PALMER *v.* STOOKE and ATTORNEY-GENERAL

SUPREME COURT (Smith, C.J.): January 12th, 1953
(Civil Case No. 497/52)

[1] **British Commonwealth—colonies—royal prerogative—all legislation for ceded or conquered colony by royal prerogative—prerogative power to legislate for settled colony limited to setting up representative institution unless British Settlements Acts relied on—Colony of Sierra Leone settled colony:** While the Crown has full power under the royal prerogative to legislate for a ceded or conquered colony unless it specifically gives up those rights, in the case of a settled colony the Crown's prerogative right is limited to the setting up of a constitution of representative institutions in the settlement, and having done so its power to legislate is finished unless it relies expressly or impliedly on the powers given to it by Parliament in the British Settlements Acts; and therefore, the Colony of Sierra Leone being a settled colony, the Crown can legislate for it by express or implied reliance on the British Settlements Acts (page 292, line 17—page 293, line 35).

[2] **British Commonwealth—legislative competence of King in Council—colonies—all legislation for ceded or conquered colony by royal prerogative—prerogative power to legislate for settled colony limited to setting up representative institution unless British Settlements Acts relied on—Colony of Sierra Leone settled colony:** See [1] above.

[3] **British Commonwealth—legislative competence of King in Council—ultra vires and repugnancy—creation of Legislative Council for Colony of Sierra Leone not ultra vires Sierra Leone (Legislative Council) Order in Council, 1951:** In the preamble and enacting clause of the Sierra Leone (Legislative Council) Order in Council, 1951, the general words "and of all other powers enabling Him in that behalf" are not to be construed as being *eiusdem generis* with the preceding more specific words "the powers vested in Him by the Foreign Jurisdiction Act, 1890" so as to restrict the authority of His Majesty in Council to the Foreign Jurisdiction Act, 1890; and therefore the creation of a Legislative Council for the Colony of Sierra Leone by the Order in Council is empowered by the British Settlements Acts and is not *ultra vires* the legislative competence of His Majesty in Council (page 290, line 40, page 291, line 6; page 293, line 39—page 294, line 5).

[4] **Civil Procedure—discontinuance and dismissal—dismissal in proceedings under O.XXI of Supreme Court Rules, 1947—frivolous and vexatious action may be affected in part or as whole—court may consider pleadings only:** Where a defendant seeks to have the action against him dismissed on the ground that it is frivolous and

vexatious, he can apply under O.XXI of the Supreme Court Rules, 1947, in which case only the pleadings can be looked at in coming to a decision, or he can apply under the court's inherent jurisdiction to strike out, stay or dismiss any actions or claims which are held to be frivolous and vexatious, in which case the court may consider not only the pleadings but also any other allegations or admissions before it; but in either situation the court may make its order referable to the action as a whole, if the plaintiff is shown to have a completely hopeless case, or, if it thinks that some of his claims have some hope of success or if there are some facts still to be determined in regard to some of the claims, merely to those parts of the action which are hopeless (page 288, line 28—page 289, line 20).

[5] **Civil Procedure—discontinuance and dismissal—Supreme Court has inherent jurisdiction to strike out, stay or dismiss action which must fail—frivolous and vexatious action may be affected in part or as whole—court may consider pleadings and any other allegations or admissions:** See [4] above.

[6] **Constitutional Law—Governor—administrative authority—ultra vires and repugnancy—not ultra vires for Governor to carry out provision for payment of salary to Leader of Opposition:** The Legislative Council is the proper body to decide what funds should be raised for the public service and how they should be spent; and it is competent therefore to make provision for the payment of salaries or honoraria to its members or offices created and recognised by constitutional convention, including the Leader of the Opposition, which the Governor can include, after appropriation, in his general warrant to the Accountant-General (page 296, lines 4–11).

[7] **Constitutional Law—Legislative Council—creation—creation for Colony of Sierra Leone not ultra vires Sierra Leone (Legislative Council) Order in Council, 1951:** See [3] above.

