to mean children and "where the gift is to the families of named persons the parents are excluded."

Reading the devise as suggested, the devise will be governed by the case of *Lucas* v. *Goldsmid* (3), where it is stated by Sir John Romilly, M.R. (29 Beav. at 660; 54 E.R. at 784):

> "There is no case relating to real estate in which the word 'family' has not been held to imply inheritance or that species of succession which belongs to inheritance. If a man says, 'I desire that my estate shall belong to the family of A.B.,' the meaning is, that the property shall be handed down from father to son . . . . The testator does not say that they are to take for their lives, but that the property 'shall be divided equally between my two sons, who shall enjoy the interest thereof.'"

Under the circumstances of this will I am of opinion upon the construction of the devise of para. 1 that the two sons, Alimamy Janneh and Mormodu Janneh, take this house and premises at Jenkins Street as tenants in common.

Order accordingly.

LOKO v. PAULINE AND COMPANY

SUPREME COURT (Beoku-Betts, J.): March 14th, 1952
(Civil Case No. 234/51)

[1] **Bailment—hire of chattels—obligations of hirer—hirer bound to exercise reasonable care—injury to chattel during hire raises prima facie presumption against hirer:** The fact that a chattel is injured whilst in the hirer's possession raises a *prima facie* presumption that the hirer is responsible for such injury (page 209, lines 2–4).

[2] **Bailment—hire of chattels—obligations of hirer—hirer bound to exercise reasonable care—liable for employees' acts in course of employment—liability extends to operative of chattel not employed, but controlled, by hirer:** Under a hirer's duty to take reasonable care of the chattel hired, he is always liable for the acts of his employees in the course of their employment; and this liability extends to the acts of persons not employed by the owner but supplied to operate the hired chattel if they are under the hirer's control, and especially if they are paid by the hirer (page 209, lines 13–14; page 210, lines 3–27).

[3] **Bailment—hire of chattels—obligations of hirer—hirer bound to exercise reasonable care—must restore chattel to owner in original condition or show reasonable care exercised:** In a contract of hiring,

the hirer is under an obligation to restore the chattel at the end of the bailment in as good condition as he received it or, if he cannot do that, to show he exercised reasonable care in the keeping of it (page 209, lines 9–13).

[4] **Bailment—hire of chattels—obligations of hirer—hirer bound to exercise reasonable care—not liable for loss unless caused by own or employees' negligence:** In a contract of hire for reward, the hirer is under an obligation to take reasonable care only of the chattel hired, and is not liable for loss or injury happening to it unless caused by his, or his employees', negligence (page 208, line 29—page 209, line 1; page 209, lines 28–34).

[5] **Employment—third parties—employer's liability to third party in contract—liability for acts within course of employment—liability of hirer of chattel extends to operative of chattel not employed, but controlled, by hirer:** See [2] and [4] above.

[6] **Evidence—presumptions—presumptions of fact—res ipsa loquitur—hirer of chattel prima facie presumed responsible for injury when in his possession:** See [1] above.

The plaintiff brought an action to recover two boats which had been hired to the defendants, or their value, and also arrears and loss of rent.

The plaintiff hired out two boats to the defendant company. Although some crew members were found by the plaintiff, the crews were under the control and management of the defendants, who also paid their wages. The defendants paid the rents due on both boats until one of them was lost. The defendants then terminated the hire of the other boat and required the plaintiff to remove it. Before it could be removed it was damaged by stones falling from a nearby crane which was being operated by employees of the defendants, and was then also lost. The plaintiff brought the present proceedings to recover the boats or the value of the boats, and also arrears and loss of rent.

The defendants admitted hiring the boats, but contended that one of them was in bad condition and was removed by the plaintiff to be repaired and never returned. The other boat, they maintained, was damaged accidentally after the agreement to hire had been terminated by them. They denied owing any arrears of rent, and contended that they had in fact been overpaying the plaintiff, since they only had possession of one boat, and were paying rent for two.

Cases referred to:

(1) *Bull & Co.* v. *West African Shipping Agency & Lighterage Co.*, [1927] A.C. 686; (1927), 137 L.T. 498, applied.

(2) *Coggs* v. *Bernard* (1703), 2 Ld. Raym. 909; 92 E.R. 107, applied.
(3) *Dollar* v. *Greenfield*, The Times, May 19th, 1905, applied.
(4) *Donovan* v. *Laing, Wharton & Down Constr. Syndicate Ltd.*, [1893] 1 Q.B. 629; (1893), 68 L.T. 512, applied.
(5) *Fawkes* v. *Poulson & Son* (1892), 8 T.L.R. 725, distinguished.

