit 18) to A.W.7 of No.63 Perseverance Street is supported by the Respondent's own evidence before Wiseham, C.J. (see Exhibit 10, p.28, 1.1). I have come to the conclusion that the account of the meeting given by A.W.2, A.W.4 and A.W.5 must be accepted in preference to that of A.W.7. That being so, there must have been a representation that Exhibit 6 was a document dealing merely with the grant by A.W.7 of the extension of time to A.W.2. There is conflict, in the evidence before me, as to whether or not there was a verbal representation. I do not accept that there was. But there must have been, and I find that there was, a representation by conduct on the part of the Respondent in obtaining the signature of A.W.2 to Exhibit 6 which A.W.2 thought, and, as I have found, was entitled to think, was a document dealing merely with the extension of time to which A.W.7 had agreed. For the Respondent by his conduct to make such a representation which he must have known was utterly false was an instance of the gravest professional misconduct towards A.W.2 who was his client, as, of course, was A.W.7. One cannot help wondering whether this disgraceful act was committed by the Respondent in order to cover up the disappearance of the £350 mentioned in allegation (a).

Allegation (c): On 25th November, 1950 at Bathurst Pierre Sarr N'Jie with intent to deceive induced the said Ousman Jeng to execute a document purporting to be a conveyance by the said Dawooda Sowe of the said Dawooda Sowe's property at 63 Perseverance Street Bathurst (and being the document referred to in sub-paragraph (b) above) by falsely representing that the said document was a document the effect of which was to convey the said property to the said Ousman Jeng.

10

20

30

40

50

The Attorney General does not press this allegation, quite rightly in my view. I will only say that the evidence in support of it is either so meagre or so unreliable that I could not find the Respondent guilty of the misconduct alleged therein.

No.25.

Judgment of
Abbott, C.J.22nd September,
1958

- continued.

10

Allegation (d): On or about 5th May, 1951 at Bathurst Pierre Sarr N'Jie utilised for his own purposes the sum of £150 held and received by him on behalf of the said Ousman Jeng.

Allegation (e): On or about 19th July, 1951 at Bathurst Pierre Sarr N'Jie utilised for his own purposes the sum of £50 held and received by him on behalf of the said Ousman Jeng.

20

It is convenient to take these two allegations together because the two payments were made, in discharge of Exhibit 18, to the Respondent, who issued the receipts Exhibits 3 and 4. Each of these states that the money mentioned therein was "in part payment of the purchase (price) of No. 63 Perseverance Street Bathurst to be sold to him by Ousman Jeng". Why were these receipts worded like this? Assuming Exhibit 6 is a genuine document, the period of three months in which A.W.2 was entitled to re-purchase the property had expired long before the date of Exhibit 3 - 5.5.51. And in any case what has happened to this £200? The only explanation given by the Respondent before Wiseham, C.J. was that, on instructions, he "diverted" the £200 to A.W.7 instead of to Alieu Jeng (A.W.6A). A.W.2 does not read and did not know the purport of Exhibits 3 and 4 until they were later explained to him. I am satisfied the £200 never reached A.W.7. He says, and here I accept his evidence, that he lied in saying in Exhibit 21 that Exhibit 18 had been repaid and reconveyed. The money also, I am satisfied, did not reach A.W.6A. So where did it go? The Respondent is totally unable to account for either of the two sums and I find, that being so, he is guilty of professional misconduct with regard to each of them.

30

40

50

Allegation (f): On or about 27th February, 1953 at Bathurst Pierre Sarr N'Jie as solicitor of the said Dawooda Sowe the mortgagor of the property at 63 Perseverance Street Bathurst with intent to deceive induced one Paul Joseph Jabre as mortgagee to

No.25.

Judgment of
Abbott, C.J.22nd September,
1958

- continued.

accept the title offered to him by concealing from the said Paul Joseph Jabre two several incumbrances, namely, a mortgage of the said property to the said Ousman Jeng dated 27th December, 1949 and a document purporting to be a conveyance of the said property to the said Ousman Jeng dated 25th November, 1950 (and being the document referred to in sub-paragraphs (b) and (c) above).

10

On 12.2.53, the Respondent wrote to Paul Joseph Jabre (A.W.6) introducing to him A.W.2 and saying the latter had "a good property to mortgage". The "good property" as appears from the evidence of A.W.6, which I accept, was No.63 Perseverance Street Bathurst. After various negotiations, A.W.6 agreed to lend £250, in the form of goods, on the security of the property and received three title deeds (Exhibits 14, 15 and 16). Then the Respondent told A.W.6 to hand over the goods, but A.W.6 refused, saying A.W.2 must sign a mortgage first. This document was brought to A.W.6 the same day by A.W.2 and the Respondent's clerk, Mr. Fowlis. A.W.2 signed it, Fowlis witnessed it, and A.W.6 handed over the goods, Fowlis taking away the mortgage deed for registration. Although A.W.6 asked the Respondent for it many times, he never saw the deed again. I am not surprised. The Respondent did not disclose to A.W.6 either Exhibit 18 (which, according to A.W.2's evidence of the true nature of Exhibits 3 and 4 had been discharged but according to the Respondent's evidence before Wiseham C.J. was merged in Exhibit 6, and in any case was still a necessary link in the title) or Exhibit 6 which was prepared by the Respondent and, if it was a genuine document, operated to divest A.W.2 of all his interest in the property. In other words, the Respondent induced A.W.6 to lend money on a security which, if he was and had been acting bona fide, he knew to be non-existent. It shocks me to find that any member of the legal profession can fall so low as to commit such disgraceful offences against his clients. I am fully satisfied that the acts of misconduct alleged in this paragraph were committed by the Respondent.

20

30

40

Allegation (g): On or about 9th August, 1954 at Bathurst Pierre Sarr N'Jie utilised for his own purposes the sum of £203.9.0d. held and received by him on behalf of one Genevieve Brahim.

50

This lady (A.W.14), whose evidence I believe, told me that the Respondent on her instructions did some legal work for her and, ultimately, owed her £206.9.0d. She kept asking him for this money over a period of 3 $\frac{1}{2}$ to 4 years and finally had to take action against him. Then he paid. Again it must be pointed out that a legal practitioner who fails to pay over to a client on demand moneys of that client which he holds and over which he has no lien is guilty of professional misconduct. I find the Respondent is guilty of misconduct regarding this sum of £206.9.0d.

10

Allegation (h): On or about 31st July, 1957 at Bathurst Pierre Sarr N'Jie utilised for his own purposes the sum of £1,360 held and received by him on behalf of one M.A. Karim.

20

The evidence in support of this allegation is provided by A.W.8 and A.W.9. Therefrom it is clear that a cheque for £1,360 of client's money, drawn by the Respondent, was dishonoured on presentation because the balance standing to the credit of the account on which it was drawn was only £76.7.1d. What had the £1,360 been used for? Certainly not on behalf of the client. It must have been used for other purposes or it could not have disappeared from the bank account. It is very serious misconduct so to misuse client's money and I find therefore that the Respondent has been guilty of misconduct regarding this sum of £1,360. It is only fair to say that this money has since been repaid to the client.

30

Allegation (i): On or about 17th February, 1958 at Bathurst Pierre Sarr N'Jie utilised for his own purposes the sum of £200 held and received by him on behalf of one Salim Hamad.

40

This is supported by the evidence of A.W.10 and A.W.8 and relates to a sum of £200 paid to the Respondent in part discharge of a debt owed by A.W.10. Owing to the negligence or dilatoriness of the Respondent or to his misuse of the money very soon after receiving it, execution was issued against A.W.10 by a judgment creditor and, as a result, A.W.10 had to pay the debt in full, although the Respondent held £200 of it on his behalf. Having paid the bailiff out in full A.W.10 tried to get his £200 from the Respondent who issued a cheque. When presented at the bank, it was dishonoured, the balance in the appropriate account

No.25.

Judgment of
Abbott, C.J.22nd September,
1958

- continued.

No.25.
 Judgment of
 Abbott, C.J.
 22nd September,
 1958
 - continued.

being only 2/6d. That £200 must also have been used for purposes other than those of the client. Again I find the Respondent guilty of misconduct with regard to this £200. This sum has also been repaid to the client concerned. It is convenient to mention, with regard to this sum of £200 that its receipt by the Respondent is evidence by Exhibit 23. When the Respondent issued the cheque, he retrieved Exhibit 23 from A.W.10 and wrote across it in red ink "Cancelled". When the dishonoured cheque was returned to him, the Respondent crossed out the word "Cancelled", initialled this alteration, and returned the receipt to A.W.10.

10

In arriving at the above decisions I have merely considered the evidence, oral and documentary, which is before me. Wiseham, C.J. will understand that I mean no disrespect to His Lordship when I say that I have disregarded the strictures which His Lordship saw fit to pass upon the conduct of the Respondent when giving judgment on the re-trial of Suit S/80/56.

20

Of the Respondent's behaviour as disclosed by the documentary and oral evidence before me I find it difficult to speak with anything approaching moderation. He is undoubtedly guilty of the most disgraceful professional misconduct that I have come across in 35 years legal experience. He is totally unfitted, in my view, to be entrusted with the interests and affairs of any member of the public, still less with any money belonging to anyone else, and he is a disgrace to the profession to which he belongs. He casts a slur upon legal practice in this territory which it may take a long time to expunge. The conduct of these proceedings must have been, to the Attorney General as distasteful as has been, to me, listening to and recording evidence of the misdeeds of the Respondent who is a member of the same profession as ourselves. The Attorney General has acted and spoken with commendable restraint throughout and I am grateful to him for his presentation of the facts.

30

40

Even more distasteful than my work last week I find the task which I must now undertake -- the imposition on the Respondent of a proper penalty for his misconduct.

I should be failing in my duty if I were to permit the Respondent, at any time in the future, to have any opportunity either to treat his client

50

as he has done in the instances disclosed above, or further to disgrace the profession of which he is a member. I therefore order that the Respondent's name be struck off the roll of Barristers and Solicitors of the Supreme Court of the Gambia, and I direct that the making of this order be reported by the Attorney General to the Masters of the Bench of the Honourable Society of the Inn of Court at which the Respondent was called to the Bar.

10

Bathurst.
The Gambia.

(Sgd.) M.J. Abbott,
Deputy Judge.

22nd September, 1958

No.25.

Judgment of
Abbott, C.J.
22nd September,
1958
- continued.

No. 27.

NOTICE OF APPEAL

IN THE MATTER OF AN APPEAL to the West African Court of Appeal under Section 14 of the West African Appeal Ordinance (Cap.6 Laws of the Gambia 1955)

20 AND IN THE MATTER of a decision of the Honourable Mr. Justice Myles John Abbott purporting to act as Deputy Judge (Deputy Chief Justice) pronounced on the 22nd September, 1958 in Miscellaneous Civil Cause No.S.63/58 and purporting to order that the name of Pierre Sarr N'Jie be struck off the Roll of Barristers and Solicitors of the Supreme Court of the Gambia and directing that the making of that order be reported by the Attorney General of the Gambia to the Masters of the Bench of the Honourable Society of the Inn of Court at which the said Pierre Sarr N'Jie was called to the Bar.

30

TAKE NOTICE that Pierre Sarr N'Jie being dissatisfied with the decision hereinbefore stated dated the 22nd September, 1958 doth hereby appeal to the West African Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the Appeal seek the relief set out in paragraph 4.

40

AND the Appellant further states that the names and addresses of the persons directly affected by the Appeal are those set out in paragraph 5.

In the
West African
Court of Appeal

No.26.

Notice of
Appeal.

6th October,
1958.

In the
West African
Court of Appeal

No.26.

Notice of
Appeal.

6th October,
1958

- continued.

2. The whole decision is appealed against.
3. The grounds of appeal are --
 - (1) No enquiry should have been ordered on the 19th July, 1958 by the Honourable the Chief Justice upon the Motion of the Attorney General dated the 16th July, 1958 because
 - (a) the Honourable Chief Justice himself had already in Civil Suit No.S/97/1958 decided that the Appellant had been guilty of misconduct and should therefore not have dealt with the application except to adjourn it for hearing by the Deputy Chief Justice. 10
 - (b) the evidence in support of the said Motion was entirely hearsay and was not that of any person alleging himself or herself aggrieved.
 - (c) there was no jurisdiction to order an enquiry upon the matters alleged in the affidavit in support of the said Motion even if such affidavit had been first-hand and/or to order the Appellant to attend and to answer the allegations. 20
 - (2) If the enquiry was properly ordered, such order required personal service upon the Appellant and was not so served
 - (3) If the enquiry was properly ordered the Deputy Chief Justice had no jurisdiction to enter upon it during the Vacation of the Supreme Court having regard to Order IV in Schedule 1 of the Rules of the Supreme Court 1928 30
 - (4) If the enquiry were properly entered upon in Vacation, it should in justice have been adjourned to enable the Appellant to cross-examine the Applicant's witnesses and present his own case.
 - (5) The allegations were of delay in payment and of the giving of erroneous advice, the Attorney General stating to the Honourable Mr. Justice Abbott that criminality was not alleged; and allegations of this nature are not proper subjects for such an enquiry or punishment in consequence. 40

- (6) if the allegations were proper subjects for enquiry and were proved, the punishment imposed was excessive
- (7) The Deputy Chief Justice had no jurisdiction to make the order made by him on the 22nd September, 1958

In the
West African
Court of Appeal

No.26.

Notice of
Appeal.

6th October,
1958

- continued.

4. Relief sought from the West African Court of Appeal:

10

To set aside the said Order of the Honourable Chief Justice and all proceedings consequent thereon.

5. Persons directly affected by the Appeal

(1) The Attorney General of the Gambia Bathurst as Applicant for the Order appealed against:

(2) The Registrar of the Supreme Court as Custodian of the Roll of Court under Rule 4 of Order IX in the First Schedule to the Supreme Court Rules 1928

20

DATED this 6th day of October, 1958.

(Sgd.) P.S. N'Jie
Appellant.

Note: The Appellant will crave leave to amend his grounds of appeal after receipt of the copy Record bespoken on his behalf.

No. 27.

No.27.

NOTICE OF APPELICATION TO AMEND GROUNDS OF APPEAL

Notice of
Application to
Amend Grounds
of Appeal.

30

IN THE MATTER OF AN APPEAL to the West African Court of Appeal under Section 14 of the West African Court of Appeal Ordinance (Cap.6. Laws of the Gambia 1955).

27th December,
1958.

AND IN THE MATTER of a decision of the Honourable Mr. Justice Myles John Abbott purporting to act as Deputy Judge (Deputy Chief Justice) on the 22nd September 1958 in Miscellaneous Civil Case No. S.63/58 and purporting to order that the name of Pierre Sarr N'Jie be struck off the Roll of Barristers and Solicitors of the Supreme Court of the Gambia and directing that the making of that order

In the
West African
Court of Appeal

No.27.