[8] **Constitutional Law—Legislative Council—political parties—formation of political party cannot be prevented by courts or Governor unless illegal body:** No court can or should interfere in matters relating to the grouping of individual members of the Legislative Council into political parties, unless a party is declared an illegal body; and, subject to the same qualification, the Governor, whatever control he has over official members of the Council, cannot prevent other members forming themselves into political parties if they so wish (page 294, lines 8–31).

[9] **Constitutional Law—Legislative Council—salaries of members—Council proper body to provide for payment of salaries to members including Leader of Opposition:** See [6] above.

[10] **Constitutional Law—party system—Legislative Council—formation of political party in Legislative Council cannot be prevented by courts or Governor unless illegal body:** See [8] above.

[11] **Constitutional Law—royal prerogative—colonies—all legislation for ceded or conquered colony by royal prerogative—prerogative power to legislate for settled colony limited to setting up representative institution unless British Settlements Acts relied on—Colony of Sierra Leone settled colony:** See [1] above.

[12] **Constitutional Law—separation of powers—judicial power—courts cannot prevent formation of political party in Legislative Council unless illegal body:** See [8] above.

[13] **Constitutional Law—separation of powers—judicial power—function of judiciary limited to interpreting law—judiciary cannot comment on what legislation should be considered by legislature:** While, when a piece of legislation has been passed, it can be brought before the courts for them to pronounce on its meaning, effect and validity, it would be an attempt to interfere with the Legislative Council in the way it should conduct its business for the courts to comment on what legislation should be put up for consideration by the legislature (page 294, line 39—page 295, line 8).

[14] **Courts—Supreme Court—jurisdiction—inherent jurisdiction—court has inherent jurisdiction to strike out, stay or dismiss action which must fail—frivolous and vexatious action may be affected in part or as whole—court may consider pleadings and any other allegations or admissions:** See [4] above.

[15] **Revenue—appropriation of funds for public service—authority for payment—Legislative Council proper body to allocate funds for payment of salaries to its members—Leader of Opposition may be included in Governor's general warrant to Accountant-General:** See [6] above.

[16] **Statutes—proof and citation—legislation prima facie proved by production of copy printed by Government Printer—court may base decision on original where official copy contains discrepancy:** Notwithstanding the fact that, under s.19(1) of the Interpretation Ordinance (*cap.* 1), any legislation may be *prima facie* proved in any legal proceedings by the production of a copy purporting to be printed by the Government Printer, the court may, out of extra caution, base its decision on the original where there is a discrepancy between the wording of the original and that of the official copy (page 290, lines 23–28).

[17] **Statutes—ultra vires and repugnancy—creation of Legislative Council for Colony of Sierra Leone not ultra vires Sierra Leone (Legislative Council) Order in Council, 1951:** See [3] above.

The plaintiff brought an action against the defendants for a declaration of the invalidity of the Constitution, an injunction restraining the first defendant from giving effect to it in the Colony

of Sierra Leone, and, in the alternative, injunctions to prevent the first defendant allowing the formation of Government and Opposition Parties in the Legislative Council, appointing ministers with portfolios and authorising payment of a salary to the Leader of the Opposition.

The British Settlements Act, 1887, as amended by the British Settlements Act, 1945, authorised the King in Council to legislate for settled colonies, one of which was the Colony of Sierra Leone, being an entity apart from the Protectorate of Sierra Leone. The Sierra Leone (Legislative Council) Order in Council, 1951 was passed by the King in Council to provide for a Legislative Council in Sierra Leone constituted in accordance with the provisions of that Order. In the preamble and enacting clause of the Order, it was stated under the heading of "Foreign Jurisdiction" that it was made by the King "by virtue and in exercise of the powers vested in Him by the Foreign Jurisdiction Act, 1890, and of all other powers enabling Him in that behalf." The Order did not mention the appointment of ministers with portfolios. In the course of time the Legislative Council split itself into various political groups, notably representing Government and Opposition parties, and a Leader of the Opposition was appointed to whom the first defendant proposed to pay a salary. The plaintiff instituted proceedings against the first defendant in his official capacity, but the suit was struck out for irregularity. These proceedings are reported in 1950–56 ALR S.L. 258. He then instituted the present proceedings and the defendants moved the court to dismiss the action as being frivolous and vexatious.

