

obtained an injunction restraining the Sheriff from carrying out the execution. The defendant issued his writ without complying with the condition precedent. From the evidence given by the plaintiff and the Master and Registrar it is clear that the defendant, having
 5 failed to comply with a condition precedent, has issued his writ irregularly. Such being the case the answer to the second question is in the negative.

Having answered the second question in the negative, it follows that the plaintiff will be entitled to damages. In 10 *Halsbury's Laws of England*, 1st ed., at 302, para. 558, damages are defined as—"the recompense given by process of law to a person for the wrong that another has done him." *Clerk & Lindsell on Torts*, 10th ed., at 868 (1947), states:

15 "When in the course of an execution a wrongful act has been committed which is not merely irregular, but altogether unauthorised, so as to be a trespass or act of conversion, the measure of damages will be the same as if the wrong-doer possessed no official character."

[The learned judge then considered the nature of the goods which the plaintiff alleged were missing, and continued:]

20 In conclusion, I allow the plaintiff the sum of £100 in damages for the irregular execution of the writ on his premises and he will have his taxed costs of the action.

Judgment for the plaintiff.

DOGBOWU v. REGINAM

30 WEST AFRICAN COURT OF APPEAL (Foster-Sutton, P., Beoku-Betts, Ag.C.J. (Sierra Leone) and Coussey, J.A.): June 16th, 1952
 (W.A.C.A. Cr. App. No. 7/52)

35 [1] Criminal Law—mistake or ignorance—transferred malice—mistake no defence where death of one person caused by unlawful blow intended for another: An accused is not relieved of responsibility for the crime of murder by the fact that the blow which caused the death of the deceased was intended to cause death or grievous bodily harm to another (page 233, lines 30–36).

40 [2] Criminal Law—murder—mens rea—transferred malice—murder where death of one person caused by unlawful blow intended for another: See [1] above.

The appellant was charged in the Supreme Court with murder.

The appellant aimed a blow with a matchet at a woman who was carrying a child strapped to her back with the intention of causing her death or grievous bodily harm. The blow missed the woman but killed the child. The appellant was convicted of murder by the Supreme Court and appealed.

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Massally for the appellant;

FOSTER-SUTTON, P., delivering the judgment of the court:

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In this case the appellant was convicted on the clearest possible evidence of murdering a young girl of about 6 years of age.

After trial and conviction the learned Chief Justice who tried the case was informed by a medical officer who was present in court during the trial that he had some doubt about the sanity of the accused. Thereupon the learned Chief Justice directed that the appellant should be kept under observation by a medical officer and that the medical officer should be available to give evidence, if required so to do, at the hearing of this appeal.

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We deferred taking this case in order to give Mr. Massally, who was assigned by the court to argue the case on behalf of the appellant, an opportunity of interviewing the medical officer who has had the appellant under observation. When the case was called on again, Mr. Massally, having had that opportunity, informed us that he did not wish to call the medical officer concerned because his evidence would be of no assistance to the appellant. That being so, we did not take any further evidence on this appeal.

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As I have already said the appellant was convicted on the clearest possible evidence. He intended to cause grievous harm or kill the woman he was endeavouring to marry, and it was when he tried to strike her with a matchet that he hit the child, killing it instantaneously. The child was fastened to the woman's back and the blow, as I said, was intended for her and not the child. The fact that he killed somebody else, however, in no way relieves him of responsibility for the crime.

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Insanity was not raised at the trial and there is no evidence suggesting that the appellant was anything but a reasonable normal man. We can see no merit in this appeal and it is therefore dismissed.

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Appeal dismissed.