Notice of
Application to
Amend Grounds
of Appeal.

27th December,
1958

- continued.

be reported by the Attorney General of the Gambia to the Masters of the Bench of the Honourable Society of the Inn of Court at which the said Pierre Sarr N'Jie was called to the Bar.

TAKE NOTICE that the Appellant will on the hearing of this Appeal apply to amend by way of clarification his Grounds of Appeal filed on the 13th day of October 1958 by deleting Ground I(c) and substituting the following:-

- "(c) Order 9, Rule 7 of Schedule 1 of the Rules of Court is ultra vires the Judge and void and the deputy Chief Justice therefore had no jurisdiction to make an order thereunder. 10
- (d) In as much as the charges against the said Pierre Sarr N'Jie might have been the subject of criminal proceedings the Chief Justice should not have proceeded to consider such charges until after the said Pierre Sarr N'Jie had been convicted by a competent Court or had admitted the truth of the allegations. 20
- (e) In as much as the charges against the said Pierre Sarr N'Jie might have been the subject of criminal proceedings neither the Chief Justice nor the deputy Chief Justice should have required him to attend the Inquiry and to answer the allegations".

The Appellant will also apply to withdraw ground (5), the Record now seen not containing the statement by the Attorney General to the Deputy Chief Justice that criminality was not alleged, but containing the statement that the allegations could form basis of criminal charges but that he did not propose to bring these. 30

DATED this 27th day of December, 1958.

(Sgd.) E.D. N'Jie.

Appellant's Solicitor.

To: The Registrar of the West African Court of Appeal:

To: The Attorney General of the Gambia, Bathurst, Gambia

and

To: The Registrar of the Supreme Court of the Gambia, Bathurst.

No. 28.

JUDGMENTS

IN THE WEST AFRICAN COURT OF APPEAL

Misc.C.C.No.S.63/58:

General Sittings holden at Freetown
in the Colony of Sierra Leone in
May, 1959.

CORAM:- Vahe Robert Bairamian - Acting President,
(Chief Justice, Sierra Leone)

10 Wilfred Hugh Hurley - Acting Justice of
Appeal.

Cecil Geraint Ames - Acting Judge of
Appeal.

IN THE MATTER of Pierre Sarr N'Jie, Barrister and
Solicitor of the Supreme Court

and

IN THE MATTER OF RULE 7, Order IX of the First
Schedule to the Rules of the Supreme Court, 1928.

20 For Appellant: Edward Frederick Noel Gratiaen, Esq.
(with E.D. N'Jie).

For Respondent: C.O.E. Cole, Esq., Acting Attorney-
General.

Hearing on 26th and 27th May, 1959.

JUDGMENTS delivered on 5th June, 1959

(a) Bairamian, Ag.P.,

30 This is an appeal from an order made by a
deputy judge in the Gambia on the 22nd September,
1958, to strike the name of a person enrolled there
as a barrister and solicitor off the roll of court,
with a direction that the Inns of Court in which
he had been called be informed.

The proceedings began with a notice of motion
which has this heading:-

"Before the Honourable the Chief Justice of
the Gambia

In the Matter of Pierre Sarr N'Jie, barris-
ter and Solicitor of the Supreme Court

and

40 In the Matter of Rule 7 of Order IX of the
1st Schedule to the Rules of the Supreme
Court, 1928.

In the
West African
Court of Appeal

No.28.

Judgments.

5th June, 1959.

(a) Bairamian,
Ag.P.

In the
West African
Court of Appeal

Notice of Motion

Take Notice that the Honourable the Chief Justice of the Gambia will be moved etc.

No.28.

That rule provides that -

Judgments.

"The Judge shall have power, for reasonable cause, to suspend any barrister or solicitor from practising within the jurisdiction of the court for any specified period, or order his name to be struck off the Roll of Court".

5th June, 1959.

(a) Bairamian,
Ag.P.

- continued.

The Notice was given by the Attorney-General, who said to the Deputy Judge in his closing address (towards the end) -

10

"Cause or matter - This is neither. This is an enquiry merely - before the Chief Justice or the person discharging his function. This is not a motion moving the Supreme Court".

Early in the judgment there is this passage :-

"It will be observed that the notice of motion does not seek to move the Supreme Court, but the Chief Justice of the Gambia. The reason for this is that it is the Chief Justice who is, by the Rules of the Supreme Court, vested with the control of barristers and solicitors".

20

It is clear that the Attorney-General was not moving the court and that the deputy judge was not sitting as the Court.

Thus the first question is whether a deputy judge can represent the judge (there is only one and he is styled the Chief Justice now) in a matter which is not a proceeding in the Court, either as a "cause" or as a "matter" within the definitions in section 2 of the Supreme Court Ordinance (Cap.5 in the Gambia Laws, 1955).

30

According to section 4 of the Ordinance -

"The Supreme Court shall consist of and be held by or before a judge", etc.

Section 7(1) enables the Governor to appoint a deputy judge -

40

"to represent the judge . . . in the exercise of his judicial powers";

under sub-section (3) -

"the judge . . . may direct at what time and

place such deputy judge shall sit, and what causes shall be heard before him, and generally make such arrangements as to him shall seem proper for the division and dispatch of the business of the Court".

10 I think that the aim of Section 7 is to make it possible to have someone appointed, in addition to the judge, to deal with cases pending before the court; a deputy judge cannot in my opinion deal with any matter which is not a proceeding in the Court.

Here the Attorney-General made it clear that his motion was not a motion moving the Supreme Court, and the Deputy Judge was equally clear that he was not sitting as the Court.

Ground (7) in the notice of appeal is that -

"The deputy Chief Justice had no jurisdiction to make the order made by him on the 22nd September, 1958".

20 In my opinion this ground succeeds and the appeal should be allowed and the order of 22nd September, 1958, set aside as being null and void.

This leaves the door open for further proceedings and brings up the question of the validity of Rule 7 in Order 9, which was canvassed under ground (c) of the second set of grounds of appeal, the objection of the appellant being that the rule is ultra vires.

30 There was an appeal from Antigua against an order of the court disbarring a person who had been admitted to practise as a barrister and attorney; it is reported as a petition to the Privy Council sub nom. In re the Justices of the Court of Common Pleas at Antigua, 1 Knapp,

267 (1830; 12 English Reports, 321). I am indebted to my learned brother Hurley, Justice of Appeal for the reference. Lord Wynford said inter alia:-

40 "The power of suspending from practice must, we think, be incidental to that of admitting to practise, as is the case in England with regard to attornies. In Antigua the characters of advocates and attornies are given to one person; the court therefore that confers both characters may for just cause take both away".

In the
West African
Court of Appeal

No.28.

Judgments.

5th June, 1959.

(a) Bairamian,
Ag.P.

- continued.

In the
West African
Court of Appeal

No.28.
Judgments.
5th June, 1959.

(a) Bairamian,
Ag.P.
- continued.

It is conceded on behalf of the Appellant that the Gambia Supreme Court has jurisdiction to suspend a person admitted to practise as a barrister and solicitor His learned Counsel describes it as an inherent jurisdiction, which may well be right. I incline to the view that this jurisdiction was conferred by Section 15 of the Ordinance, which enacts that the Supreme Court shall -

"possess and exercise all the jurisdiction, powers and authorities which are vested in or are capable of being exercised by Her Majesty's High Court in England" (etc.) 10

Viewed on the analogy of solicitors in the light of the year 1888, when the Ordinance was passed. Section 72(1) empowers the judge to make rules of court

"(c) for regulating the qualification, admission and enrolment of barristers, advocates, solicitors and notaries" (etc.)

This pre-supposes that the Supreme Court can admit persons to practise both as barrister and solicitor, which it does; therefore it can suspend anyone from practising in either or both characters for reasonable cause. 20

It follows that the judge may under Section 72(1) make rules to regulate the cursus curiae on an application to the court to suspend. Such an application begins what is in my view a civil "matter" - a "proceeding in the court not in a cause", within the definition in Section 2 of the ordinance of Godfrey V. George, 1896, 1 Q.B.48; and rules of procedure would be useful to everyone concerned and may be made at any time. But what order 9 does instead is to provide a rule, namely Rule 7, which empowers the judge to suspend. 30

The view of the learned Attorney-General of the Gambia was, and the argument on his behalf before us is that an application to suspend is not a "cause" or "matter" in other words, it is not a proceeding in the court, and when the judge acts under that rule he is not acting as the court: hence his statement to the learned Deputy Judge that "this is not a motion moving the Supreme Court". Consequently an order made under that rule is not an order of court. This view is carried into Section 14 of the West African Court of Appeal Ordinance (Cap.6 of the Gambia laws) which provides that :- 40

"An appeal shall be to the court of appeal from any order of the judge suspending a barrister and solicitor of the supreme court from practice or striking his name off the roll, and for the purposes of such appeal any such order shall be deemed to be an order of the Supreme Court".

In the
West African
Court of Appeal

No.28.

Judgments.

5th June, 1959.

(a) Bairamian,
Ag.P.

- continued.

10 This provision, which was enacted in 1929, was doubtless drafted on the basis that the judge, when acting under Rule 7 in Order 9 is not acting as the court.

20 There are two occasions where it may be said that he is acting as apart from the court; one is when he revokes the appointment of a Commissioner of Affidavits under Section 27 of the Supreme Court Ordinance, which empowers the judge to make such an appointment and to revoke it; the other is when, as my learned brother Ames, Justice of Appeal pointed out to me, he acts under section 4 of the Notaries Public Ordinance (Cap.19), which provides that -

"Every notary public shall be deemed to be an officer of the Supreme Court, and the judge of the Supreme Court shall have power for reasonable cause to suspend any notary from practising during any specified period, or to order his name to be struck off the roll of court".

30 Section 2 empowers the judge to appoint a person to be a notary, and section 4 to suspend him for a time or for always. This ordinance was passed in 1946, and section 4 is modelled on Rules 6 and 7 in Order 9 of the Supreme Court Rules, 1928. Under Section 4 of that Ordinance the judge will hold an enquiry but not as constituting the court.

Likewise under Rule 7 in Order 9 he will hold an enquiry but not sitting as the court. Such is the view advanced by and for the learned Attorney-General of the Gambia, and it is on this basis that I shall discuss the validity of that rule.

40 In considering a rule of court one has to look at Section 11(c) and (d) of the Interpretation Ordinance (Cap.1), which provide that, unless the contrary intention appears -

"(c) no subsidiary legislation shall be inconsistent with the provisions of any ordinance;

In the
West African
Court of Appeal

No.28.

Judgments.

5th June, 1959.

(a) Bairamian,
Ag.P.

- continued.

(d) subsidiary legislation shall be published in the Gazette and shall have the force of law upon such publication thereof or from the date named therein".

Thus a rule when published has the force of law insofar as it is not inconsistent with, at any rate, the Ordinance under which it is made. (There is no submission that the Supreme Court Ordinance authorises the judge to make a rule which may be inconsistent with the Ordinance so I need not do more than refer to instances of a schedule to an ordinance which some authority is empowered to alter by subsidiary legislation). Here Rule 7 in Order 9 has to pass the two tests suggested by (c) of Section 11 of the Interpretation Ordinance: One is that the rule must be intra vires, for otherwise it is inconsistent with Section 72(1) of the Supreme Court Ordinance; the other test is that the rule must not be inconsistent with the Supreme Court Ordinance in any other respect.

10

20

As the jurisdiction to suspend resides in the Court under the Ordinance, a rule which confers a power to suspend on the judge as apart from the Court is inconsistent with the ordinance. The rule does not deal with the procedure to be followed on an application to the Court and is not intra vires the rule-making power conferred by Section 72(1).

The argument for the Attorney-General of the Gambia, that the word "regulating" in Section 72 (i)(c) enables the judge to make rules to "control" those admitted to practise, may take one as far as Rule 6, which provides that those enrolled shall be deemed officers of the Court, and thus come under its discipline and control: it does not get over the objection of inconsistency to the validity of Rule 7.

30

Before dealing with the other argument for the Attorney-General I shall quote section 72 subsections (3), (4) and (5) which read thus :-

(3) "No such rules, or any alteration, amendment or revocation thereof, shall be deemed binding until they shall have been approved by the Legislative Council, and shall have been published in the Gazette.

40

(4) All such rules, and such alterations, amendments, and revocations thereof, when so approved and published, shall have the

same force and effect for all purposes as if they had been made by Ordinance, and shall in like manner come into immediate operation, or on such day as shall be provided in such rules, subject to disallowance by Her Majesty.

- (5) Notwithstanding the provisions of sub-section (4) hereof to the contrary, the Rules of the Supreme Court, 1928, shall be deemed binding and to have come into operation on the 1st January, 1929, without any publication in the Gazette".

If it is argued, as it was, that the legislature itself enacted the 1928 Rules by reference in Ordinance No.1 of 1929, which added sub-section (5), the argument leads to this awkward result - that no rules can be made to amend the Rules of 1928. But there was no such aim in sub-section (5).

- 20 I think that attention to sub-sections (3) and (4) shows that there are two requisites - approval by the Council and publication in the gazette. Presumably when the Council approves a set of rules, its clerk appends a certificate of the approval, which is published below the rules in the gazette. I stressed the word "and" in sub-section (5) when reading it. I think that this sub-section was designed to cure two deficiencies in the rules - one, that there was no certificate of approval, and the
- 30 other, that the rules were not published on New Year's Day and did not provide that they should come into operation on that day. It is in this light and within these limits that the opening words of sub-section (5) - "Notwithstanding" etc. - are in my opinion to be construed. The effect of sub-section (5) is to give the Rules of 1928 the same status as any rules might have which had received approval and were published, in accordance with sub-section (4).

- 40 The rules must be treated as if they have been made by ordinance. That sort of provision resembles the provision canvassed in The Institute of Patent Agents v. Lockwood, 1894, A.C., the report of which contains at p.360 some obiter dicta in Lord Herschell's judgment, that one should try to read the rules side by side with the Act but that in a case of conflict the Act should prevail - which is the effect of Section 11(c) and (d) of the Interpretation Ordinance.

In the
West African
Court of Appeal

No.28.

Judgments.

5th June, 1959.

(a) Bairamian,
Ag.P.

- continued.

In the
West African
Court of Appeal

No.28.

Judgments.

5th June, 1959.

(a) Bairamian,
Ag.P.

- continued.

If Rule 7 in Order 9 means (as is contended for the Attorney-General of the Gambia) that the judge when acting under it does not act as the Supreme Court in a proceeding pending in the court, the rule is inoperative. No other view of the rule was advanced on his behalf, if I understood the arguments rightly. I must therefore hold that the rule is not a valid rule on that basis. In a sense my views on the rule are obiter, for the ground of allowing the appeal is the one given in the first portion of this judgment.