The plaintiff contended that the words "all other powers" in the preamble to the Order in Council should be construed *eiusdem generis* so as to mean other powers of the King in Council in respect of foreign jurisdiction other than those given him by the Foreign Jurisdiction Act, and therefore the Order did not apply to Sierra Leone. He further contended that, even if the Order was not *ultra vires*, the first defendant, in his capacity as President of the Legislative Council, acted *ultra vires* in allowing members of the council to form themselves into Government and Opposition parties, in introducing legislation authorising the appointment of ministers with portfolios, and in authorising payment of a salary to the Leader of the Opposition.

The defendants maintained that the words "all other powers" in the preamble to the Order meant all other powers whatever they may be and from whatever source they are derived, and that there-

fore the Order could apply to the Colony of Sierra Leone under the British Settlements Acts.

Case referred to:

(1) *R.* v. *Thompson* (1944), 10 W.A.C.A. 201, applied.

Legislation construed:

Interpretation Ordinance (Laws of Sierra Leone, 1946, *cap.* 1), s.19(1):

"Any . . . Order in Council . . . may be *prima facie* proved in any legal proceedings by producing a copy thereof—

. . .

(c) purporting to be printed at the Government Printing Office or by the Government Printer or deemed to be so printed."

Sierra Leone (Legislative Council) Order in Council, 1951 (No. 611), Preamble:

The relevant terms of the Preamble are set out at page 290, lines 32–37.

O.I.E. During, R.W. Beoku-Betts and *Wellesley-Cole* for the plaintiff.
The *Attorney-General* appeared in person with *M.C. Marke.*

SMITH, C.J.:

This has been a most interesting case and I am obliged for the very careful and helpful arguments which have been addressed to me by counsel on both sides. They in their turn, I have no doubt, are indebted to the patient industry in research of the juniors who appear with them. Thanks to this assistance I have had little difficulty in coming to a decision.

This is a motion by the defendants asking that the action be dismissed on the ground that it is frivolous and vexatious. There are rules of court dealing with applications of this type. In our Supreme Court Rules they are embodied in O.XXI. These rules, in the main, are taken from O.XXV of the English Rules of the Supreme Court; but, as is shown in the *Annual Practice 1952*, at 423, in addition to the powers conferred by these Orders, there is an inherent jurisdiction in the court to strike out, stay, or dismiss actions or claims which are held to be frivolous and vexatious. It is said that if the application is made under one of these specific rules of the Order, only the pleadings in the case can be looked at in coming to a decision; but if the application is made under the inherent jurisdiction of the court, other matters may be considered and all the facts can be gone into. Therefore in making my decision

in this case, in which I am moved to exercise my inherent jurisdiction, I can examine not only the pleadings but other facts alleged before me in the two affidavits which have been filed on the motion and any admission made by counsel on either side in the course of their arguments.

In order to succeed in an application of this kind the mover must satisfy the court that the plaintiff has a completely hopeless case. If he fails to show that, then he loses the motion in whole or in part, because it is also laid down that on a motion of this kind the court has wide powers: if it thinks that the whole action is misconceived, it may dismiss the whole action; alternatively it may, if it thinks that some of the claims have some hope of success or if there are some facts further to be determined in regard to some of the claims, strike out or dismiss or stay the hopeless part of the case, but it must allow those parts about which the plaintiff may still have some hopes to proceed. Therefore, in considering what I should decide on this motion, I have to take each one of the claims which have been made and consider each one as to whether it is a hopeless claim or not, and it is only if I find that they are all hopeless that I can dismiss the whole action.

In his statement of claim, after setting out certain general facts which are not substantially in dispute at all, the plaintiff goes on to make four allegations and to ask for four remedies in respect of them. I will take them one by one.

