mother) or to be restricted to meaning brother of the full blood, *i.e.* "brother german"? I was somewhat impressed by Mr. Wright's argument that as the full brother excludes all others in inheritance, preference should be given to him in administration and that to do otherwise would be an absurdity such as the legislature should not be expected to perpetrate. I think, however, that this is somewhat speculative, and that in the absence of any indication to the contrary, the word should be given its ordinary meaning, which includes half-brother. It is not irrelevant to observe that from the inclusion of the words — ". . . if of full age according to Mohammedan Law" in s. 9(2) (a) and (b) the legislature had Mohammedan Law in mind, and could well have limited the meaning of the word had it been so minded.

It follows that the applicant does not come within the scope of section 9(2) (b) and his application therefore fails.

Application dismissed.

S.V. RICHARDS v. A.T.W. RICHARDS

Supreme Court (Tew, C.J.): March 11th, 1932

[1] **Civil Procedure — execution — garnishee order — not available in respect of future earnings — only made in respect of debts owing or accruing:** There is no procedure available to enforce a maintenance order by restraining the respondent from receiving further salary until he has paid the arrears due, for this would be equivalent to a garnishee order which may be granted only in respect of debts owing or accruing, and since future earnings fall into neither of these categories they may not be the subject of such an order (page 305, line 6—page 306, line 13).

[2] **Courts — Supreme Court — jurisdiction — civil jurisdiction — matrimonial causes — current English practice to be followed in absence of other provision:** The effect of s. 6 of the Supreme Court Ordinance (*cap.* 205) is that where the Ordinance or the rules made under it make no provision as to a particular matter of the practice in matrimonial causes, such as that concerning the enforcement of orders for alimony the court may exercise its jurisdiction in conformity with the relevant practice for the time being in force in England and is not restricted to applying the rules in force in England on January 1st, 1905 as is specified for other matters of civil procedure by O.XLV, r. 2 of the Supreme Court Rules (*cap.* 205); in accordance with the current English practice, proceedings in chambers to enforce an order for alimony must be started by summons and an application in any other form cannot be entertained (page 304, line 12—page 305, line 4).

[3] **Family Law — maintenance — enforcement of order — current English**

practice applicable in absence of other provision — proceedings in chambers must be started by summons: See [2] above.

[4] **Family Law — maintenance — enforcement of order — no order restraining debtor from receiving future earnings — garnishee order only available in respect of debts owing or accruing:** See [1] above.

[5] **Jurisprudence — reception of English law — incorporation of English law — matrimonial causes — current English practice to be followed in absence of other provision:** See [2] above.

The petitioner gave notice of her intention to apply for an order to enforce a maintenance order made previously against the respondent, her husband.

The petitioner obtained a decree of judicial separation and an order for permanent alimony to be paid in monthly instalments by the respondent. The respondent, who was employed in the Government service, failed to make the required payments and the petitioner took out a summons to restrain him from receiving his full salary until the amount owed by him had been paid. The court made an order restraining him as requested and also made an order against the Government directing that part of the respondent's salary equivalent to the arrears of alimony should be paid into court. The order also gave the petitioner liberty to apply in chambers in case of failure to pay any future instalments.

The respondent again defaulted and the petitioner gave notice of her intention to apply in chambers for payment of the arrears by the Government. The respondent raised the preliminary objection that the petitioner's application should not be entertained since it had been made in the wrong form. He contended that the effect of ss. 6 and 7 of the Supreme Court Ordinance (*cap.* 205) read with O.LXV, r. 2 of the Supreme Court Rules was that procedure in matrimonial causes was governed only by rules made under English statutes in force on January 1st, 1880, which were themselves in force on January 1st, 1905, and contended that according to those rules the present application should have been made by summons, petition or motion.

Although the court held that the application should be dismissed since it had not been made by summons in accordance with the practice for the time being in force in England, it proceeded to consider whether it might otherwise have succeeded. The respondent had contended that the application should fail since there were a limited number of ways of enforcing a maintenance order

which did not include an order against the future earnings of the respondent.