10

I propose on that ground that the appeal be allowed and the order and direction made and given by the Deputy Judge on 22nd September, 1958, be set aside as being null and void.

(Sgd.) V.R. BAIRAMIAN,

CHIEF JUSTICE, SIERRA LEONE,
ACTING PRESIDENT.

5, June, 1959.

/Bannerman.

20

(b) Hurley,
Ag. J.A.

(b) Hurley, Ag. J.A. - In my opinion, this appeal should be allowed for the reasons, dependent on the learned Deputy Judge's jurisdiction under section 7(2) of the Supreme Court Ordinance of the Gambia, which have been given in the judgment of the learned President. However, the validity of Order 9, Rule 7, in the First Schedule to the Gambia Rules of the Supreme Court, 1928, has been called in question in the appeal, and the relevance of any decision on the question of the Deputy Judge's jurisdiction under Section 7(2) seems to me from one aspect of the matter to depend on that rule's being intra vires, for if it were not, it would not matter whether the Deputy Judge had jurisdiction to enforce it. In my opinion the rule is intra vires. In that I differ, with respect and regret, from my colleagues on this bench. Before giving the reasons for my view of the question, I will confess that I embarked on the inquiry which led to my decision because I recoiled from a construction of the Gambia Supreme Court Ordinance which, it seemed, would entail the consequence that nobody on the Roll of Court of the Supreme Court of the Gambia was entitled to practise in that Court, or, at any rate, that enrolment is a nullity even though for some other reason persons on the Roll may be thought to be entitled to practise in the Court which has for so long in fact allowed them to practise and have audience. How-

30

40

ever, my conclusions are in no other sense dependent on my dislike of the consequences of the construction which I reject; in my opinion, the construction to which I have been led is the necessary consequence of the words used in the enactments under consideration read in the light of the authorities and law relating to their subject-matter.

In the
West African
Court of Appeal

No.28.

Judgments.

5th June, 1959

(b) Hurley, ...
Ag.J.A.
- continued.

10 The Appellant, a member of the English bar, was enrolled to practise as a barrister and solicitor of the Supreme Court of the Colony of the Gambia under Order 9 in the First Schedule to the Rules of the Supreme Court, 1928, made under section 72 of the Supreme Court Ordinance, Cap.5. Sub-section (1) of Section 72 provides that the Judge (that is, the Judge of the Supreme Court, now by an amendment of the Ordinance styled the Chief Justice) may at any time make rules of court for the Supreme Court for carrying the Ordinance into effect, and paragraph (c) of the sub-section provides in particular for making rules for regulating the qualification, admission, and enrolment of barristers, advocates, solicitors and notaries, and of persons acting temporarily in those capacities, and for regulating their employment in causes and their fees, and for regulating the taking and recovery of their fees and disbursements. Rule 2 of Order 9 provides that the Judge may, in his discretion, approve, admit and enrol to practise as a barrister and solicitor of the Court a person who is entitled to practise as a barrister, or who has been admitted as a solicitor, in England, and who fulfils certain other conditions. Rule 4 provides that every person admitted to practise as a barrister or solicitor in the Court, shall cause his name to be enrolled in a book to be kept for the purpose in the office of the Registrar of the Supreme Court, and to be called the Roll of Court, and no person whose name shall not be enrolled as aforesaid shall be entitled to practise. Rule 7 provides that the Judge shall have power for reasonable cause, to suspend any barrister or solicitor from practising within the jurisdiction of the Court for any specified period, or to order his name to be struck off the Roll of Court. The appellant's name was ordered to be struck off the Roll by an order of a Deputy Judge appointed under Section 7 of the Ordinance to represent the Judge, and he appeals against that order.

50 The first ground of appeal to be argued was

In the
West African
Court of Appeal

No.28.

Judgments.

5th June, 1959

(b) Hurley,
Ag.J.A.

- continued.

that rule 7 was ultra vires. In support of this, learned Counsel for the Appellant argued that no provision had been made in section 72 enabling the Judge to make rules for suspending a barrister or solicitor or for striking him off the Roll, because the only express provision relating to barristers and solicitors to be found in the section is that in sub-section (1)(c), which provides for making rules for enrolment but not for striking off. But rule 72(1) commences by empowering the Judge to make rules for carrying the Ordinance into effect. The object of the Ordinance is to establish a Court which will function in the Gambia, administering English law as it stood on 1st November, 1888 (Section 2 of the Law of England (Application) Ordinance, Cap.3) and exercising the same jurisdiction as the High Court in England (Section 15 of the Supreme Court Ordinance). The administration of English law in the High Court in England is effected with the participation of barristers and solicitors, and indeed it is not too much to say that the High Court could not function without them, and that the substantive law administered there, that is, English law within the meaning of Section 2 of Cap.3, owes in very great measure its present form and rules to their participation in the work of the Courts in the past. The Supreme Court of the Gambia is to administer English law, and English law in its nature cannot be administered to the best effect without allowing legal practitioners to practise and have audience in the court which administers it. The Ordinance recognises that by providing in Section 72 (1)(c) for making rules regulating the enrolment of a body of practitioners. It is said that it does not anywhere make provisions concerning disqualifying from further practice any persons admitted to that body, either by express enactment or by a delegated power of legislating by rules of court. But, as I have said, Section 72 provides for making rules for carrying the Ordinance into effect, and that would certainly in the course of time be stultified to a greater or less extent if persons once enrolled as practitioners had a continuing right to remain on the Roll whether or not by their conduct they had shown themselves to be disqualified from participating in the work of the Court. The Ordinance cannot properly be carried into effect if unsuitable persons are to be enabled to acquire an indefeasible right to practise and

10

20

30

40

50

10 have audience in the Court, and provision for making rules for carrying the Ordinance into effect must include a power to make rules about excluding such persons from practice and audience after they have been enrolled as well as before. The same considerations apply to the functioning of any Court administering English law. They are grounded on common sense, and they have in part been applied by the Privy Council in the case of the Antigua Justices, 1 Knapp 267, where the judgment says "The power of suspending from practice must, we think be incidental to that of admitting to practice, as is the case in England with regard to attornies". And the judgment proceeds "In Antigua the characters of advocates and attornies are given to one person; the Court therefore that confers both characters may for just cause take both away".

20 It has rightly been observed that Section 72 (1) cannot empower the Judge as rule-making authority to confer powers, such as powers of admitting to practise and disqualifying from practise, but only to regulate the exercise of powers the source of which must be found elsewhere. From what source are such powers to be derived, and what are they, in the case of a Colonial Court administering English law, and in particular in the case of the Supreme Court of the Gambia? Section 15 of the Ordinance provides that the Supreme Court shall possess and exercise all the jurisdiction, powers and authorities which are vested in or capable of being exercised by Her Majesty's High Court of Justice in England. The Ordinance was enacted in 30 1888. In regard to solicitors, there were in 1888 certain disciplinary powers which had been reposed in the hands of the High Court; in the case of barristers, the powers of the Court, or rather the powers of the Judges, had been delegated to the Inns of Court: The King v. Gray's Inn 1 Dougl. 353; The Antigua Justices' case.

40 Then, where a Colonial Court administers English law, and possess powers over solicitors but not over barristers, what powers, if any, will it have over persons who practise before it, if those persons are to practise in the character of barristers as well as solicitors? The answer was given by the Privy Council in 1830 in the Antigua Justices' case. In England in 1830 jurisdiction over attornies lay in the superior courts of law and was exercisable by them separately. The jurisdiction over barristers was as it was in 1888 and is now.

In the
West African
Court of Appeal

No.28.

Judgments.

5th June, 1959

(b) Hurley,
Ag.J.A.

- continued.

In the
West African
Court of Appeal

No.28.

Judgments.

5th June, 1959

(b) Hurley,
Ag.J.A.

- continued.

In Antigua advocates practised both as barristers and attorneys. They were admitted to practise in both characters by the Court of Common Pleas and then practised in the other courts of the Island as well. The petitioner, one of such practitioners, had been disbarred by the Court of Common Pleas, for various acts of professional and general misconduct with which he had been charged by the Attorney-General and other practising advocates there. He petitioned the Privy Council to restore him to the bar. The Judges presented a memorial in reply, in which they cited authorities to prove the right of courts to expel from the bar those of its members who misconduct themselves. The petitioner complained that the Judges had proceeded to disbar him, instead of striking him off the roll as an attorney, when there must have been a regular prosecutor. The Privy Council said, "In England the Courts of Justice are relieved from the unpleasant duty of dis-barring advocates in consequence of the power of calling to the Bar and dis-barring having been delegated to the Inns of Court. In the Colonies there are no Inns of Court, but it is essential for the due administration of Justice that some persons should have authority to determine who are fit persons to practise as advocates and attorneys there. Now advocates and attorneys have always been admitted in the Colonial Courts by the Judges, and the Judges only. The power of suspending from practice must, we think be incidental to that of admitting to practise, as is the case in England with regard to attorneys. In Antigua the character of advocates and attorneys are given to one person; the Court therefore that confers both characters may for just cause take both away". What emerges from that case is this, that a Colonial Court has the power of admitting persons to practise before it, and may admit them to practise in the combined character of barristers and solicitors, and may disqualify persons admitted in that combined character from practising, although the Courts in England are left by the English law with only the power of admitting and disqualifying solicitors. It is clear from this that the Supreme Court of the Gambia has powers of admitting persons to practise as barristers and solicitors and of disqualifying them; and what the Rules of the Supreme Court do is to regulate the exercise of that jurisdiction of the Court's, to do which is well within the ambit of Section 72(1) of the Ordinance where it provides that rules may be made for carrying the Ordinance into effect.

10

20

30

40

50

In the
West African
Court of Appeal

No.28.

Judgments.

5th June, 1959

(b) Hurley,
Ag.J.A.

- continued.

The jurisdiction of the Supreme Court in the Gambia over practitioners is not the same as the jurisdiction of the High Court in England over solicitors, and for that reason and on general principles I think it need not necessarily be exercised in the same way, provided it is exercised by the Court or by some person or authority who may lawfully exercise the Court's jurisdiction. By section 4 of the Supreme Court Ordinance, the Supreme Court of the Gambia consists of, and is held by and before, the Judge but that does not apply in criminal trials, which by Section 33 are had before the Judge and a jury. The Court and the Judge are not the same thing. They are not the same thing in criminal trials, to begin with. Again, the Judge may exercise, within limitations, the Court's jurisdiction though he is not then the Court, or is not the Court for the particular purpose in hand. Thus, there is the well-known distinction between the Judge in Chambers and the Court, which is recognised, incidentally, in Section 65 of the Ordinance. Both the Courts and the Judge conduct litigious business, but when the Court conducts, it is coram publico, and when the Judge conducts it, it is not. Then the Judge, not the Court, exercises certain powers or performs certain duties ancillary to the jurisdiction over litigious matters or of an administrative nature; for example, he appoints commissioners of affidavits under Section 27, he directs a special jury under Section 34, he allows witnesses' expenses under Section 46, he takes down evidence under Section 25, and he draws up minutes of proceedings under Section 51. Thus the litigious jurisdiction of the Court is exercised by the Court coram publico and by the Judge non coram publico; and it is the Judge, and not the Court, who exercises powers and performs duties ancillary to the litigious jurisdiction. The Court's jurisdiction over practitioners is not in my view part of its litigious jurisdiction; it is a domestic one, and is either distinct from the litigious jurisdiction, or ancillary to it. If it is distinct, there is nevertheless nothing in the law that requires it to be exercised coram publico or by the Court itself, for it is not the same as the jurisdiction over solicitors in England nor is it necessarily to be exercised in the same way, and as litigious jurisdiction may be exercised non coram publico by the Judge, so may any other jurisdiction be. And the jurisdiction over practitioners is a domestic one,

In the
West African
Court of Appeal

No.28.

Judgments.

5th June, 1959

(b) Hurley;
Ag.J.A.

- continued.

not one between members of the public, and therefore in its nature need not, and very often cannot conveniently or with propriety, be exercised in public. If the jurisdiction over practitioners is ancillary to the litigious jurisdiction, the Judge may exercise it instead of the Court. In either case, it is a jurisdiction which may lawfully be exercised by the Judge, and in my opinion the rules of Court regulating its exercise are *intra vires* when they provide for its exercise by the Judge.

10

(Sgd.) W.H. HURLEY.

(c) Ames,
Ag.J.A.

(c) Ames, Acting J.A. I agree with the learned President and my learned brother Hurley that this appeal must succeed on ground 7.

A deputy judge can only exercise "the judicial powers" of the Chief Justice. Section 7 of the Supreme Court Ordinance, in particular its subsection (3), makes it clear to me that by "judicial powers" is meant powers which he exercises when constituting the Supreme Court under section 4, to the exclusion of any other of his powers. The application before the learned deputy judge did not ask him to exercise, and he himself expressly purported not to be exercising, the judicial powers of the Chief Justice in this sense. Consequently he was without jurisdiction.

20

This means that the proceedings before the Deputy Judge were a nullity and the matter is still pending and awaiting valid determination. I also agree with the President that it is consequently desirable to consider ground of appeal 1(c), which is that Rule 7 of Order 9 is ultra vires. This ground was Mr. Gratiaen's main ground and the one on which he began his argument.

30

I agree with the conclusion of the learned President that the rule is ultra vires. I do not find any help in considering how and by whom barristers are called, enrolled and can be debarred in England or how and by whom solicitors are there admitted and can be struck off. In the Gambia there are neither barristers as such nor solicitors as such, but every person whose name is on the roll of legal practitioners is at one and the same time and all the time both a barrister and a solicitor. Consequently one must look to the laws of the Gambia for guidance on the question: and the laws of the Gambia, when examined closely as we have had to examine them, seem to me to be deficient.

40

There is no Ordinance on the subject of Legal Practitioners. The Supreme Court Ordinance is what one must look at. The object of the Ordinance is, as stated in the long title, "to make better provision for the Administration of Justice in the Colony of the Gambia". It contains no other mention of legal practitioners than that in Section 72(1)(c) which enables the Chief Justice to make rules for the following:-

10

(c) for regulating the qualification, admission and enrolment of barristers, advocates, solicitors and notaries, and of persons acting temporarily in those capacities, and for regulating their employment in causes and their fees, and for regulating the taxation and recovery of their fees and disbursement.

20

This rule presupposes that "barristers, advocates, solicitors and notaries" shall practise before the Court, and shall be admitted and enrolled to do so.

