properties have not been sold, in proportion to the values of these latter properties in relation to those that have been sold. For the purposes of valuation the prices at which the properties were sold are to be taken as their respective values. As to the unsold properties, they will have to be valued, if this has not already been done, and each devisee will have to pay that proportion of the total debts (less the amount realised from personalty) which his particular property or properties bear in relation to the total value of all the real estate. This will be a matter of accounting which the administrator of the estate will have to work out, and I give him liberty to apply to the court if he should require further directions.

The costs of all parties who have appeared before me and argued these questions are to be paid out of the estate.

Order accordingly.

MARKE *v.* JOHNSON

SUPREME COURT (Boston, Ag.J.): December 2nd, 1953
(Civil Case No. 425/53)

[1] **Criminal Law—homicide—killing by fetish—not punishable under Fangay Ordinance (cap. 78) but only as homicide if elements of offence proved:** The Fangay Ordinance (*cap.* 78), which makes it a criminal offence for anyone to practise fangay, was intended to prevent persons practising frauds and extorting money by the false pretence of possessing supernatural powers or occult means; therefore it does not include killing by fetish which is punishable only as murder or manslaughter if the ingredients of either offence are present (page 348, lines 11–28).

[2] **Criminal Law—witchcraft—practice of fangay—Fangay Ordinance (cap. 78) designed to prevent fraud and extortion by pretence of occult means or supernatural power—alleged killing by fetish not fangay:** See [1] above.

[3] **Tort—damages—special damages—slander—special damage must be proved unless slander actionable per se:** In an action for slander, special damage must be proved except in certain cases in which the words are held to be actionable in themselves without proof of special damage (page 347, line 40—page 348, line 2).

[4] **Tort—defamation—slander—slander actionable per se—imputation of criminal offence—words accusing person of killing by fetish do**

not impute criminal offence: While the imputation of a criminal offence is a slander which may be actionable *per se*, words which accuse a person of killing another by fetish do not impute the commission of any particular offence and therefore are not so actionable (page 348, lines 29–37).

[5] **Tort — defamation — slander — slander actionable per se — special damage need not be proved:** See [3] above.

The plaintiff brought an action against the defendant to recover damages for slander.

The defendant uttered words accusing the plaintiff of having killed his child, the implication being that she had killed the child by fetish. The plaintiff instituted the present proceedings for slander, and alleged that the words were actionable *per se* in that they imputed the commission of a criminal offence. The Supreme Court considered whether the words were actionable *per se*, and whether killing by fetish was a known criminal offence.

Legislation construed:

Fangay Ordinance (Laws of Sierra Leone, 1946, *cap.* 78), s.2:
The relevant terms of this section are set out at page 348, lines 17–22.

R.W. Beoku-Betts for the plaintiff.
The defendant did not appear and was not represented.

BOSTON, Ag.J.:

The plaintiff's claim is for damages for slander. The case for the plaintiff is that in the afternoon of August 30th, 1953 she was at home at No. 72 Calmont Road, Waterloo; the body of the defendant's child, who had died the previous day, was being taken for interment. When the cortège got to the plaintiff's house, she heard the defendant, who was among the mourners, shouting so as to be heard by people in the neighbourhood: "Taiwo aye: look nar windah oh, dah pekin way you kill dem day go barr am." This means: "Taiwo aye: look out of the window; the child whom you killed is being carried away to be buried." The plaintiff states that in so doing the defendant accused her of a crime, and that in consequence of the words used by the defendant she had been seriously injured in her character, credit and reputation and has been brought into public scandal, odium and contempt.

In an action for slander special damage must be proved, except in certain cases where the words are held to be actionable

per se, that is, actionable in themselves without proof of special damage, as for instance where the words impute a criminal offence. In this case the plaintiff has not alleged or proved special damage. She says the words are actionable *per se*, as the words uttered by the defendant accused her not only of killing someone, but killing by a particular method. The plaintiff does not say the defendant accused her of murder or manslaughter in relation to the dead child —her complaint is that the defendant accused her of killing his child by fetish. The point to be decided is whether in law that is an accusation of the commission of a crime known to the law.

Neither the plaintiff in her evidence, nor her solicitor, has stated what exactly fetish is, what place it occupies in our jurisprudence, and whether it is a crime to kill by fetish if that were possible. The nearest thing I can find in our laws is the Fangay Ordinance (*cap.* 78) which makes it a criminal offence for anyone to practise fangay. Fangay is not defined in the Ordinance, but s.2 states:

> "A person practising fangay means any person who uses or pretends to use any occult means or pretends to possess any supernatural power or knowledge or is in possession of any instrument of fangay and who acts in any of the ways aforesaid, with any intent to effect any fraudulent or unlawful purpose, or for gain or purpose of frightening any person."

The object of the Ordinance is to prevent persons practising frauds on their credulous victims and extorting money from people by the false pretence of possessing supernatural powers or occult means; and therefore fangay is not killing, for if the ingredients of murder or manslaughter are present the offender would be tried for the particular offence.

I have not been referred to any authority where alleged killing or homicide by fetish is an offence. In this case, the child as a fact was dead and the body was being taken away for burial. The defendant is alleged by the plaintiff to have said that the plaintiff "killed the child by fetish." Do those words impute the commission of a crime known to the law? Is there any imputation of killing or homicide in the affirmation so as to make such words assume a criminal character? I hold that the use of such words does not impute the commission of a crime.

The plaintiff in her claim stated that she has been brought into public scandal, odium and contempt, but the only witness she called said that he still held her in high regard after hearing the words complained of. Having considered the evidence carefully,

I hold that the words are not actionable without proof of special damage; and as special damage was neither pleaded nor given in evidence this action must be dismissed.

Suit dismissed.

WILKIN and OTHERS *v.* WEATI

SUPREME COURT (Boston, Ag.J.): January 9th, 1954
(Civil Case No. 128/53)

[1] **Succession—intestate succession—disposal of estate—Krooman's legitimate children entitled to equal shares in estate to exclusion of any widow and other relatives:** Where a member of the Kroo tribe dies intestate, under Kroo customary law all his children by wives he has "priced," *i.e.*, married lawfully by Kroo custom, are entitled in equal shares to his property to the exclusion of any widow and all their relatives (page 350, line 40—page 351, line 7).

The plaintiffs brought an action against the defendant to recover possession of certain property.

The plaintiffs' father, a member of the Kroo tribe who had married according to Kroo custom, died intestate. The Official Administrator was empowered to administer the estate and conveyed the property in question to the plaintiffs. They allowed the defendant, their cousin, to live on the property with them rent-free until she was given notice to quit. The defendant did not comply with the notice and put in an adverse claim to the property, whereupon the plaintiffs instituted the present proceedings for possession.

The Supreme Court considered who was entitled to the estate of an intestate under Kroo customary law.

Miss Wright for the plaintiffs;
Wellesley-Cole for the defendant.

BOSTON, Ag.J.:

The plaintiffs' claim is for possession of a portion of the premises occupied by the defendant situate at No. 30 Edward Street, Freetown, and for mesne profits.

The case for the plaintiffs is that James Wilkin, father of the plaintiffs, was the fee simple owner of the premises in question. He died on September 24th, 1942 intestate, without parting with the