Taylor-Kamara for the plaintiff;
Kempson for the defendants.

BEOKU-BETTS, J.:

The plaintiff's claim is for the return of two boats supplied to the defendant on hire or their value (£105. 15s. 0d.), and for arrears due to the plaintiff in respect of the said hire for the months of March and April 1950, and loss of rent for May and June.

The particulars are the following:

	£.	s.	d.
Cost of first boat	57	7	6
Cost of second boat	47	7	6
Arrears from March 16th, 1951 to April 30th, 1951	15	0	0
Loss of rent for May and June	20	0	0
Total claim as amended	£139.	15s.	0d.

The defendants admit that they hired the boats from the plaintiff but say that one of the boats was in bad condition on the hire and leaked, and that the plaintiff's servants removed it for repairs and never returned it to the defendants; that the plaintiff had been fully paid for the hire of the boats and in fact was overpaid; that the defendants terminated the hire of the remaining boat on April 9th, 1951, and requested the plaintiff to remove it but the plaintiff failed to do so; and that the defendants kept the remaining boat in the safest possible position but it was damaged accidentally.

I do not consider it necessary to review the evidence at any length. It seems sufficient for me to record my findings on the facts and then consider the legal position resulting from the facts as I find them.

I am satisfied that the plaintiff hired out the two boats to the defendants for reward at £5 per month each. I am satisfied that the defendants took possession of these boats on the agreement for hire. I am also satisfied that the defendants agreed to be

responsible for the crew of the boats and paid their wages through the plaintiff for convenience, but that the crew remained under the control of the defendants and the plaintiff did not interfere with them in the management or use of the boats. The defendants were completely in control of them. While one of the boats was under the control of the defendants it was lost. I do not believe the evidence of the first defence witness, Gill, that one boat was leaking from the beginning. If that were so, I do not believe the defendants would have agreed to accept it, knowing the purpose for which it was required. The defendants would not have paid full rent for it if the boat was leaking. I do not believe the boat was taken away by the plaintiff or any of his servants for repairs. I cannot accept the evidence of Gill that he saw the boat "going towards" Cline Town, and that when he asked the captain where it was being taken to he said for repairs. He said he never saw the boat again. In my opinion the defendants, as persons who hired the boat for reward, should have followed to discover where the boat ultimately got to and should have seen that whoever took it should have taken it back.

As regards the other boat, it was with the defendants. The defendants terminated the hire forthwith on April 9th, 1951, and required the plaintiff to remove it. Before the plaintiff did so, it was damaged while servants of the defendants were working a crane and stones or a stone from a skip damaged the boat. No evidence was given as to the condition of the boat after it was damaged or what happened to it or where it is at the present day. One thing is certain, that the plaintiff never got it back.

The questions of law which I have to consider before coming to a conclusion are the following:

1. What was the responsibility of the defendants when they accepted the boats on hire for reward?

2. What was the legal position when although two members of the crew of each boat were found by the plaintiff, the defendants were liable for their wages and they were in control of them?

3. What was the position when the first boat went missing?

4. What was the position when the second boat got damaged while with the defendants?

I propose to consider the first, third and fourth questions together. The contract was one of hire for reward, and the defendants as hirers are under an obligation to take reasonable care only of the goods, and they would not be liable for loss or injury,

unless caused by their negligence or that of their servants: see 1 *Halsbury's Laws of England*, 2nd ed., at 759. The fact that the chattel is injured whilst in the hirer's possession raises a *prima facie* presumption against the hirer. In the leading case of *Coggs* v. *Bernard* (2), it was decided that if goods are let out for reward, the hirer is bound to use the utmost diligence such as the most diligent father of a family would, and if he uses that he shall be discharged.

In *Dollar* v. *Greenfield* (3), it was decided that in a contract of hiring there is an obligation upon the hirer to restore the chattel at the end of the bailment in as good condition as he received it, or, if he cannot do that, to show that he exercised reasonable care in the keeping of the chattel. A hirer is always liable for the act of his employees in the course of their employment.

Learned counsel for the defendants referred to the case of *Fawkes* v. *Poulson & Son* (5), and contended that the stone which damaged the second boat fell out from the skip of the crane and must be regarded as the result of an unavoidable accident. The facts of that case are quite different from those in this case.

In the case before me the defendants are hirers for reward who kept the boat in a place where in fact it was damaged through what I consider was the negligence of the defendants. The evidence does not satisfy me that they had taken all reasonable steps to take care of the boat. They have not been able to state what happened to the boat after the damage or where it is at the present moment. As hirers they have a duty to return the boat, but they have taken no steps to find out where it is and so cannot return it.