30

Mr. Gratiaen's argument was that, because section 72(1)(c) is silent on the matters of suspension and striking off, which he argues are different matters, no rules can be made about these different matters. I am not able to agree. There is a general power in Section 72(1) to make rules for "carrying into effect this Ordinance", (intended as it was to provide for the better administration of justice). It is ridiculous to suppose (as the logical conclusion of Mr. Gratiaen's argument is) that, once admitted and enrolled, a legal practitioner in the Gambia is free of any disciplinary control. In the Antigua case (so to call it) the Privy Council held that a power to disbar and suspend was necessarily incidental to the power to admit and enrol. The Notaries Public Ordinance (Chapter 19) is an interesting analogy. Its purpose, as in its long title, is "to make provision for the appointment of Notaries Public and for the enrolment of Public Notaries authorised to act as such by the Master of Faculties and for other purposes in relation to the performance of notarial functions". There is no mention of their suspension or of their being struck off. Yet the Legislature enacted Section 4, which provides for that, and presumably considered it to be necessary and incidental to the purpose of the Ordinance. So also in my opinion, Section 72(1)(c) must impliedly confer a power to make rules about suspension and striking off of legal practitioners.

50

In the
West African
Court of Appeal

No. 28.

Judgments.

5th June, 1959

(c) Ames,
Ag.J.A.

- continued.

In the
West African
Court of Appeal

No.28.

Judgments.

5th June, 1959

(c) Ames,

Ag. J.A.

- continued.

The rule of court, which has been made (Rule 7 of Order 9), is not a rule of Court prescribing the procedure for striking a name off the roll. It purports to confer upon the Chief Justice the power to do so, and makes no procedural rules.

Mr. Gratiaen admitted that the Supreme Court of the Gambia had the same inherent powers as has the High Court in England over barristers and solicitors: but argued that it was not any such power that was being invoked in the proceedings before the deputy Judge.

10

I agree with my brother Hurley as to disciplinary powers over barristers in England. In 1780, Lord Mansfield said, in the case of the King vs. Gray's Inn (99 E.R. 227):-

"All the powers which they" (he was referring to the Inns of Court) "have concerning the admission to the bar is delegated to them from the Judges"

On the other hand disciplinary powers over Solicitors belonged to the Court, although now-a-days the Law Society exercises statutory powers over them.

20

As I have said, there are neither barristers nor solicitors as such in the Gambia but what are, in Colonial legislation, often called legal practitioners. I have also said that the Ordinance presupposes that they shall practise before the Court, and every tribunal has, in the absence of statutory provisions, power to say who shall be its officers and who shall and who shall not practise before it. The Court has empowered the Chief Justice to make rules of procedure to that end. The Ordinance has not conferred upon him personally any disciplinary powers, as it has by Section 27 of the same Ordinance in the case of Commissioners of Oaths or by Section 4 of the Notaries Public Ordinance in the case of Notaries Public, who are also officers of Court. It seems to me therefore that in the Gambia the Court has not parted with, or conferred upon anyone, its powers of discipline over legal practitioners, and that there does not exist a domestic tribunal (as it was called) consisting of the Chief Justice, (or any such tribunal at all) with such powers of discipline.

30

40

For these reasons I think that Rule 9 is ultra vires, unless it is validated by Section 72 (5) and, as to that, I agree with the learned President that it is not and for the same reasons.

June, 1959.

(Sgd.) C.G. AMES,
Ag. Justice/Appeal.

50

No. 29.

NOTICE OF MOTION FOR LEAVE TO APPEAL TO
HER MAJESTY IN COUNCIL

IN THE WEST AFRICAN COURT OF APPEAL

IN THE MATTER OF PIERRE SARR N'JIE BARRISTER-AT-LAW
AND SOLICITOR OF THE SUPREME COURT OF THE GAMBIA

- and -

IN THE MATTER OF RULE 7, ORDER IX OF THE FIRST
SCHEDULE TO THE RULES OF THE SUPREME COURT

In the
West African
Court of Appeal

No.29.

Notice of Motion
for Leave to
Appeal to Her
Majesty in
Council.

23rd June, 1959.

10 TAKE NOTICE that this Honourable Court will
be moved on Friday the 3rd day of July, 1959, or
so soon after as Counsel can be heard on behalf of
the Attorney-General of the Gambia.

20 (a) that this Honourable Court may be pleased
to grant leave to appeal against the judg-
ment herein of this Honourable Court given
on the 5th day of June, 1959, on the ground
that the question involved in the appeal is
one which, by reason of its great public
importance ought to be submitted to Her
Majesty in Council for decision; and

(b) for an Order that this Notice of Motion and
copy affidavit of John Henry Smythe, Acting
Solicitor-General sworn to on the 23rd day
of June, 1959 and filed herein be served by
registered post on the opposite party Pierre
Sarr N'Jie whose present address is c/o The
Overseas Club, St. James Palace, London, or
elsewhere in the United Kingdom.

30 AND TAKE NOTICE that at the hearing of this
application it is intended to use the affidavit of
John Henry Smythe sworn to on the 23rd day of June,
1959 and filed herein.

DATED this 23rd day of June, 1959.

(Sgd.) C.O.E. COLE,
Acting Attorney-General,
Solicitor for the Applicant.

To:- The Deputy Registrar,
West African Court of Appeal

40 And to:- Pierre Sarr N'Jie.

In the
West African
Court of Appeal

No.30.

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

No.30.

IN THE WEST AFRICAN COURT OF APPEAL

Affidavit in
Support of
Motion for Leave
to Appeal to Her
Majesty in
Council.

IN THE MATTER OF PIERRE SARR N'JIE BARRISTER-AT-LAW
AND SOLICITOR OF THE SUPREME COURT OF THE GAMBIA

- and -

IN THE MATTER OF RULE 7, ORDER IX OF THE FIRST
SCHEDULE TO THE RULES OF THE SUPREME COURT.

23rd June, 1959.

I, JOHN HENRY SMYTHE, Acting Solicitor General
of the Legal Department of the Colony of Sierra
Leone make oath and say as follows:-

10

1. On the 5th day of June, 1959, this Honourable
Court allowed an appeal by Pierre Sarr N'Jie
Barrister-at-Law and Solicitor of the Supreme
Court of the Gambia who appealed against an
Order of the Honourable Mr. Justice Myles John
Abbot dated 22nd day of September, 1958, or-
dering that the name of Pierre Sarr N'Jie be
struck off the Roll of Barristers and Solici-
tors of the Supreme Court of the Gambia.

20

2. That I am informed and verily believe that
the Attorney-General of the Gambia is dis-
satisfied with the judgment of this Honourable
Court and prays leave to appeal therefrom on
the grounds that -

(a) this Honourable Court was wrong in law in
holding that the Deputy Chief Justice
acted without jurisdiction;

(b) the question involved in the Appeal is
one which, by reason of its great general
or public importance ought to be submitted
to Her Majesty in Council for decision.
The question is whether the powers of
disciplining Barristers and Solicitors of
the Supreme Court of the Gambia may
properly be exercised by the Deputy Judge
of the Gambia, Gambia being a single
territory. This question is of vital
importance.

30

3. That I am informed by the Honourable the At-
torney-General of the Gambia and verily be-
lieve that the present address of the said
Pierre Sarr N'Jie the only other party involved

40

in this appeal is -

c/o The Overseas Club,
Saint James Palace, London,

outside the jurisdiction of this Honourable
Court.

(Sgd.) John Smythe

SWORN at Freetown this 23rd
day of June, 1959 at 2 o'clock
in the afternoon.

10

Before me,

(Sgd.) F.H.S. Bridge
MASTER AND REGISTRAR.

This Affidavit is filed on behalf of the Attorney
General.

In the
West African
Court of Appeal

No.30.

Affidavit in
Support of
Motion for Leave
to Appeal to
Her Majesty in
Council.

23rd June, 1959
- continued.

No. 31.

JUDGMENT REFUSING LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

No.31.

Judgment
refusing leave
to Appeal to
Her Majesty in
Council.

Bairamian Ag. P., giving the decision of the Court:

6th July, 1959.

20

This is an application by the Attorney-General
of the Gambia for leave to appeal to the Privy
Council from the judgment given by the Court on
the 5th June, 1959, which allowed the appeal of
Pierre Sarr N'Jie and set aside the order made by
the Deputy Judge in the Gambia in September last
year that N'Jie be struck off the roll of barris-
ters and solicitors of the Gambia. There is also
a request for an order for service by registered
post on Pierre Sarr N'Jie, whose present address
is believed to be c/o The Overseas Club, St. James's
Palace, London, or for such service on him else-
where in the United Kingdom.

30

The ground for allowing Mr. N'Jie's appeal
was a legal ground pertaining to the Deputy Judge's
jurisdiction, and we would have been disposed to
grant leave under Section 3(b) of the West Afri-
can (Appeal to Privy Council) Order in Council,
1949, but for Section 5 of the Order which provides
that -

40

"Applications to the Court for leave to appeal
shall be made by motion or petition within 21

In the
West African
Court of Appeal

No.31.

Judgment
refusing leave
to Appeal to
Her Majesty in
Council.

6th July, 1959
- continued.

days from the date of the judgment to be appealed from, and the applicant shall give the opposite party notice of his intended application".

The notice which the applicant is required to give the opposite party is "notice of his intended application"; and effect must be given to the word "intended". We take the view that those words require the applicant to give notice of the application which he intends to make for leave to appeal; and, as the application for leave to appeal must be made within 21 days, it follows that the applicant cannot give notice of his intention to make such an application after the 21 days have expired. It has been the practice in this Court to require evidence of notice to the opposite party having been given within the 21 days. The soundness of this practice has not been questioned within our experience; nor, as we understand, is it being questioned now by the Learned Counsel for the applicant in the present application.

10

20

In this case it was not possible for the Attorney-General of the Gambia to give the opposite party notice because that party was not in the Gambia but in England; hence the request for an order to give him notice by registered post. With regret, we cannot accede to this request, for this Court cannot, in face of Section 5 of the Order in Council, entertain an application for leave to appeal unless the notice to the opposite party of the intended application is given before the 21 days have expired: but they have expired, and the giving of such notice hereafter cannot serve any useful purpose in this Court.

30

We are bound to refuse the application for leave to appeal to the Privy Council, and the same is hereby refused together with the request for an order to give notice by registered post.

(Sgd.) V.R. Bairamian
Ag. President.

(Sgd.) R.B. Marke
Puisne Judge,
Sierra Leone.

40

(Sgd.) S.A. Benka-Coker
Puisne Judge,
Sierra Leone.

6 July, 1959.

No. 32.

ORDER GRANTING SPECIAL LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

AT THE COURT AT BUCKINGHAM PALACE

The 21st day of December, 1959

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT
EARL OF FERTH

MR. SECRETARY WARD
MR. BROOKE

In the
Privy Council

No.32.

Order granting
Special Leave
to Appeal to
Her Majesty in
Council.

21st December,
1959.

10 WHEREAS there was this day read at the Board
a Report from the Judicial Committee of the Privy
Council dated the 9th day of December, 1959 in the
words following, viz:-

20 "WHEREAS by virtue of His late Majesty King
Edward the Seventh's Order in Council of the
18th day of October 1909 there was referred un-
to this Committee a humble Petition of the
Attorney-General of The Gambia in the matter of
an Appeal from the West African Court of Appeal
between the Petitioner and Pierre Sarr N'Jie
Respondent setting forth (amongst other matters):
that on the 16th July 1958 the Petitioner served
upon the Registrar of the Supreme Court of The
Gambia and upon the Respondent a Notice of Motion
under Order IX Rule 7 of the Rules of the said
Supreme Court for an Order that an Enquiry be
made by the Chief Justice into the allegations
against the Respondent contained in an affidavit
in support of the Notice of Motion and if reason-
able cause be shown the Respondent's name be
30 struck off the Roll of the Court or such other
Order as to the Chief Justice might seem fit:
that the said affidavit was sworn by the Petitioner
and alleged that the Respondent had on
six occasions utilised for his own purposes
monies received by him on behalf of clients had
by false representation with intent to deceive
procured the execution of a document and had on
another occasion with intent to deceive induced
40 a client as mortgagee to accept a title by con-
cealing from him the existence of two incumbrances:
that the Respondent applied for the Enquiry
to be held by a Judge other than the Chief Justice
and the Chief Justice made an Order accordingly:
that the Enquiry was held by a Deputy
Judge of the said Supreme Court neither the

In the
Privy Council

No.32.

Order granting
Special Leave
to Appeal to
Her Majesty in
Council.

21st December,
1959

- continued.

Respondent or anyone on his behalf appearing and on the 22nd September 1958 Judgment was delivered finding all but one of the allegations against the Respondent established and ordering that his name be struck off the Roll of Barristers and Solicitors of the Supreme Court of The Gambia and that the Order be reported to the Benchers of the Respondent's Inn; that the Respondent appealed to the West African Court of Appeal and that Court delivered Judgment on the 5th June, 1959 holding (i) that the Deputy Judge had had no jurisdiction to make his Order and (ii) that Order IX Rule 7 was ultra vires and void: that the Petitioner gave Notice of Motion in the West African Court of Appeal for leave to appeal to Your Majesty in Council and on the 6th July 1959 Judgment was given dismissing it: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the Judgments of the West African Court of Appeal dated the 5th June 1959 and the 6th July 1959 and for further or other relief:

10

20

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgments of the West African Court of Appeal dated the 5th day of June 1959 and the 6th day of July 1959 respectively but that liberty be reserved to the Respondent to raise at the hearing of each Appeal the preliminary point that no Appeal lies at the instance of the Petitioner:

30

"AND THEIR LORDSHIPS do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the appeal upon payment by the Petitioner of the usual fees for the same".

40

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order

81.

as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of The Gambia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

In the
Privy Council

No.32.

Order granting
Special Leave
to Appeal to
Her Majesty in
Council.

21st December,
1959

- continued.