The essence of the first claim is set out in para. 6 of the statement of claim—that the Sierra Leone (Legislative Council) Order in Council, 1951, having been made under the Foreign Jurisdiction Act, 1890, could not apply to the territory known as the Colony of Sierra Leone and is as such *ultra vires.* I may say that counsel who have argued the case were in agreement thus far that this particular claim is the real crux of the case; and a very important question is raised by it. The instrument itself, the application of which is called in question, is attached to the defendants' affidavit as Exhibit A4. I do not propose to read the whole of it but there are certain parts of it which appear to govern the question I have to decide. It quite clearly purports to legislate not only for the Protectorate but for the Colony as well. It defines "Colony" in s.1 of Part 1. It defines "Sierra Leone" as meaning the two territories put together —Protectorate and Colony—and it says there shall be a Legislative Council in and for Sierra Leone—that is, the whole territory. And it goes on to provide for the membership of this Council. They

are grouped under five headings in the Order: first, the Governor who shall be president; secondly, a vice-president; thirdly, 7 *ex officio* members; fourthly, 21 elected members; and fifthly, 2 nominated members. Further on, in ss.6 and 7, provision is made as to who these *ex officio* and elected members shall be. The elected members are drawn from two main sources: 7 members are to be elected by a ballot of the registered voters from the districts of the Colony, and the remaining 14 are to be elected from the Protectorate by a different system of election, but nevertheless they are called elected members. It is clear, therefore, I have said enough to show that so far as the contents of the instrument are concerned it purports to legislate for, and that it contains provisions which are intended to apply to, both the Colony and Protectorate.

Now, there are two other features about this document which call for attention. Firstly, there is a curious thing about the heading: in the official copy made by the Government Printer in Sierra Leone and similarly in the official copy made by the Government Printer in London, two words which appear in the original have been left out—these are the words "Foreign Jurisdiction" which appear to be omitted from below the words "Statutory Instrument" in the heading. Why there should be that discrepancy between the basic original and these official copies I do not know, but it is clear that there is that discrepancy. I know that the Interpretation Ordinance (*cap.* 1), s.19 says that the court should follow, take as authentic, official copies of documents published by the Government Printer here. But, out of extra caution, when I find there is this discrepancy, I propose to base my decision as if it were worded as in the original with two recitals, the first one of which recites the Sierra Leone (Legislative Council) Order in Council of 1924 and the second says it is expedient to make other provisions for the constitution and powers of the Legislative Council for Sierra Leone, that is, the whole territory. The instrument goes on to enact: "Now, therefore, His Majesty by virtue and in exercise of the powers vested in Him under the Foreign Jurisdiction Act, 1890, and of all other powers enabling Him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows . . . ." So in the enacting clause reference is made to the Foreign Jurisdiction Act and to all other powers as the authority for making this instrument.

Mr. During, for the plaintiff, urges that these words "all other powers" should be construed by the rule of *eiusdem generis* and

that the "other powers" referred to must mean other powers of His Majesty in respect of foreign jurisdiction other than those given him by the Foreign Jurisdiction Act. The Attorney-General, on the other hand, argues that when the instrument says "all other powers" it means all other powers whatever they may be and from whatever source they are derived.

They both cited a number of authorities to me in support of their arguments. But, in my view, the point is quite definitely decided by the case of *R.* v. *Thompson* (1). I say I consider that case decides this point, but I should add two things to that remark: firstly, I think it is a correct decision because I was a party to the judgment; and secondly, by way of reinforcement, the whole basis of the *Thompson* case was the ruling contained in this judgment. Thompson appealed to the Privy Council—it was a criminal case and the appeal was by way of petition for leave to appeal. I thought that it was such an important point, and by no means an easy point, that the learned Law Lords would give leave to appeal in order that there should be a full dress argument on the question. They however thought differently and refused leave to appeal. So that, inferentially, the Privy Council has approved the decision in the *Thompson* case. Therefore, it is binding on me, in so far as it decides the point I have to decide, whether I may agree with it or not.

In the *Thompson* case the question was as to whether the accused was a "Public Officer" within the meaning of s.5 of the Ghana Criminal Code (*cap.* 9) under which he was charged. "Public Officer" was defined in s.5 of the Code as a person holding "any office to which a person is nominated or appointed by Statute or by public election"; in s.3 "Statute" was defined as "any Act of Parliament or ordinance, and any orders or rules or regulations made under the authority of any Act of Parliament or ordinance"; and "public election" in s.5 meant "any election the qualification for voting at which, or the mode of voting at which, is determined or regulated by statute."