The application was dismissed.

Cases referred to:

(1) *Burrowes v. Burrowes* (1929), 141 L.T. 201; 45 T.L.R. 401, distinguished.

(2) *Hall v. Pritchett* (1877), 3 Q.B.D. 215; 37 L.T. 671, applied.

(3) *Holmes v. Millage*, [1893] 1 Q.B. 551; (1893), 68 L.T. 205, applied.

(4) *Willcock v. Terrell* (1878), 3 Ex. D. 323; 39 L.T. 84.

Legislation construed:

Supreme Court Ordinance, 1925 (Laws of Sierra Leone, 1925, *cap.* 205), s.6: The relevant terms of this section are set out at page 304, lines 21—25.

s. 7: "The statutes of general application, which were in force in England on the first day of January, eighteen hundred and eighty, shall be in force in this Colony . . . ."

Supreme Court Rules, 1925 (Laws of Sierra Leone, 1925, *cap.* 205), O.LXV, r. 2:

"Where no other provision is made by these Rules, or by an Ordinance of the Legislature of Sierra Leone . . . the procedure and practice which were in force in the High Court of Justice in England on the 1st day of January, 1905, so far as they can be conveniently applied to the circumstances of this Colony shall be in force in the Supreme Court."

Boston for the petitioner;
C.E. Wright for the respondent.

TEW, C.J.:

On March 23rd, 1931, the petitioner who had obtained a decree of judicial separation, obtained an order for permanent alimony at the rate of £60 *per annum* to be paid monthly as from February 13th, 1931, the date of the decree. The respondent then was, and still is, in the service of the Government of this Colony. On October 19th, 1931 the petitioner took out a summons — "to restrain the respondent from receiving the sum of five pounds monthly out of the salary" alleging in her affidavit that the instalments due in February and August had not been paid. On October 28th, 1931 the Acting Chief Justice made an order restraining the respondent from receiving his pay until the amount of alimony due from him to the petitioner had been liquidated and directing further that the said arrears of alimony should be

paid into court by the Colonial Treasurer to the account of the petitioner. There was also to be liberty to the petitioner to apply in chambers in case of failure to pay any future instalment.

On January 28th, 1932, no payments having been made by the respondent in respect of the months of October and December 1931, and the costs of the previous application being still unpaid, the petitioner filed notice of her intention to apply in chambers under the order of October 28th, 1931 for an order for the payment by the Colonial Treasurer of the sum of £15.12s.8d.

Mr. Wright, for the respondent, took the preliminary objection that the application should have been made by summons, petition or motion, and should therefore be dismissed as irregular. As to the rules regulating the procedure, he argued that the effect of ss. 6 and 7 of the Supreme Court Ordinance (*cap.* 205) read with O.LXV, r. 2 of the Rules under that Ordinance, was that procedure in this Colony in divorce and matrimonial causes is governed only by rules made under English statutes in force on January 1st, 1880, which were themselves in force on January 1st, 1905. Section 6 of the Supreme Court Ordinance (*cap.* 205) reads as follows:

> "The jurisdiction hereby conferred upon the Court in probate, divorce and matrimonial causes and proceedings may, subject to this Ordinance and to rules of Court, be exercised by the Court in conformity with the law and practice for the time being in force in England."

At first I was inclined to agree with this argument and to think that the words — "subject to this Ordinance and to rules of Court" meant that this section was governed by the provisions of the next section. On further consideration I am of the opinion that the words quoted only mean — "where no other provision as to the law and practice in such causes is made by the Ordinance or rules made under it." I am confirmed in this opinion by the fact that there are certain rules of court relating to probate (O.XVI, r. 11; O.XX, r. 26; O.XXI, rr. 2 and 7; and O.LI, r. 7(3)) and that O.LIX, r. 1 relates in part to "Proceedings for Divorce or other Matrimonial Causes."