ExhibitsE X H I B I T S

1.
History of Land
Tenure in
Bathurst relating No.62, Perseverance St.
to 62,
Perseverance
Street.
1. - HISTORY OF LAND TENURE IN BATHURST RELATING
TO 62, PERSEVERANCE STREET
-
- One half property conveyed 23.7.49 to Papa Bundu
Camara and Dawooda Sowe by Papa Bundu Camara
Ref. Vol. 13 C.D. 62/49.
- Mortgaged 14/1/50 to Alieu Jeng by P.B. Camara
and D.Sowe
Ref. 25/50 Vol.13 C.D. 10
- Reconveyed 18.2.54 to P.B. Camara and D. Sowe
Ref. 15/54 Vol.18 C.D.
- $\frac{1}{2}$ share mortgaged 8.3.54 to C.F.A.O.by D.Sowe
Ref. C.M. 5/54 Vol. 3.
- $\frac{1}{2}$ share conveyed 12.11.55 to A.F.F.Deen Betts
by C.F.A.O.
Ref. C.D. 51/55 Vol.19.
- Conveyed 25.4.57 to A.F.F. Din Betts by Papa B.
Camara
Ref. C.D. 25/57 Vol.21. 20
- Equitable mortgage 20.6.57 to U.A.C. by A.F.F.
Deen Betts
Ref. M.D. 51/57 Vol. 4a.
- I hereby certify that this is a true and cor-
rect copy of the record book of History of Land
Tenure in Bathurst relating to the plot of land
known as No.62, Perseverance Street Extracted
this Eleventh day of July in the year One thousand
nine hundred and fifty-eight.
- (Sgd.) F.E. Webster 30
REGISTRAR GENERAL.
-
2.
History of Land
Tenure in
Bathurst
relating to 63,
Perseverance
Street.
2. - HISTORY OF LAND TENURE IN BATHURST RELATING
TO 63, PERSEVERANCE STREET
-
- 63, Perseverance St.
- Property Conveyed 18.11.33 to M.J.Jajur by
Curator
Ref. C.D. 54/33 Vol.7.
- Mortgaged 12.10.36 to U.A.Coy.Ltd. by Ederiss
N'Jie.
Ref. C.D. 55/36 Vol.10. 40

Conveyed 29.5.41 to Dawda Sowe by U.A.Coy.Ltd.
Ref. C.D. 16/41 Vol.11.

Mortgaged 28.12.49 by Dawooda Sowe to Ousman
Jeng
Ref. 5/50 Vol. 13 C.D.

Conveyed 25.11.50 to Ousman Jeng by Dawooda Sowe
Ref. 139/50 Vol.14.

Conveyed 28.7.56 to B.S.O. Jeng by O. Jeng
Ref. C.D. 53/56 Vol. 20

10 Mortgaged 16.8.56 to U.A.C. by B.S.C. Jeng
Ref. C.M. 35/56 Vol. 5.

I hereby certify that this is a true and correct copy of the record book of History of Land Tenure in Bathurst relating to the plot of land known as No. 63, Perseverance Street Extracted this Eleventh day of July in the year One thousand nine hundred and fifty-eight.

(Sgd.) F.E. Webster
REGISTRAR GENERAL.

Exhibits

2.

History of Land Tenure in Bathurst relating to 63, Perseverance Street
- continued.

20 3. - RECEIPT No.232 FOR £150 GIVEN TO
DAWOODA SOWE BY P.S.N'JIE

No.232 5th May, 1951.
Received from Mr. Dawooda Sowe the sum of One hundred and fifty pounds being part payment of the purchase of No.63 Perseverance Street Bathurst to be sold to him by Mr. Ousman Jeng.
£150. (Sgd.) P.S. N'Jie.

3.

Receipt No.232 for £150 given to Dawooda Sowe by P.S. N'Jie.
5th May, 1951.

4. - RECEIPT No.240 for £50 GIVEN TO
DAWOODA SOWE BY P.S.N'JIE

30 No.240 19th July, 1951.
Received from Mr. Dawooda Sowe the sum of Fifty pounds being part payment of purchase price of No. 63 Perseverance Street, Bathurst, to be sold to him by Ousman Jeng.
£50. (Sgd.) P.S. N'Jie.

4.

Receipt No.240 for £50 given to Dawooda Sowe by P.S.N'Jie.
19th July, 1951.

Exhibits

5.

5. - RECEIPT NO.247 FOR £50 GIVEN TO DAWOODA SOWE BY P.S.N'JIE

Receipt No.247 for £50 given to Dawooda Sowe by P.S.N'Jie. 6th August, 1951.

No.247. 6th August, 1951. Received from Mr. Dawooda Sowe the sum of Fifty Pounds, being part payment of purchase price of No.63, Perseverance Street, Bathurst, to be sold to him by Mr. Ousman Jeng. £50. (Sgd.) P.S. N'Jie.

6.

6. - CONVEYANCE OF 63 PERSEVERANCE STREET BY DAWOODA SOWE TO OUSMAN JENG

Conveyance of No. 63, Perseverance Street by Dawooda Sowe to Ousman Jeng. 25th November, 1950.

THIS INDENTURE is made the Twenty-fifth day of November One thousand nine hundred and fifty Between DAWOODA SOWE of Number sixty three (63) Perseverance Street Bathurst in the Colony of the Gambia Meat Butcher (hereinafter called the Vendor) of the one part and OUSMAN JENG Trader (hereinafter called the Purchaser) of the other part

WHEREAS the Vendor is seised of the land and hereditaments hereinafter described and expressed to be hereby assured and has agreed with the Purchaser to sell to him the said land and hereditaments at the price of Three hundred and sixty pounds (£360)

NOW THIS INDENTURE WITNESSETH :

(1) That in consideration of the said sum of Three hundred and sixty pounds (£360) now paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges) the Vendor as BENEFICIAL OWNER hereby grants and conveys unto the Purchaser ALL THAT lot of land and hereditaments situate at Perseverance Street in Bathurst in the Colony aforesaid and numbered sixty three (63) in the Register and Plan of Town Lots for Bathurst aforesaid TO HOLD the same unto and to the use of the Purchaser in fee simple subject to the covenant in favour of the Vendor his heirs and personal representatives hereinafter mentioned

(2) That the Vendor hereby covenants with the Purchaser that the Vendor shall have the

10

20

30

40

right and power within three months only of the execution of these presents to demand the reconveyance to the Vendor by the Purchaser of the said premises and hereditaments by way of sale upon payment to the Purchaser by the Vendor of the sum of Three hundred and sixty pounds (£360).

Exhibits

6.

Conveyance of
No. 63,
Perseverance
Street by
Dawooda Sowe to
Ousman Jeng.

25th November,
1950

- continued.

10 IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written

SIGNED SEALED AND DELIVERED)
by the said DAWOODA SOWE)
after the contents of the)
within-written Indenture)
have been translated into) (Sgd.) D.O.Sowe (L.S.)
the Woloff language and ex-)
plained to him and he ap-)
peared fully to understand)
the same in the presence of)

20 (Sgd.) L.A. Coron,
16, Anglesea Street, Bathurst.
Civil Servant.

SIGNED SEALED AND DELIVERED)
by the above-named OUSMAN) (Sgd.) Ousman Jeng
JENG in the presence of:) (L.S.)

(Sgd.) L.A. Coron,
16, Anglesea Street, Bathurst.

30 This Instrument was proved by the testimony of L.A. Coron of 15, Anglesea Street, Bathurst to be the deed of Dawooda Sowe and Ousman Jeng of Bathurst within-named before me this sixth day of December in the year One thousand nine hundred and fifty at 4.46 o'clock in the afternoon.

(L.S.) (Sgd.) P.C. Hodgson
AG. COLONIAL REGISTRAR.

40 I hereby certify that this is a true and correct copy of the Register of Colony Deeds Volume 14 pages 174 and 175 Extracted this 5th day of July in the year One thousand nine hundred and fifty-six.

(Sgd.) L. Weston,
COLONIAL REGISTRAR.

Exhibits

7.
Cheque No. $\frac{P}{50}$ 081543 given to Dawooda Sowe by P.S.N'Jie.
6th December, 1950.
7. - CHEQUE NO. $\frac{P}{50}$ 081543 GIVEN TO DAWOODA SOWE BY P.S. N'JIE.
-
- No. $\frac{P}{50}$ 081543 Bathurst, 6th December, 1950
- BANK OF BRITISH WEST AFRICA LIMITED
BATHURST.
P.S.N.
Pay Dawooda Sowe OR BEARER the sum of Fifty pounds
£50. (Sgd.) P.S. N'Jie
CLIENTS' ACCOUNT.
-
8.
Receipt No.186 for £50 given to Dawooda Sowe by P.S. N'Jie.
14th November, 1950.
8. - RECEIPT NO.186 FOR £50 GIVEN TO DAWOODA SOWE BY P.S. N'JIE
-
- No.186. 14th November, 1950
- Received from Mr. Dawooda Sowe the sum of Fifty pounds, being part payment of principal money due on a mortgage of No. 62, Perseverance Street, Bathurst.
£50. (Sgd.) P.S. N'Jie.
-
9.
Record of Appeal in Dawooda Sowe v. Alhaji Ousman Jeng and Alhaji B.S.O. Jeng before Miles, C.J.
9. - RECORD OF APPEAL IN DAWOODA SOWE v. ALHAJI OUSMAN JENG and ALHAJI B.S.O. JENG before MILES, C.J.
-
- NOT REPRODUCED
-
10.
Record of proceedings in Dawooda Sowe P.J.Jabre v. Alhaji Ousman Jeng & Alhaji B.S.O. Jeng before Wiseham, C.J.
10. - RECORD OF PROCEEDINGS IN DAWOODA SOWE, P.J. JABRE v. ALHAJI OUSMAN JENG and ALHAJI B.S.O. JENG before WISEHAM, C.J.
-
- NOT REPRODUCED

11. - PARTICULARS OF CLAIM AND WRIT OF SUMMONS IN
CIVIL SUIT NO. S.97/58 GENEVIEVE BRAHIM
v. P.S. N'JIE.

Exhibits

11.

IN THE SUPREME COURT OF THE COLONY OF THE GAMBIA
Civil Suit No.S.97 of 1958

Particulars of
Claim and Writ
of Summons in
Civil Suit
No.S.97/58
Genevieve
Brahim v P.S.
N'Jie.

BETWEEN:- GENEVIEVE BRAHIM Plaintiff

- and -

P.S. N'JIE Esq., B.L. Defendant

To: P.S.N'Jie Esq., B.L. of 19, Buckle Street,
Bathurst.

4th July, 1958.

10

YOU ARE HEREBY COMMANDED in Her Majesty's
name to attend this Court at Bathurst on Friday
the 11th day of July, 1958 at 9.0 o'clock in the
forenoon to answer a suit by Genevieve Brahim
against you.

The Plaintiff claims the sum of £206.9s. being mon-
eys had and received by the Defendant as solicitor
for Plaintiff.

CHIEF JUSTICE

20 Issued at Bathurst the 4th day of July, 1958.

TAKE NOTICE:-

1. That if you fail to attend at the hearing of
this suit or at any continuation or adjourn-
ment thereof, the Court may allow the Plain-
tiff to proceed to judgment and execution.
2. If you have a counterclaim or set-off against
the plaintiff you must lodge with the Regis-
trar FOUR CLEAR DAYS before the Return Day a
Notice in original, with as many duplicates
thereof as there are plaintiffs, containing
your name and address and a concise state-
ment of the grounds of such counterclaim or
set-off and pay such Court and Service fees
as may be payable therefor.

30

CERTIFICATE OF SERVICE BY BAILIFF

UPON the day of , 1958, this summons
was served by me on the Defendant;
This I did by serving a copy of the above summons
(and Particulars of Claim) on the Defendant person-
ally at

40

COURT FEES:- Bailiff or Officer of the Court.

Exhibits

11.

Particulars of Claim and Writ of Summons in Civil Suit No.S.97/58 Genevieve Brahim v P.S. N'Jie.

4th July, 1958
- continued.

IN THE SUPREME COURT OF THE COLONY OF THE GAMBIA.

Civil Suit No.S.97 of 1958

BETWEEN: GENEVIEVE BRAHIM Plaintiff
- and -
P.S. N'JIE Esq., B.L. Defendant

PARTICULARS OF CLAIM

1. The Defendant was at all material times the Solicitor and Counsel for the Plaintiff.
 2. The Defendant had and received moneys at different times for and on behalf of the Plaintiff in the course of his professional relationship with the Plaintiff and failed to pay such moneys to the Plaintiff. 10
 3. Plaintiff made several demands to the Defendant for payment over to her of the said sums of money to no avail.
 4. At the instance of the Defendant the Plaintiff agreed that the said sums of money amounting to £206.9s. sterling be paid by the Defendant to the credit of her account with Messrs. S. Madi Limited of Bathurst, but the Defendant failed to make such payment as aforesaid. 20
 5. The Plaintiff claims the sum of £206.9s. sterling from the Defendant as moneys had and received by him for and on her behalf.
- Dated the 2nd day of July 1958
(Sgd.) Sam. J. Forster
Sam. J. Forster Esq. B.L., 11/12 Buckle Street, Bathurst Gambia
Solicitor for Plaintiff.

12.

Certified True Copy of Proceedings in Civil Suit No.S.13/54 - Paul Joseph Jabre v Dawooda Sowe.

22nd February, 1954.

12. - CERTIFIED TRUE COPY OF PROCEEDINGS IN CIVIL SUIT NO.S.13/54 - PAUL JOSEPH JABRE v DAWOODA SOWE 30

Paul Joseph Jabre versus Dawooda Sowe
22.2.54 Civil Suit 13/54
P.S. N'Jie for Plaintiff
Defendant in person

Defendant says:- "I admit owing this sum, but I ask for time to be given me as I have other Court orders against me. I ask to pay £25 for three months and the balance at £50 per month.

Dawooda Sowe, Moharmedan, Sworn -

I have three judgments against me which I am paying off by instalments. I produce receipts (put in as Ex.D.1). I am a butcher. I am supplying the hospital. After all my expenses sometimes I used to have £30 per week. The judgment obtained by Momodou N'Dure was £60 and costs and the other by Njaki Sung for £120 and costs and Ali Seka for £25.0.0.

- 10 N'Jie All judgments except Momodou N'Dure was for cattle supplied to me. This debt was incurred last February. This was to help me to buy cattle. Some colas I sold on credit. I sold 6 blies on credit and have not collected a penny. It was 11 blies for £241.10.0. I was expecting to receive what I had given out. I sold 5 blies and put it in my business which was bad. I own 63, Perseverance Street. It is mortgaged to Ousman Jeng but the title deeds are in Lawyer N'Jie's hands. Ousman
- 20 gave me £200 worth of goods. This was in 1949 - 1950. I have paid something.

Order Judgment for Plaintiff for £250 and costs payable by instalments of £30 per month commencing on 1st March, 1954 for three months, balance payable by instalments of £50 per month payable on the 1st day of each month. On default in payment of any one instalment whole balance outstanding to become and be immediately due and payable.

Liberty to apply.

30

(Sgd.) B.R. Miles, J.
22.2.54.

13. - LETTER FROM P.S.N'JIE TO PAUL JOSEPH JABRE

P.S. N'JIE,
P.O. BOX 63,
BATHURST, GAMBIA,
WEST AFRICA.

12th February, 1953

Dear Mr. Paul Joseph,

- 40 Mr. Dawooda Sowe wants a loan of £300 in goods. He has a good property to mortgage.

(Sgd.) P.S. N'Jie.

Exhibits

12.

Certified True Copy of Proceedings in Civil Suit No.S.13/54 - Paul Joseph Jabre v Dawooda Sowe.

22nd February, 1954

- continued.

Exhibits

14.

Conveyance of
63 Perseverance
Street by
United Africa
Company to
Dawooda Sowe.
29th May, 1941.