Thompson was a member of the Legislative Council of the Gold Coast, the constitution of which was determined by an Order in Council made under the common law prerogative of the Crown, or in the exercise of the powers vested in the Crown by the British Settlements Act, 1887. It was argued, firstly, that the Gold Coast Colony was not a British settlement, and therefore the British Settlements Act did not apply to it; and secondly, that the Order in

Council which the Crown made for the Gold Coast must have been made under the prerogative powers of the Crown. Like the instrument which I have before me, the Gold Coast instrument did not refer to the British Settlements Act either in the preamble or in the enacting clause or anywhere else. The enacting clause was drawn in very similar terms as this one I have before me. The case was very fully argued, the argument, I remember, lasted, as this one has done, several days and the court made a very thorough analysis of all possible authorities. It was held that the Gold Coast Colony was a settled colony and therefore the British Settlements Act applied to it. It further held that the Crown, in making an Order setting up the Gold Coast Constitution of that time, although it did not recite the British Settlements Act as its authority for making the Order, nevertheless was making the Order under the powers derived from that Act. Therefore, a "Public Officer" was something created by statute and the accused person in that case was a "Public Officer."

Now what is the position in this Colony? There is no shadow of doubt about it, and I feel sure I should be drummed out of the country if I were to suggest that this Colony is anything else than a British settlement. Its earliest constitutional instrument recites the British Settlements Act of 1843. Later ones down to 1887 recite the British Settlements Acts as applying to this Colony. All the textbook writers, with one exception, say Sierra Leone is a British Settled Colony and the Crown exercises powers to set up legislatures for it by virtue of the British Settlements Act. The only exception to this opinion of textbook writers is the learned author of the *Current Year Book 1951*, who states that the present constitution of Sierra Leone, this one I am considering now, is made under the Foreign Jurisdiction Act. Well, apart from his being in a minority with a full stream of authorities to the contrary, I also assume that the learned author of the *Current Year Book* is happily still alive. Therefore, his opinions have not the authority of a writer who has unfortunately fulfilled his time and has been gathered to his fathers. I say quite clearly that the Sierra Leone Colony is a British settlement. As was pointed out in the *Thompson* case, the prerogative right of the Crown to legislate for British colonies is limited in certain respects. If the colony is a ceded or conquered colony, the Crown has full rights to legislate for it, unless it specifically gives up those rights. If the colony is a settled colony, however, the prerogative right of the Crown is limited to setting up a constitution of representative institutions in the settlement, and having

set up such a constitution the Crown's power to legislate is finished. Examples of that will be found in the older colonies and in many of the original American States, and the constitutions of some of the older colonies of the West Indies and West Atlantic are examples of the use of the Crown's prerogative right to make constitutions for settled colonies. But if the Crown wishes to make a constitution which is not what we would specifically term "Representative Government," it has to rely on the powers given it by Parliament. Parliament has given the Crown these powers by a succession of Acts. The first one was in 1843 and then the next one 1860—those two only apply to the settlements in West Africa, of which this is one, and to the Falkland Islands. The next Act, that of 1887, applied to a wider category of colonies. And finally, the 1945 Act further extended the Crown powers and provided rather more convenient machinery for legislation. The *Thompson* case (1) held that the Gold Coast being a settled colony, the Crown could not legislate for it in the way it did under its prerogative right; it could only legislate under the British Settlements Act. Here the same thing applies: this is a settled colony and the only power given the Crown to legislate for the Colony in the way it has done is under the British Settlements Acts.

The *Thompson* case also decided that even though the British Settlements Acts are not referred to in the instrument, nevertheless the Crown was exercising powers under them. Now we have exactly the same position here. It is true that in a later constitutional instrument for the Gold Coast, made after the *Thompson* case, we find very full recitals including references to the British Settlements Acts.

