O.LXIV, r.13. My authority for this is the judgment of Lord Ellenborough, C.J. in the case of *May* v. *Wooding* (2), in which he says (3 M. & S. at 501; 105 E.R. at 698):

> "The reason of the rule is this, that while the matter is still in controversy, the party should, after so long a lapse as four terms without any proceedings, have notice, that he may prepare himself, but when the matter has passed in rem judicatam by the verdict, the same reason does not apply. The rule of this Court therefore relates merely to interlocutory stages of the cause. No instance is stated where it has been carried farther. and there is no analogy to aid this case."

I also refer to 26 *Halsbury's Laws of England*, 2nd ed., at 77, para. 130, and the cases of *Houlston* v. *Woodall* (1), which stated that the proceeding referred to in the rule means a proceeding before and not after judgment, and *Webster* v. *Myer* (3). Having failed to give this notice, the plaintiff has contravened the Supreme Court Rules as laid down, and the proceedings in this case since the first and second defendants put in their appearance being grossly irregular, these proceedings are set aside on the grounds of irregularities and the defendants are dismissed from this action for want of prosecution. The defendants are to have the costs of these proceedings.

Application granted.

TIMBO *v.* JALLOH

WEST AFRICAN COURT OF APPEAL (Foster-Sutton, P., Smith, C.J. (Sierra Leone) and Coussey, J.A.): June 18th, 1953
(W.A.C.A. Civil App. No. 15/52)

[1] Land Law—joint tenancy—words of severance—devise to several of testator's sons of property to be used as family property—devisees take as joint tenants to benefit whole of testator's family: Where a testator leaves land to several of his sons and instructs that "the property is to be used as family property," the will must be construed in a manner consistent with an intention on the part of the testator to benefit his whole family and not just the families of the devisees; and therefore the devisees take as joint tenants rather than tenants in common (page 317, lines 5–16).

[2] Succession—wills—construction—joint tenancy and tenancy in common—devise to several of testator's sons of property to be used as

family property—devisees take as joint tenants to benefit whole of testator's family: See [1] above.

The appellant brought an action against the respondent in the Supreme Court to recover possession of property to which he claimed to be entitled under a will.

A testator left his home by will to two of his sons with the instruction that it was to be used as family property and not sold. Subsequently an issue arose between the appellant and the respondent which necessitated a finding as to whether the sons took as joint tenants or tenants in common. The Supreme Court (Luke, Ag.J.) found that by instructing the sons to use the property as family property the testator had intended to benefit only their families, and therefore held that they should take as tenants in common. The proceedings before the Supreme Court are reported in 1950–56 ALR S.L. 200. On appeal, the West African Court of Appeal attempted to ascertain the testator's intention on the basis of the language used in the will.

Edmondson for the appellant;
O.I.E. During for the respondent.

SMITH, C.J. (Sierra Leone):

This is an appeal from the decision of Luke, Ag.J. on an issue tried by him as to whether Alimamy Janneh and Mormodu Janneh took a property at No. 12 Jenkins Street, Freetown, as joint tenants or tenants in common, in which he held that they took as tenants in common.

The whole point turns on the proper construction of cl. 1 of the will of Jallah Janneh, father of Alimamy and Mormodu, made on October 3rd, 1898. This clause reads as follows: "To my natural sons Alimamy Janneh and Mormodu Janneh my house and premises at Jenkins Street in which I at present reside. The property is to be used as family property and is in no wise to be sold." And it is pertinent to note that the testator left other children besides the two sons mentioned in cl. 1, and that the property disposed of in this clause is the house where he was living at the time he made the will.

It is clear that the first sentence of the clause, taken alone, devises the property to the two sons as joint tenants; but it is argued that if the second sentence is construed with it, the two together express the testator's intention that they should take in

severalty, and this construction was accepted by the learned judge, who held that the testator intended to benefit the respective families of the two sons and this could only be effected by severing the tenancy.

With respect, I consider that the learned judge misconstrued the clause. The property devised was the testator's home. He had other children besides the two sons, and when he said "The property is to be used as family property," I understand that the testator was referring to his own family and not to the families of the two sons.

This intention to benefit the testator's family, so far as it could be carried out, could be done rather better by the two sons holding the property jointly than by severing, and I think it is doing violence to the language used by the testator to construe it as expressing any intention on his part that the tenancy should be severed, or that the sons' families as distinct from the testator's family should take any benefit from the gift.

For these reasons I hold that the two sons took as joint tenants and I would allow this appeal with costs in this court and declare that the appellant is entitled to the costs of the issue in the court below.

FOSTER-SUTTON, P. and COUSSEY, J.A. concurred.

Appeal allowed.

FEISAL *v.* BASMA

SUPREME COURT (Luke, Ag.J.): July 22nd, 1953
(Civil Case No. 65/51)

[1] Aliens and Nationality—civil and criminal liability of aliens—execution of judgments—Execution against Real Property Ordinance (cap. 75) does not apply to aliens—land can be attached only under writ of elegit: The provisions of the Execution against Real Property Ordinance (*cap.* 75) do not apply to aliens; and therefore whenever this situation pertains, a judgment creditor who wishes to execute a judgment for the payment of money or an order for costs upon the lands of a judgment debtor may apply immediately for the issue of one or more writs of *elegit* (page 320, lines 6–20).

[2] Civil Procedure—execution—land—writ of execution—Execution against Real Property Ordinance (cap. 75) does not apply to aliens—land can be attached only under writ of elegit: See [1] above.