14. - CONVEYANCE OF 63 PERSEVERANCE STREET BY
UNITED AFRICA COMPANY LIMITED TO DAWOODA SOWE

THIS INDENTURE is made the Twenty ninth day of May One thousand nine hundred and forty-one Between The United Africa Company Limited of Wellington Street Bathurst in the Colony of Gambia (hereinafter called the Vendors) of the one part and Dawooda Sowe of 26 Lancaster Street in Bathurst aforesaid (hereinafter called the Purchaser) of the other part

10

W H E R E A S by an Indenture of Mortgage dated the 12th day of October 1936 and made between Ederisa N'Jie of the one part and the Vendors of the other part the hereditaments hereinafter described and intended to be hereby assured (hereinafter referred to as the said hereditaments) were conveyed unto and to the use of the Vendors by way of mortgage for securing the principal sum of £45.0.0. together with interest

AND WHEREAS by virtue of the Conveyancing and Law of Property Act 1881 and in the events which have happened the Vendors are now empowered to sell and convey the said hereditaments and give a valid discharge for the purchase money in manner hereinafter expressed

20

AND WHEREAS by the direction of the Vendors the said hereditaments were on the 31st day of March 1941 put up for Sale by Public Auction at 63 Perseverance Street in Bathurst aforesaid and at which sale the Purchaser was the highest bidder for and was declared the Purchaser of the same for the sum of Thirty-five pounds and ten shillings

30

NOW THIS INDENTURE WITNESSETH that in consideration of £35.10.0. paid by the Purchaser to the Vendors (the receipt whereof the Vendors hereby acknowledge) the Vendors as Mortgagees in exercise of the before-mentioned Power of Sale and of all other enabling powers and estates (if any) hereby convey unto the Purchaser ALL THAT lot piece or parcel of land situate at Perseverance Street aforesaid and numbered 63 in the Register and Plan of town lots of land for Bathurst aforesaid together with all buildings fixtures rights easements advantages and appurtenances whatsoever to the said hereditaments appertaining or with the same held or enjoyed or reputed as part thereof or appurtenant thereto TO HOLD the same UNTO AND TO

40

THE USE of the Purchaser in fee simple free from all right and equity of redemption and from all claims whatsoever under the said Indenture of Mortgage.

IN WITNESS whereof Cornelius Leonard Page of 17 Wellington Street Bathurst aforesaid Commercial Agent as Attorney for and on behalf of the Vendors hath hereunto set his hand and seal the day and year first above written

10 SIGNED SEALED AND DELIVERED)
 by the above-named Cornelius) (Sgd.) C.L. Page
 Leonard Page as the Attorney) pp. THE UNITED
 for the above-named United) AFRICA COMPANY
 Africa Company Limited in) LIMITED
 the presence of :-)

(Sgd.) T.K. Laing
 Accountant. The U.A.C. Ltd.,
 Bathurst.

20 This Instrument was proved by the testimony of T.K. Laing of Bathurst to be the deed of Cornelius Leonard Page of Bathurst within-named before me this Sixth day of June in the year One thousand nine hundred and forty-one at 10.15 o'clock in the forenoon.

(Sgd.) J.R. Chow
 for COLONIAL REGISTRAR.

15. - CONVEYANCE OF 63 PERSEVERANCE STREET BY MARIE JOSEPHINE JAGNE TO EDERISA N'JIE.

30 THIS INDENTURE made the Second day of July in the year of our Lord One thousand nine hundred and thirty six between Marie Josephine Jagne of Leman Street Bathurst in the Colony of Gambia of the one part and Ederisa N'Jie of Perseverance Street in Bathurst aforesaid Shopkeeper of the other part
 40 WHEREAS by an Indenture dated the 18th day of November 1933 and made between Albert Geoffrey Borradaile Manson Curator of Intestate Estates of the Colony of the Gambia of the one part and the said Marie Josephine Jagne of the other part the hereditaments hereby assured were granted by the said Albert Geoffrey Borradaile Manson as administrator of the estate of Marian Mendy late of Perseverance Street aforesaid deceased unto and to the use of the said Marie Josephine Jagne her heirs and assigns

Exhibits

14.
 Conveyance of
 63 Perseverance
 Street by
 United Africa
 Company Limited
 to Dawooda Sowe
 29th May, 1941
 - continued.

15.
 Conveyance of
 63 Perseverance
 Street by Marie
 Josephine Jagne
 to Ederisa N'Jie.
 2nd July, 1936.

Exhibits

15.

Conveyance of
63 Perseverance
Street by Marie
Josephine Jagne
to Ederisa N'Jie.
2nd July, 1936
- continued.

in fee simple AND WHEREAS the said Marie Jose-
phine Jagne has agreed with the said Ederisa N'Jie
for the sale to him for the sum of Twenty-five
pounds of the hereditaments hereby assured for an
estate in fee simple in possession free from in-
cumbrances NOW THIS INDENTURE WITNESSETH that in
pursuance of the said agreement and in considera-
tion of the sum of Twenty five pounds before the
execution of these presents paid by the said
Ederisa N'Jie to the said Marie Josephine Jagne
(the receipt of which the said Marie Josephine
Jagne hereby acknowledges) the said Marie Josephine
Jagne AS BENEFICIAL OWNER hereby grants UNTO the
said Ederisa N'Jie ALL THAT lot piece or parcel
of land situate at Perseverance Street aforesaid
and numbered 63 in the register and plan of town
lots of land for Bathurst aforesaid and bounded on
the North East side thereof by Perseverance Street
aforesaid seventy six feet and six inches or
thereabouts on the South East side thereof by a
plot of land in the occupation of one Aminatta
N'Gum sixty one feet or thereabouts on the South
West side thereof by two plots of land in the oc-
cupation of one Ebrimah N'Jie and one Sirra N'Jie
respectively seventy one feet and six inches or
thereabouts and on the North West side thereof by
a plot of land in the occupation of one Abdoulie
Camara sixty one feet or thereabouts or howsoever
otherwise the same may be known bounded described
or distinguished TO HOLD the same hereditaments
and premises UNTO AND TO THE USE of the said Eder-
isa N'Jie in fee simple IN WITNESS whereof the
said Marie Josephine Jagne has hereunto set her
hand and seal the day and year first above-written

10

20

30

(Sgd.) Marie Josephine Jagne
X

SIGNED SEALED AND DELIVERED)
by the above-named Marie)
Josephine Jagne in the pre-)
sence of :-

(Sgd.) N.C.R.Saine
21, Kent St. B'hurst.
Solicitor's Clerk.

40

This Instrument was proved by the testimony of
N.C.R.Saine of 21 Kent Street, Bathurst to be the
deed of Marie Josephine Jagne of Leman Street,
Bathurst within-named before me this Thirteenth
day of July in the year One thousand nine hundred
and thirty six at 9.30 o'clock in the forenoon.

(Sgd.) I.C.C. Rigby.
COLONIAL REGISTRAR.

16. - INDENTURE OF MORTGAGE OF 63 PERSEVERANCE
STREET BETWEEN EDERISA N'JIE and THE UNITED
AFRICA COMPANY LIMITED

Exhibits

16.

Indenture of
Mortgage of 63
Perseverance
Street between
Ederisa N'Jie
and The United
Africa Company
Limited.

12th October,
1936.

THIS INDENTURE is made the 12th day of October
One thousand nine hundred and thirty-six Between
Ederisa N'Jie of 63 Perseverance Street Bathurst
in the Colony of the Gambia Trader (hereinafter
called the Mortgagor which expression shall where
the context so admits include his heirs executors
10 administrators and assigns) of the one part and
The United Africa Company Limited of Wellington
Street Bathurst aforesaid General Merchants (here-
inafter called the Mortgagees which expression
shall where the context so admits include their
assigns) of the other part WHEREAS under and by
virtue of a deed of Conveyance dated the 2nd day
of July 1936 and made between Marie Josephine
Jagne of the one part and the Mortgagor of the
other part the Mortgagor is seised in fee simple
20 in possession free from incumbrances of the here-
ditaments hereinafter described and expressed to
be hereby conveyed (which are hereinafter called
the said hereditaments) AND WHEREAS the Mortgagor
was engaged as shopkeeper by the Mortgagees and
upon an account stated the 9th day of October last
past there is owing to the Mortgagees from the
Mortgagor the sum of £45.0.0. (Forty-five pounds)
AND WHEREAS at the request of the Mortgagor the
30 Mortgagees have agreed to forbear to sue the Mort-
gagor upon having the payment thereof with interest
secured in the manner hereinafter appearing NOW
THIS INDENTURE WITNESSETH that in pursuance of
the said agreement and in consideration of the sum
of Forty-five pounds so owing by the Mortgagor to
the Mortgagees as aforesaid the Mortgagor hereby
covenants with the Mortgagees to pay to them on
the 30th day of April One thousand nine hundred
and thirty-seven the said sum of £45.0.0. with in-
40 terest thereon from the date hereof at the rate of
six pounds per centum per annum and if the said
sum shall not be paid on that day then so long as
any part thereof shall remain owing to pay to the
Mortgagees interest at the rate aforesaid on the
moneys for the time being so remaining owing AND
THIS INDENTURE ALSO WITNESSETH that in further
pursuance of the premises and for the consideration
aforesaid the Mortgagor as Beneficial Owner hereby
grants unto the Mortgagees ALL THAT lot piece or
parcel of land situate at Perseverance Street
50 aforesaid and numbered 63 in the register and plan

Exhibits

16.

Indenture of Mortgage of 63 Perseverance Street between Ederisa N'Jie and The United Africa Company Limited.

12th October, 1936

- continued.

of town lots of land for Bathurst aforesaid together with all buildings fixtures rights easements advantages and appurtenances whatsoever to the said hereditaments appertaining or with the same held or enjoyed or reputed as part thereof or appurtenant thereto TO HOLD the said hereditaments UNTO AND TO THE USE of the Mortgagees in fee simple subject to the proviso for redemption hereinafter contained PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED That if the Borrower shall on the 30th day of April 1937 pay to the Mortgagees the said sum of £45.0.0. with interest thereon in the meantime in accordance with his foregoing covenant in that behalf the Mortgagees at any time thereafter at the request and cost of the Mortgagor will reconvey the mortgaged property to the Mortgagor or as he shall direct and the Mortgagees shall not be answerable for any involuntary loss happening in or about the exercise or execution of any power conferred on them by these presents or by statute or of any trust connected therewith IN WITNESS whereof the said parties hereto have hereunto set their respective hands and seals the day and year first above-written

10

20

SIGNED SEALED AND DELIVERED } (Sgd.) Ederisa N'Jie
by the above-named parties } For THE UNITED
hereto in the presence of:-) AFRICA COMPANY LTD.

Momadou Joof
31 Gloucester St.
Bathurst.
Writing Clerk.

(Sgd.) Lde.V.Bottomley
General Manager

30

This Instrument was proved by the testimony of Momodou Joof of 31, Gloucester St. Bathurst to be the deed of Ederisa N'Jie and Lde V. Bottomley Attorney of the firm of U.A.C. Ltd., both of Bathurst within-named before me this Fourteenth day of October in the year One thousand nine hundred and Thirty six at 1.55 o'clock in the afternoon.

(Sgd.) A.G.B. Manson
COLONIAL REGISTRAR.

17. - INDENTURE OF MORTGAGE OF 62 PERSEVERANCE
STREET BETWEEN PAPA BUNDU CAMARA and DAWOODA
SOWE and ALIEU JENG

Exhibits

17.

THIS INDENTURE is made the Fourteenth day of Janu-
ary One thousand nine hundred and fifty BETWEEN
PAPA BUNDU CAMARA of No.62 Perseverance Street
Bathurst in the Colony of the Gambia Meat Butcher
and DAWOODA SOWE of No.63 Perseverance Street Bat-
hurst aforesaid Meat Butcher (hereinafter called
10 "the Borrowers") of the one part and ALIEU JENG
of No.76 Lancaster Street Bathurst in the Colony
aforesaid Trader (hereinafter called "the Lender")
of the other part

Indenture of
Mortgage of 62
Perseverance
Street between
Papa Bundu
Camara and
Dawooda Sowe
and Alieu Jeng.

14th January,
1950.

WHEREAS under and by virtue of an Indenture
of Conveyance on sale expressed to be made between
the Borrowers bearing date the 23rd day of July
One thousand nine hundred and forty-nine the Bor-
rowers are together seised in fee simple free from
20 incumbrances of the freehold premises and heredita-
ments hereinafter described and expressed to be
hereby conveyed (which are hereinafter called the
said premises and hereditaments) as tenants-in-
common:

AND WHEREAS the Lender has agreed to lend to
the Borrowers the sum of Two hundred pounds sterling
(£200) upon having the repayment thereof secured in
manner hereinafter appearing:

NOW THIS INDENTURE WITNESSETH that in pursu-
ance of the said agreement and in consideration of
30 the sum of Two hundred pounds sterling (£200) this
day paid by the Lender to the Borrowers (the re-
ceipt whereof the Borrowers hereby acknowledge) the
Borrowers hereby covenant with the Lender to repay
to the Lender the said sum of Two hundred pounds
sterling (£200) on the Fourteenth day of April, 1950

NOW THIS INDENTURE ALSO WITNESSETH that in
further pursuance and consideration of the premises
the Borrowers as beneficial owners hereby conveyed
and grant unto the Lender and his heirs ALL the
40 piece or parcel of land situate in Perseverance
Street Bathurst in the Colony of the Gambia and
numbered sixty-two (62) in the Register and Plan
of Town Lots for the Town of Bathurst together with
all buildings fixtures rights easements and advan-
tages and appurtenances whatsoever to the said land
appertaining or with the same held or enjoyed or
reputed as part thereof or appurtenant thereto TO
HOLD the said premises and hereditaments TO THE

Exhibits

17.

Indenture of Mortgage of 62 Perseverance Street between Papa Bundu Camara and Dawooda Sowe and Alieu Jeng.

14th January, 1950

- continued.

USE of the Lender in fee simple subject to the proviso for redemption hereinafter contained

PROVIDED ALWAYS that if the Borrowers shall repay to the Lender the said sum of Two hundred pounds sterling (£200) on the day hereinbefore stipulated then and in such case the Lender shall at the request and cost of the Borrower execute and do all such deeds acts and things as may be necessary for reconveying the said premises and hereditaments unto and to the use of the Borrowers their heirs executors administrators and assigns or as he or they may direct.

10

IN WITNESS whereof the Borrowers have hereunto set their hands and seals the day and year first above written

SIGNED SEALED AND DELIVERED by the)
above-named Papa Bundu Camara after)
the contents of this document have)
been translated into the Wolloff)
language and explained to him and)
he appeared perfectly to understand)
the same in the presence of :-)

Papa Bundu
his
x
mark
Camara

20

(Sgd.) D.M. Kah
17, Anglesea Street,
Bathurst.