There is one other feature of that Gold Coast Instrument of 1950, so far as it helps us, to which I will call attention. It is that one of the units of the Gold Coast is the Colony of Ashanti, which is a conquered colony. The right of the Crown to legislate for Ashanti is its prerogative right, and yet the prerogative right of the Crown is not specifically referred to in the Gold Coast instrument. It uses the words "of all other powers enabling Him in that behalf."

There are a number of other points argued in connection with this particular question and a number of other authorities have been referred to before me, but I consider that no useful purpose would be served by analysing them here. It is quite definite in my mind that although the British Settlements Acts are not referred to in the Sierra Leone (Legislative Council) Order in Council, 1951, they are

the authority which gave the Crown the right to legislate for this Colony, that the Crown in purporting to legislate for this Colony was exercising the powers conferred by those Acts, and that this instrument does apply to the Colony and is *intra vires* and binding on all of us here.

It is clear therefore that the plaintiff's first claim is quite hopeless and should not be allowed to proceed further.

The next claim which the plaintiff makes is that the first defendant, in his capacity as President of the Legislative Council of Sierra Leone—and I may say that the remaining three claims are based on the assumption that the first claim is bad, since if the first claim is good then all the others are of no consequence, and it is only if the first claim is bad that the plaintiff falls back on these other three—acted *ultra vires* in allowing members of the Legislative Council to form themselves into Government and Opposition parties in the Legislative Council. An interesting argument has been addressed to me on this point, but unless a party has been declared an illegal body, as some parties have been in other countries, for the life of me I cannot see how the Governor or this court can stop people from forming themselves into parties if they wish to do so. It is true that in the composition of the present Council groups of individuals coming from different groups have gathered together, though not entirely. However, that is a matter for the members of the Legislative Council. If the Colonial Secretary and the First Member for Freetown like to form a party of two, so far as this court is concerned I could not stop them if they wanted to do it, and I do not see, whatever control he may have over his official members, that the first defendant has any control over unofficial members as to how they group themselves. The claim is manifestly untenable and no court of law can or should interfere in matters of this kind; it is quite a hopeless claim and should not be allowed to proceed.

The third claim is that the first defendant has announced his intention to appoint ministers with portfolios, and I am asked to give a declaration that it is *ultra vires* the 1951 Order in Council to appoint ministers with or without portfolios and make an injunction restraining the first defendant from doing the same. It now emerges, in the course of the argument, that what is being complained about is the introduction of legislation authorising the appointment of ministers. Now, obviously, it would be quite wrong for any court to attempt to say what measures should or should not be introduced into the legislature. It is none of our business, and

we would be infringing the rights of everybody and attempting to interfere with the Legislative Council in the way it should conduct its business. When a piece of legislation has been passed, then of course it can be brought before the court and the court can pronounce on what it means, or what effect it has, and whether it is valid or invalid. But this court could not, and should not, have any say in what legislation is to be put up for consideration. It is none of our business. But even with the claim as originally drawn, on the basis that the first defendant has announced his intention of appointing ministers with portfolio, it is not alleged that he is going to do it unlawfully or contrary to the statutory instrument or that he is going to act unlawfully. It does not allege that—and, as the Attorney-General pointed out, it would be wrong for the court to assume that—he is acting unlawfully unless something is shown to indicate that fact. It is true that the statutory instrument, in contrast with statutory instruments in some other colonies, makes no mention of ministers. It may well be that before ministers can be properly appointed further legislation will be required. In fact from the affidavit put in by the defendants it is manifestly clear that that is the position. It is not intended to appoint ministers without further legislation, and, so far as I can see, if and when the legislation is passed, action can be brought in the courts to determine the result of that legislation; but until then the courts should not interfere. This claim is too vaguely drawn and does not allege any unlawful act, and I hold therefore that that claim has no hope of success.