It is agreed that it has been the invariable practice of this court to follow the current English practice, and I think that that procedure is correct. The Rules now in force are the Matrimonial Causes Rules, 1924. I can find nothing in these Rules which even suggests that an application such as this can be made otherwise

than by summons. In England this would be a summons before the Registrar; here it would be before a judge in chambers. The form of the application is wrong and for that reason alone it cannot be entertained. Assuming for the moment that the application were not irregular in form, I proceed to consider whether I could make the order which the petitioner seeks. There are various ways in which an order for alimony can be enforced. Rule 79 of the Matrimonial Causes Rules, 1924 provides for the issue of writs of *fieri facias*, sequestration or *elegit* for this purpose. Another method is by way of judgment debtor summons under the Debtors Ordinance (*cap.* 51), and in a proper case a garnishee order could also be obtained. This last method would obviously not be open to the petitioner here, as it is not a method by which a debtor's future salary can be attached (see *Hall v. Pritchett* (2)) and the petitioner is attempting to obtain by another process what would practically amount to a garnishee order.

Mr. Boston for the petitioner relied almost entirely upon the case of *Burrowes v. Burrowes* (1). There an application was made for an order charging certain securities belonging to the respondent with payment of costs due to the petitioner and arrears of alimony with liberty to apply in chambers with regard to the future instalments of alimony. The Court of Appeal granted an injunction restraining the respondent from receiving the dividends on those securities and an order empowering the petitioner's solicitor to receive them and also gave liberty to apply as asked. The court approved of and adopted an order made in *Willcock v. Terrell* (4) where writs of sequestration had been issued against the debtor, who was an ex-County Court judge in receipt of a pension payable in quarterly payments, and the sequestrators were empowered to receive them. Thus the order in *Burrowes v. Burrowes* was as was pointed out in *Browne & Latey on Divorce*, 11th ed., at 163 (1931) in effect an order of sequestration.

It should be noted here that in *Willcock v. Terrell* the court refused to make an order upon the Treasury or the Paymaster-General to pay over the instalments of pension on the ground that such an order could not be enforced.

Mr. Wright argued that dividends arising from investments are in an entirely different category from future payments of salary in that they represent property to which the debtor will be absolutely entitled when they fall due. I have no hesitation in

upholding this contention. Future earnings of salary are on a very different basis, and I can find no case in which an order such as that for which the petitioner asks was made in respect of them. Equitable execution will not be granted in a case in which the Court of Chancery would not have given such relief before the Judicature Acts. In *Holmes v. Millage* (3) where an application was made for the appointment of a receiver of a debtor's salary, the order was refused and the principle stated above was clearly laid down by the Court of Appeal.

In my opinion this is not a case in which an injunction could be granted to restrain the respondent from receiving future payments of salary; and even if it could be granted, the court could not, as noted above, order the Treasurer to pay over the money.

In *Burrowes v. Burrowes* (1), although the wife's application in the court below failed and although it was alleged that she had separate estate, Hill, J. ruled that as the husband had brought the proceedings upon himself by his persistent refusal to make the monthly payments of alimony, he must pay the costs.

I order that the respondent pay the costs of this application.

Application dismissed.

MACAULEY v. PARAMOUNT CHIEF MEEMA

Circuit Court (Tew, C.J.): May 10th, 1932

[1] **Civil Procedure — parties — defendants — action for recovery of possession of land — person in control but not in actual possession of property may be defendant:** An action for the recovery of possession of land may be brought against a person who is not in actual possession of it, when he has control of the property and the capacity to return it to its rightful owner (page 311, line 38—page 312, line 10).

[2] **Contract — formation — terms — contract void if parties clearly negotiated in contemplation of diverse terms:** If the parties to a purported contract clearly negotiated in contemplation of diverse terms the contract is void and cannot therefore be the subject of a claim for damages for breach of contract (page 311, lines 7—20).

[3] **Contract — uncertainty — effect — no concluded contract:** See [2] above.

[4] **Courts — native courts — jurisdiction — son of unmarried non-native and native woman, living in Protectorate but acting and treated as non-native is non-native — not subject to native court jurisdiction:** The son of a non-native and a Temne woman to whom his father was not married,