SIGNED SEALED AND DELIVERED by the)
above-named Dawooda Sowe after the)
contents of this document have been)
translated into the Wolloff langu-)
age and explained to him and he)
appeared perfectly to understand)
the same in the presence of :-)

(Sgd.) D.O.
Sowe.

30

(Sgd.) D.M.Kah,
17, Anglesea Street,
Bathurst.

This Instrument was proved by the testimony of D.M. Kah of 17, Anglesea Street Bathurst to be the deeds of P.B. Camara of 62 Perseverance Street and D.O. Sowe of 63 Perseverance Street Bathurst within-named before me this Sixteenth day of February in the year One thousand nine hundred and fifty at 2 o'clock in the afternoon.

40

(Sgd.) M. Messr Bennetts
COLONIAL REGISTRAR.

18. -- INDENTURE OF MORTGAGE OF 63 PERSEVERANCE
STREET BETWEEN DAWOODA SOWE and OUSMAN JENG.

Exhibits

18.

THIS INDENTURE is made the Twenty eighth day of
December 1949 BETWEEN Dawooda Sowe of No. 63
Perseverance Street Bathurst in the Colony of the
Gambia Meat Butcher (hereinafter called "the
Mortgagor") of the one part and Ousman Jeng of No.
76 Lancaster Street Bathurst aforesaid Trader
(hereinafter called "the Mortgagee") of the other
10 part WHEREAS under and by virtue of a conveyance
on sale bearing date the 29th day of May 1941 and
made between the United Africa Company Limited and
the Mortgagor the Mortgagor is seised in fee simple
free from incumbrances of the freehold premises
and hereditaments hereinafter described and ex-
pressed to be hereby conveyed: AND WHEREAS the
Mortgagor is indebted to the Mortgagee in the sum
of £200 (Two hundred pounds) and has agreed with
the Mortgagee to secure the repayment thereof to
20 him in manner hereinafter provided NOW THIS
INDENTURE WITNESSETH that in consideration of the
said sum of £200 now owing by the Mortgagor to the
Mortgagee and in pursuance of the said agreement
the Mortgagor hereby covenants with the Mortgagee
to repay to him the said sum of £200 on the 31st
day of March 1950 AND THIS INDENTURE ALSO WIT-
NESSETH that in further pursuance and in consid-
eration of the premises the Mortgagor as beneficial
owner thereof conveys and grants to the Mortgagee
30 his heirs and assigns ALL THAT piece or parcel
of land situate in Perseverance Street Bathurst in
the Colony of the Gambia and numbered sixty-three
(63) in the Register and Plan of Town lots for the
town of Bathurst aforesaid together with all build-
ings fixtures rights easements and appurtenances
whatsoever to the said piece or parcel of land be-
longing or appertaining TO HOLD the said premises
and hereditaments UNTO AND TO THE USE of the
40 Mortgagee his heirs and assigns in fee simple sub-
ject to the proviso hereinafter contained PROVIDED
ALWAYS that if the Mortgagor shall on or before
the 31st day of March, 1950 repay to the Mortgagee
the said sum of £200 then and in such case the
Mortgagee shall at the request and cost of the
Mortgagor do all such deeds and acts and things as
may be necessary for reconveying the said premises
unto and to the use of the Mortgagee his heirs and
assigns AND that the Mortgagee shall not be ans-
werable for any involuntary loss happening in or
50 about the exercise of any power conferred on him

Indenture of
Mortgage of 63
Perseverance
Street between
Dawooda Sowe
and Ousman Jeng.
28th December,
1949.

Exhibits

18.

Indenture of
Mortgage of 63
Perseverance
Street between
Dawooda Sowe
and Ousman Jeng.
28th December,
1949
- continued.

by these presents or by statute or ordinance or of
any trust connected therewith

IN WITNESS whereof the said Dawooda Sowe has here-
unto set his hand and seal the day and year first
above written.

SIGNED SEALED AND DELIVERED by)
the said Dawooda Sowe after the)
contents of this deed have been) (Sgd.) D.O.Sowe
translated into the Woloff)
language and explained to him)
in the presence of :-

(Sgd.) D.M. Kah,
17, Anglesea Street,
Bathurst.
Writing Clerk.

This Instrument was proved by the testimony
of D.M. Kah of 17 Anglesea Street to be the
deed of Dawooda Sowe of 63, Perseverance
Street Bathurst within-named before me this
Twentieth day of January in the year One
thousand nine hundred and fifty at 9.45
o'clock in the forenoon

(Sgd.) ? ? ?
For Colonial Registrar.

10

20

19.

Cash debit of
£400 to Ousman
Jeng by S.Madi.
16th November,
1950.

19. - CASH DEBIT OF £400 to OUSMAN JENG BY S. MADI

Cables: CASH DEBIT 11, RUSSELL STREET
"Madi, Bathurst" BATHURST.
16/11/50.

Mr. Ousman Jeng, Berrending.

BY S. MADI.

Cash supplied for the purchase
of property at No. 63 £400 - -
Perseverance St. Bathurst £400 - -
(Four hundred pounds)

(Sgd.) Ousman Jeng.

30

20. -- RECEIPT NO.188 FOR £350 GIVEN TO
OUSMAN JENG by P.S. N'JIE

Exhibits

20.

No.188 17th November, 1950
Received from Mr.Ousman Jeng the sum of Three hundred and fifty Pounds, deposit for purchase of No. 63 Perseverance Street Bathurst.
£350. (Sgd.) P.S. N'Jie.

Receipt No.188 for £350 given to Ousman Jeng by P.S.N'Jie.
17th November, 1950.

21. - STATEMENT OF ALAGI OUSMAN JENG.

21.

25th January, 1956. At Berending

10 Alagi Ousman Jeng, states -

Statement of Alagi Ousman Jeng.

It must have been about 1949 to 1950 that Dawooda Sowe came to me at Berending and asked me to lend him £200. I agreed. I gave him a little more than £200 and sent one of my boys with him to P.S. N'Jie who is my solicitor for him to prepare a deed of mortgage. This was done and the papers were sent back to me for signature. It was brought to me by L.A. Coron. I signed it and sent it back to P.S. N'Jie.

25th January, 1956.

20 Not very long after Dawooda Sowe paid me back in full. The money was paid to P.S. N'Jie. Then the money was paid over to me.

About a year or some months afterwards Dawooda Sowe came to me again and said he wanted another loan. I told P.S. N'Jie to prepare a deed of mortgage. He did so. I was then in Bathurst. I saw the deed and signed it.

30 I am quite sure that the first deed of mortgage made in 1949 or 1950 had been reconveyed back to Dawooda Sowe after he repaid me the £200 on the first loan. This was my instruction to my solicitor. I believe I remember signing the reconveyance.

40 When I made the second loan to Dawooda Sowe the amount loaned to him was £400. I handed this sum in cash to P.S. N'Jie with instructions that he hand it to Dawooda Sowe. I have not recovered anything from this loan. He has never paid me anything at all up to now. I have been very patient with him and I have never taken him to Court. He has begged me not to do so.

As far as I know the deed of conveyance in respect of the second loan of £400 is in the possession of P.S. N'Jie.

Exhibits

21.

Statement of
Alagi Ousman
Jeng.

25th January,
1956

- continued.

About March or April of 1955 before Henry Madi went to England I went to see him to ask him to get this title deed back from P.S. N'Jie for me. Both I and P.S. N'Jie went together to Henry Madi. P.S. N'Jie first told me that he could not find the papers. Later during the last rainy season he told me that the papers were all with Henry Madi. I have been to Madi's but he tells me he has searched for them and has not found them.

10

Before Henry Madi came back from England I asked Joe and Robert Madi to search for the papers because P.S. N'Jie had told me the papers were with Madi's. Both the Madis told me they had searched and could not find them.

The copy of the deed now shown me is for £360. This must be the second one.

(Sgd.) Elhaji Ousman Jeng.

22.

Book of Stopped
and returned
Cheques of the
Bank of West
Africa.

22. - BOOK OF STOPPED AND RETURNED CHEQUES OF THE
BANK OF WEST AFRICA

20

NOT REPRODUCED

23.

Un-numbered
receipt given
to Salim Hamed
by P.S. N'Jie.
17th February,
1958.

23. - UN-NUMBERED RECEIPT GIVEN TO SALIM HAMED
BY P.S. N'JIE

No. 17th February, 1958
Received from Mr. Salim Hamed the sum of Two Hun-
dred Pounds to be paid to Etablissements Vezia
£200 (Sgd.) P.S. N'Jie

~~Cancelled~~

24.

Telegram No.203
from Salim
Hamed to Farid
Massry.

24. - TELEGRAM NO.203 FROM SALIM HAMED
TO FARID MASSRY

At 1625 m A 1130 Georgetown (15) No.203
From VSW 21 30
F. Massry 61 Wellington
Street, Bathurst
GO TO NJIE RECEIVE £200 FROM HIM
SALIM

25. - ACCOUNTS OF GENEVIEVE BRAHIM AND HER DEBTORSExhibits

		KELUNGLANG SABALLY	
		200.0.0 P.S. N'Jie	
		<u>128.1.0</u> Dep. in Ct.	
		328.1.0	
		<u>15.0.0</u> Rice for self	
		343.1.0	
	428.17.0	Original sum	
	13.13.0	Cost	
10	<u>20.11.0</u>	Cost execution	20.11.
	463.1.0		£ 13.13.
	<u>343.1.0</u>		<u>87.</u>
	120.0.0		£ 121. 4.0
	Ansu Camara	10.19.0	
	do.	<u>18. 0.0</u>	
		28.19.0	
	Landin	<u>7. 0.0</u>	
		35.19.0	
		<u>228. 0.0</u>	
20	87.0.0	263.19.0	
		<u>57.10.0</u>	
		206. 9.0	

25.

Accounts of
Genevieve
Brahim and
her debtors.

1954.

26. - SAME AS EXHIBIT 11

26.

Same as Exhibit
11.27. - GAMBIA GOVERNMENT OFFICIAL RECEIPT NO.3204

27.

Madam Antoine Brahim vs. K. Sabally
Gambia Government Official Receipt No.32407 (sic)
Department Judicial 1.6.1954.
Received from The Sheriff the sum of Twenty eight
pounds one shilling being amount deposited in
favour of Plaintiff
Deposit (Sgd.) J.T. Roberts

Gambia
Government
Official
Receipt No.
3204 (sic)
1st June, 1954.

- Exhibits
28. 28. -- GAMBIA GOVERNMENT OFFICIAL RECEIPT NO.3371
 Genvin Brahim vs. K. Sabally.
 Gambia Government Official Receipt No.3371 ??
 Department Judicial 24.6.1954
 Received from The Sheriff the sum of One hundred pounds being amount deposited in favour of Plaintiff.
 £100.0.0.
 Deposit (Sgd.) J.T. Roberts.
-
29. 29. -- GAMBIA GOVERNMENT OFFICIAL RECEIPT NO.337?
 Geneive Brahim vs. Ansu Camara 10
 Gambia Government Official Receipt No.337?
 Department Judicial 24.6.5 ?
 Received from The Sheriff the sum of Eighteen Pounds being amount deposited in favour of Plaintiff.
 £18.
 Deposits (Sgd.) J.T. Roberts.
-
30. 30. -- GAMBIA GOVERNMENT OFFICIAL RECEIPT NO.284?
 Supreme Court of the Gambia
 Genevieve Brahim vs. Ansu Camara
 Gambia Government Official Receipt No.284? 20
 Department Judicial 23.4.54.
 Received from The Sheriff the sum of Ten Pounds nineteen shillings being amount deposited in favour of Plaintiff.
 £10.19.0.
 Deposits (Sgd.) J.T. Roberts
-
31. 31. - LETTER, P.S.N'JIE TO CHIEF JUSTICE
 Letter, P.S.N'Jie to Chief Justice.
 17th August, 1958.
 Sir,
 Kindly excuse the use of my handwriting.
 After six years of a busy life without leave of absence, I stay in the Courts wherever I go.
 I have noted that the hearing of the matter 30
 17th August, 1958

before the Court will take place (at Bathurst) on the 15th day of September, 1958, and I shall be present, God being willing.

Should there be any urgency about the hearing my whereabouts will be as follows:-

(1) Via Manhiaveli 1
ALESSANDRIA,
ITALIA (Italy),

till August 20th, 1958

10 (Sorry for this but the messenger leaves now and I have no other paper

or
c/o Hans-Gert Talkenbog,
c/o S. Fischer Verlag,
Frankfurt/Main
Germany;

for a week to a fortnight thereafter.

20 My London address would, however, be preferable to me as any mail is easily redirected to the above addresses and any undeliverable mail would be returned to me and I might be there then.

I am, Sir,
Yours faithfully,
(Sgd.) P.S.N'Jie.

32. - TELEGRAM P.S. N'JIE TO CHIEF JUSTICE

AWB44 IRS68 L O N D O N 11 28 =
GIT = CHIEF JUSTICE BATHURST =
I OBJECT TO HEARING DURING VACATION =
NJIE.

32.

Telegram
P.S.N'Jie to
Chief Justice.
28th August,
1958.

33. - TELEGRAM CHIEF JUSTICE TO P.S. N'JIE

30 To PIERRE SARR N'JIE X OVERSEAS LEAGUE ST.JAMES'S
LONDON
YOUR ATTENDANCE HEARING FIFTEENTH SEPTEMBER PEREMP-
TORY X ARRANGEMENTS FOR JUDGE FROM NIGERIA FINAL-
ISED X YOUR SECURITY LIABLE FORFEITURE X WIRE
REPLY X

33.

Telegram
Chief Justice
to P.S. N'Jie.
30th August,
1958.

CHIEF JUSTICE

Exhibits

31.

Letter
P.S.N'Jie to
Chief Justice.
17th August,
1958
- continued.

Exhibits34. - TELEGRAM P.S. N'JIE TO CHIEF JUSTICE

34.
Telegram
P.S.N'Jie to
Chief Justice.
3rd September,
1958.

AWB50 IRS17 LONDON 26 4 135 =
IT = CHIEF JUSTICE BATHURST =
YOUR MESSAGE AUGUST 30 IMPOSSIBLE ATTEND HEARING
SEPTEMBER FIFTEENTH DO NOT UNDERSTAND REFERENCE
TO DEPOSIT REGRET DELAY REPLY DUE ABSENCE LONDON =
NJIE

35.

35. - TELEGRAM CHIEF JUSTICE TO P.S. N'JIE

Telegram
Chief Justice
to P.S. N'Jie.
11th September,
1958.