In my opinion, the case of *Bull & Co.* v. *West African Shipping Agency & Lighterage Co.* (1) is more appropriate to the facts of this case. In this case the boats were hired to the defendants. The defendants were in charge of them, and, by their negligent keeping of one of the boats in a place where stones were being discharged from a crane, caused damage to it. Further than that, they were so negligent that they cannot say what happened to the boat.

The last question is whether, as the crew were found by the plaintiff although paid by the defendants, the defendants were not liable for any negligence by the crew and the plaintiff could not recover any damage to the boats or their loss. In this case I have found that although some of the crew were found by the plaintiff, they were paid by the defendants. The defendants had other men

on the boats and the defendants controlled all the men and were the persons effectively in charge of the boats.

The case of *Donovan* v. *Laing, Wharton & Down Constr. Syndicate Ltd.* (4) may be regarded as the leading case on the point. In that case the defendants contracted to lend to a firm a crane with a man in charge of it. The man in charge of the crane received directions from the firm or their servants as to the working of the crane and the defendants had no control in the matter. Injuries were caused to a person by the use of the crane. It was held that though the man in charge remained the general servant of the defendants, yet as they had parted with the power of controlling him, they were not liable for his negligence while so employed.

In this case the defendants were the persons who paid the wages of the men and controlled their movements. They certainly had the right to change the men on the boats and must also have had the right to dismiss them if their work was not satisfactory. In all the circumstances I must find that the plaintiff has proved his case, and as far as the defendants are concerned I am satisfied that they were negligent in not preventing the first boat from leaving their works while it was on hire to them. I do not believe that they knew what happened to it. They were negligent in not taking proper care of it. As regards the second boat, they had a duty to keep it and return it to the plaintiff. I am satisfied they were also negligent about this boat. They kept it in a place where it was damaged by the work of their employees, they did not take care to repair it after it was damaged and do not know where it went to or what happened to it. I do not accept the defendants' story that they overpaid the plaintiff. If anything, para. 2 of the termination of the hiring is strong evidence that up to April 9th, 1951 they were paying the plaintiff for two boats, which presupposes that the defendants admitted that up to that date the two boats were on hire to them and they were still responsible for them.

I have made it clear that I do not accept the story of the defendants that they had overpaid the plaintiff. There is no evidence to support this statement. The man who made the payments was not called to give evidence. The suggestion of overpayment was only made to counteract the fact that the defendants had been paying for two boats when their case was that one had been taken away by the plaintiff. The fact is strong evidence that until the dispute arose the defendants admitted that their liability was for two boats. I must find that the defendants were liable for the loss of both

boats. I assess the damage as £50 for the first boat and £35 for the second boat, a total of £85, taking into account the wear and tear. As regards arrears I am not satisfied the defendants are liable for any. I will therefore award no amount for arrears of rent and loss of rent. There will be damages of £85 and costs.

Judgment for the plaintiff.

JOHN and ANOTHER *v.* ATTORNEY-GENERAL

SUPREME COURT (Luke, Ag.J.): March 24th, 1952
(Civil Case No. 369/51)

[1] **Land Use Planning—compulsory acquisition—compensation—disputed assessments—factors to be considered by court in ascertaining quantum:** While the general rule is that compensation for compulsorily acquired land is based on the market value of the land in its actual condition at the date of expropriation if sold by a willing seller, the court, in ascertaining that value, must consider every element of value which the land possesses, including the owner's actual use of it and all its potentialities but excluding any advantage due to the carrying-out of the scheme for which it was compulsorily acquired, and may have regard to any loss of business and goodwill by the owner; in other words the owner receives what the land is worth to him, not the purchaser, in money terms so that his property is not diminished in amount but only changed in form (page 214, line 24—page 216, line 22).

[2] **Land Use Planning—compulsory acquisition—compensation—test of value—hypothetical sale:** See [1] above.

[3] **Statutes—interpretation—retrospective legislation—retrospective operation clearly intended or necessarily and distinctly implied must be given effect—statutes affecting vested rights or legality of past transactions or contracts especially restricted:** No statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the statute or arises by necessary and distinct implication, and this is especially so where the statute concerned would prejudicially affect vested rights or the legality of past transactions or impair contracts (page 217, lines 29–36).

[4] **Statutes—interpretation—statutes affecting existing rights—no retrospective effect unless clearly intended or necessarily and distinctly implied:** See [3] above.

[5] **Statutes—operation—retrospective effect—none unless clearly intended or necessarily and distinctly implied—statutes affecting vested rights**