Now, the last claim is that the first defendant acted *ultra vires* in authorising payment of a salary to the Leader of the Opposition in the said Legislative Council. Now that is not a claim that the wrong person has been allowed to draw money voted for the benefit of some other person. Obviously a claim of that nature should only be fought out by rival claimants to the money. Neither of them, if they exist, are before me in this case. It appears that what the first defendant has done in this matter is that, after the legislature made appropriation in the ordinary way for payments to be made to certain elected members of the legislature, the first defendant signed his general warrant to the Accountant-General authorising him to pay out monies appropriated by the Budget and the Appropriation Ordinance, 1952, subject to certain restrictions which do not affect this case; and that is what he has done. The legislature in 1951, I say, made this appropriation in the estimates and this item

is included in the lump sum referred to in the Appropriation Ordinance. The ordinary procedure was followed by the first defendant in giving authority for this money so appropriated to be paid out to the person indicated. There is no doubt that the legislature of the country is the proper body to decide what funds shall be raised for the public service and how those monies shall be spent. It is obviously competent for the legislature to make provision for payments of salaries or honoraria or whatever you like to call them to its members, and when that money is appropriated it is obviously right that the Governor should include those payments in the general warrant to the Accountant-General. Mr. During argues that unless there be a special legislation recognising the position of Leader of the Opposition as an office, no money can be paid to him. He cited by way of analogy the Ministers of the Crown Act, 1937 in England. But that Act, while it makes provision for salaries of certain ministers outside the annual Appropriation Acts by making these salaries fixed for all time until amended, and charging them against the consolidated funds so that they do not have to be coming under review every year, does not create any of the ministers who benefit thereby. It merely recognises their existence. Ministers of State and Leaders of Opposition are normally, in our form of constitution, not the creatures of statute. They are like little Topsy —they just growed. Their positions are often not defined in any specific legislation. They derive very largely from constitutional conventions. There is no reason why the position of Leader of the Opposition in this Colony should not derive from the same source, if in effect there is a person who leads the opposition and an amount is voted he could lawfully claim. There is no reason on earth why he should not have it. And it is quite within the powers of the legislature here to make provision for that purpose, and it is equally lawful for the executive and administrative side of the Government to take steps to pay that money to the person indicated if he puts in his proper payment voucher. That apparently is being done in this case, and apparently also there is no complaint that the wrong person is receiving the money; and this claim I must say is quite a hopeless and untenable claim in the form in which it is brought.

My final conclusion therefore is that the defendants have succeeded in their motion. I am satisfied that on the claims as brought there are no further facts that require investigation, nor are there any matters of fact that may still be in dispute which could alter the position. There is one allegation of fact which may still

be in dispute between the parties, as to whether the Governor is the Governor of Sierra Leone. Without deciding that point, I have based my decision on the assumption that he is. Even if he is not, that fact would not be of any assistance to the plaintiff in his claim. I therefore allow the motion and I dismiss the action summarily. There will be no order as to costs.

Suit dismissed.

TAYLOR *v.* JOHNSON

SUPREME COURT (Smith, C.J.): March 19th, 1953
(Civil Case No. 235/52)

[1] **Civil Procedure—interlocutory proceedings—compromise—effect is to bar relitigation of original dispute—exception where question one of enforcement of compromise terms or where evidence of fraud, mistake or misrepresentation:** Where a case is settled and is struck out by the consent of the parties, then, whether or not the terms of their compromise are communicated to the court and embodied in a formal judgment, and whether or not the issues between them are set out in the court order, the parties are barred from relitigating their original dispute, unless the second dispute is as to the carrying-out of the terms of the compromise or there is evidence of fraud, mistake, or misrepresentation in fact or in law; and if the original dispute arose out of a contract, the compromise in effect substitutes a new contract for the original one between them (page 298, line 26—page 299, line 25).

[2] **Contract—novation—compromise of proceedings on contract—compromise between parties to action substitutes new contract for original one:** See [1] above.

[3] **Estoppel—record—judgment by consent or default—parties to compromise estopped from relitigating original dispute—embodiment of compromise terms in formal judgment and setting out of issues in court order not necessary for estoppel:** See [1] above.

The plaintiff brought an action against the defendant arising out of a contract between them.

The action was struck out by consent and a formal judgment was drawn up which did not set out the issues between the parties. The plaintiff then instituted the present proceedings based on the same contract.

The plaintiff contended that he was not estopped from re-