To PIERRE SARR N'JIE X OVERSEAS LEAGUE ST.JAMES'S
LONDON
REPEAT: JUSTICE ABBOTT, FEDERAL SUPREME COURT LAGOS
JUSTICE ABBOTT SITTING 15th SEPTEMBER X WILLING
CONSIDER A DAY OR TWO ADJOURNMENT X OTHERWISE
HEARING PROCEEDING X PLEASE ATTEND X
CHIEF JUSTICE

10

36.

36. - LETTER P.S. N'JIE TO CHIEF JUSTICE

Letter P.S.N'Jie
to Chief Justice
2nd September,
1958.

2nd September, 1958.
Sir,

Overseas League,
Park Place,
St. James's
London, S.W.1.
England.

20

Re Rule 7

Yesterday I received a message from Bathurst
by telephone about the hearing of the application
herein.

It is impossible now for counsel to appear at
Bathurst on September 15th. Work on the context
of the Affidavit (in support of the Notice of Mo-
tion) alone took the part of a month between my
Solicitors and myself and between themselves and
junior counsel. Senior counsel may complete con-
sideration of the application itself by Thursday
or Friday of this week. Junior counsel already
thought I was unduly rushing an important matter.
The affidavit is not helpful: take, for instance
paragraph 4(h) thereof. I don't know of any such
suit with which Genevieve Abraham has been concerned,

30

and the document referred to (suit No.S/97/1958) is not been exhibited and the documents referred to in paragraph 4(a) too are not exhibited. It was only yesterday that I received photograph copies of some cheques and receipts and I am awaiting receipts of the records of the said proceedings.

10 If the Court wishes to proceed in my absence I suppose it can, but I do not see how it can do so. If it will adjourn the hearing of the Notice of Motion I should be glad to know the date to which it will adjourn the hearing.

20 In England any such proceedings against a solicitor made for hearing during any vacation of the High Court would be dismissed, and any such proceedings commenced before any vacation for hearing after such vacation would equally be dismissed. The proceedings, which must give the solicitor 14 days' notice, must be commenced and concluded before the commencement of a vacation of the Court. This pre- and post Judicature legal provision is retained in the present practice of the High Court here as even the authorities show. I realise that we talk of two clear days for ordinary notices of motion.

I am, Sir,
Yours faithfully,
(Sgd.) P.S.N'Jie.

The Chief Justice,
Bathurst.

Exhibits

36.

Letter
P.S.N'Jie to
Chief Justice.

2nd September,
1958
- continued.

30 37. LETTER P.S. N'JIE TO CHIEF JUSTICE

37.

Original

Overseas League,
Park Place,
St. James's,
London, S.W.1.
4th September, 1958.

Letter
P.S. N'Jie to
Chief Justice.
4th September,
1958.

Sir,

Re Rule 7

I confirm my cablegram sent yesterday as follows :-

40 "CHIEF JUSTICE BATHURST
"YOURS MESSAGE AUGUST 30
"IMPOSSIBLE ATTEND SEPTEMBER FIFTEENTH
"DO NOT UNDERSTAND REFERENCE TO
"DEPOSIT REGRET DELAY REPLY DUE
"ABSENCE LONDON
NJIE"

Exhibits

37.

Letter
P.S. N'Jie to
Chief Justice.
4th September,
1958
- continued.

The Court had more than 15 (fifteen) days in which to act to prevent Judge Abbott coming. I am surprised at the insistence on my attendance on September 15th in view of my clear objection. The advice of my solicitor's and counsel was to object by cablegram to hearing during vacation which I did as soon as I received the advice. Their further advice is that if the Court should proceed in my absence in spite of my objection I should appeal to the Court of Appeal, which advice I intend to follow.

10

Incidentally, I do not understand the reference to deposit in your cablegram. I did not make any, and, of course, I would not have been required to make one in any civil application of this nature; and I presume that counsel cannot have got anyone else to do so. Counsel of course, cannot according to law, go surety under any circumstances.

I am, Sir,
Yours faithfully,
(Sgd.) P.S. N'Jie.

20

The Chief Justice,
Bathurst.

38.

Letter
P.S.N'Jie to
Chief Justice.
12th September,
1958.

38. - LETTER P.S. N'JIE TO CHIEF JUSTICE

Overseas League,
Park Place,
St. James's,
London, S.W.1.
12th September, 1958.

COPY to ATTORNEY GENERAL, CROWN LAW OFFICE,
BATHURST.

30

Sir,

Re ATTORNEY GENERAL ats MYSELF.

On August 28th, 1958, I sent you a cablegram objecting to this matter being heard in vacation as I am clearly entitled to do under the provisions of Schedule I, Order IV, Rules 5 and 6 of the Rules of the Supreme Court, 1928. I have received no reply to that cablegram, but on August 30th, 1958, I received a cablegram from you reading as follows:-

"PIERRE SARR N'JIE OVERSEAS LEAGUE ST.JAMES
"LONDON -
"YOUR ATTENDANCE HEARING FIFTEEN SEPTEMBER

40

"PEREMPTORY X ARRANGEMENTS FOR JUDGE FROM
 "NIGERIA FINALISED X YOUR SECURITY LIABLE
 "FURNITURE X WIRE REPLY

Exhibits

38.

"CHIEF JUSTICE"

Letter
 P.S. N'Jie to
 Chief Justice.

and I cabled you in reply as follows :-

12th September,
 1958
 -- continued.

10 "CHIEF JUSTICE BATHURST
 "YOUR MESSAGE AUGUST 30 IMPOSSIBLE ATTEND
 "SEPTEMBER FIFTEENTH DO NOT UNDERSTAND REFER-
 "ENCE TO DEPOSIT
 "REGRET DELAY REPLY DUE ABSENCE LONDON

"NJIE"

I then followed this up with a letter dated Sep-
 tember 4th 1958, and addressed to you as follows:-

Sir,

Re Rule 7

"I confirm my cablegram sent yesterday as
 follows:-

20 "CHIEF JUSTICE BATHURST
 "YOUR MESSAGE AUGUST 30 IMPOSSIBLE
 "ATTEND SEPTEMBER FIFTEENTH DO NOT
 "UNDERSTAND REFERENCE TO DEPOSIT RE-
 "GRET DELAY REPLY DUE ABSENCE LONDON
 "NJIE"

"The Court had more than 15 (fifteen) days
 "in which to act to prevent Judge Abbott com-
 "ing, I am surprised at the apparent insis-
 "tence on my attendance on September 15th in
 "view of my clear objection.

30 "I do not understand the reference to de-
 "posit in your cablegram. I did not make any
 "and I would not have been required to make
 "any in a civil application of this nature;
 "and I presume that counsel cannot have got
 "anyone else to do so. Counsel, of course,
 "cannot, according to law, go surety under
 "any circ umstances.

I am, Sir,
 Yours faithfully,

40 "The Chief Justice,
 "Bathurst,
 "Gambia.

Then on September 11th, 1958, I received from you
 a cablegram reading as follows:-

Exhibits

38.

Letter
P.S.N'Jie to
Chief Justice.

12th September,
1958
- continued.

"PIERRE SARR N'JIE OVERSEAS LEAGUE ST. JAMES
"LONDON
"REPEAT JUSTICE ABBOTT FEDERAL SUPREME COURT
"LAGOS JUSTICE ABBOTT SITTING 15th SEPTEMBER
"WILLING CONSIDER A DAY OR TWO ADJOURNMENT X
"OTHERWISE HEARING PROCEEDING X PLEASE ATTEND
"CHIEF JUSTICE"

and I have today sent you a cablegram in reply as follows:-

"CHIEF JUSTICE BATHURST
"CABLE RECEIVED I OBJECT TO HEARING IN VACATION
"AND WILL RELY SCHEDULE ONE ORDER FOUR RULES
"FIVE AND SIX STOP PLEASE CONFIRM CASE WILL
"NOT BE EFFECTIVE
"NJIESOL"

10

This is an extremely serious matter for me in view of the gravity of the allegations which are being made, and in these circumstances I must strongly protest at the irregular manner in which the proceedings are being conducted. I have not been served with any summons under Rule 6 (quoted above) asking for an order for the hearing of this matter in vacation and even if I had been served with such a summons I should have strongly opposed it having regard to the provisions of the proviso to Rule 6. There is no urgent need for the trial or hearing of this cause or matter during the vacation. The Court has no power to order trial of a civil matter during vacation unless the Chief Justice is satisfied that there is urgent need. There is no case of urgency herein. The term "urgent need" cannot mean the convenience of the Chief or Deputy Chief Justice; it can only mean urgent need in the interest of justice. This is in effect the trial of an action and is included in the expression "cause or matter" (please see page 31 of Volume I). I must make it quite clear that I cannot consent to this matter being heard in vacation. I am now in England and do not expect to be back in Bathurst before October 15th which will still be before the commencement of the next term. I would respectfully suggest that the hearing of this matter be fixed for a date in November next (1958).

20

30

40

I should be grateful if you would kindly let me have your confirmation that there would be no hearing of this matter during this long vacation.

I should also be grateful if you would kindly

let the Attorney General have a copy of the correspondence including cablegrams between you and me.

I am, Sir,
Yours faithfully,
(Sgd.) P.S. N'Jie.

The Honourable the Chief Justice,
The Supreme Court, Bathurst.

Exhibits

38.

Letter
P.S.N'Jie to
Chief Justice.

12th September,
1958

-- continued.

39. - LETTER P.S.N'JIE TO ATTORNEY GENERAL

39.

10

Overseas League,
St. James's,
London, S.W.1.
25th July, 1958.

Letter
P.S.N'Jie to
Attorney
General.

Sir,

25th July, 1958.

20

I shall be glad if you will be good enough to inform me of the date in which it will be possible to hold the enquiry "into my conduct". I had an idea that November was fixed but as I am anxious to finish with it I should like it held as early as possible, say, first week of September next. I don't think it would take more than two - a Thursday and a Friday - at the outside. I believed you or rather Mr. S.A. N'Jie agreed to an early date.

After this week I shall be in the country and after Saturday of next week I shall be in France and Italy for a fortnight.

Yours faithfully,
(Sgd.) P.S. N'Jie.

40. - RECORD OF PROCEEDINGS IN CIVIL APPEAL
NO.W.A.C.A.2/57 - DAWOODA SOWE v. ALHADJI
OUSMAN JENG & ALHADJI B.S.O. JENG

40.

30

IN THE WEST AFRICAN COURT OF APPEAL

W.A.C.A. No.2/1957.

DAWOODA SOWE versus ALHADJI
OUSMAN JENG DEFTS.

and

LAHADJI BABOUCAR O.S. JENG

Betts for app. Forster for 1st resp.

P.S. N'Jie for 2nd resp.

Record of Pro-
ceedings in
Civil Appeal
No.W.A.C.A.2/57
- Dawooda Sowe
v. Alhadji
Ousman Jeng &
Alhadji B.S.O.
Jeng.

Exhibits

40.

Record of Proceedings in
Civil Appeal
No.W.A.C.A.2/57
-- Dawooda Sowe
v. Alhadji
Ousman Jeng &
Alhadji B.S.O.
Jeng.
- continued.

Betts adtl. grounds to be numbered 3(10), (11), (12).

(1) to (5) plttf. objected to P.S. N'Jie appearing; p.8 bottom and p.9 top. put at p.56, final para. There are features needing invtion: re Pierre N'Jie, Headings show he took material part throughout and would have had to give evidence. He should not have accepted a brief.

Court might have exercised inherent jurisdiction to call him as a witness. 10

Halsbury 3rd ed. Vol.3, p.68 on Barristers, para. 102. Much peculiarity within his knowledge. He appeared as counsel; he did not give evidence. See p.51, l.24 and N'Jie not going into box.

Pleading of 2nd deft.

Adjourned to 9 a.m. tomorrow.

(Sgd.) V.R. Bairamian.

2/57. Sowe v Jeng & Another.

Betts for appellant. I agree that the judgment be set aside, that the case should go for re-trial, that P.J. Jabre and the U.A.C. be joined, that there shall be no order as to costs of appeal, that the costs incurred below shall abide the event, so far as the present parties are concerned, that the pleadings of the present parties shall stand but without prejudice to the trial court's power of amendment where it thinks fit, and that the Plaintiff shall apply for adding P.J. Jabre and the U.A.C. by the 6th March, 1958. 20

Forster for respondent. I agrees 30

P.S. N'Jie for respondent. II agrees.

Judgment set aside an order made for retrial on the above terms (to be embodied in the order when drawn up).

(Sgd.) V.R. Bairamian, Ag.P.

(Sgd.) C.G. Ames

(Sgd.) R.B. Marke.

CERTIFIED TRUE COPY

(Sgd.) A.B. N'Jie
Registrar. 40

17/9/58.

41. - REPAYMENT OF DEPOSIT VOUCHER NO. 7865 MADE
PAYABLE TO P.S. N'JIE

Exhibits

41.

Madam G.Brahim vs. Camara
No.7865 (Intld.) N.H.A. $\frac{28472}{23/4/54} = \text{£}10.19. -$
GAMBIA (Intld.) N.H.A. $\frac{33709}{24/6/54} = \text{£}18. --. -$
Payable to Mr.P.S.N'Jie $\text{£}28.19. -$

Repayment of
Deposit Voucher
No.7865 made
payable to
P.S. N'Jie.
9th July, 1954.

REPAYMENT OF DEPOSIT

Deposit Account Clerk of Courts

10

Particulars amount deposited in favour of Plain-
tiff.

Amount of repayment twenty-eight pounds nineteen
shillings.

Certified Correct (Sgd.) A.B. N'Jie

Authority filed Clerk of Courts

In Court Date 7/7/54

I hereby acknowledge the receipt of £28.19.0d.
(twenty-eight pounds nineteen shillings) as above.

Signed M.N'Jie Witness

Date 9/7/54

20

42. - REPAYMENT OF DEPOSIT VOUCHER NO.7866 DATED
9.9.54 MADE PAYABLE TO P.S. N'JIE

42.

Madam G.Brahim vs. K. Sabally
No.7866 (Intld.) N.H.A. $\frac{34497}{1/6/54} = \text{£}28.1. -$
GAMBIA (Intld.) N.H.A. $\frac{3371}{24/6/54} = \text{£}100.--. -$
Payable to P.S. N'Jie. $\text{£}128.1. -$

Repayment of
Deposit Voucher
No.7866 made
payable to
P.S. N'Jie.
9th September
1954.

REPAYMENT OF DEPOSIT

Deposit Account Clerk of Courts

30

Particulars amount deposited in favour of Plaintiff

Amount of repayment one hundred and twenty-eight
pounds one shilling.

Certified correct (Sgd.) A.B.N'Jie
Clerk of Courts

Date 7/7/54.

I hereby acknowledge the receipt of £128.1.0. (One
hundred and twenty eight pounds one shilling)
as above.

Signed M. N'Jie Witness.
9/9/54.