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.

[3] **Civil Procedure—execution—land—writ of execution—writ of elegit must be registered with Registrar-General in name of judgment debtor—non-registration renders writ of every consequent proceeding void as against purchaser for value:** A writ of *elegit* must be registered in the Registrar-General's office in the name of the judgment debtor, and if it is not so registered the writ of every proceeding taken thereunder is void as against any purchaser for value of the land (page 320, lines 22–27).

[4] **Civil Procedure—execution—writ of execution—issue of writ in improper form destroys judgment creditor's priority of claim:** A judgment creditor who, at the date when he files his *praecipe*, has not issued the proper writ of execution to the Sheriff loses whatever priority he may have had against other processes or judgments in connection with the property on which execution is sought (page 321, lines 3–7).

The plaintiff, the claimant in interpleader proceedings, asked the court to determine, *inter alia*, whether the defendant judgment creditor could levy execution on the judgment debtor's land under the Execution against Real Property Ordinance (*cap.* 75).

Both parties to this proceeding were aliens. The defendant, in execution of a judgment against the judgment debtor, issued a writ of *fi. fa.* directing the Sheriff to levy on the personal effects of the judgment debtor, if sufficient, and if not to levy on his land. The plaintiff, who claimed to be equal owner of the land with the judgment debtor, contended that the provisions of the Execution against Real Property Ordinance did not apply to aliens, and therefore the defendant could not proceed under a writ of *fi. fa.* but only under a writ of *elegit*. The proceedings came before the court as an interpleader issue.

Case referred to:

(1) *Underhill* v. *Devereaux* (1845), 2 Wms. Saund. 68; 85 E.R. 698.

Legislation construed:

Execution against Real Property Ordinance (Laws of Sierra Leone, 1946, *cap.* 75), s.2:
The relevant terms of this section are set out at page 319, lines 31–39.

Supreme Court Rules, 1947 (P.N. No. 251 of 1947), O.XXX, r.8:
"In these rules the term 'writ of execution' shall include writs of *fieri facias*, *capitas*, *elegit*, sequestration, and attachment . . . ."

O.XXXI, r.3: "Writs of *venditioni exponas*, and all other writs in aid of a writ of *fieri facias* or of *elegit* may be issued and executed in the same case . . . ."

O.I.E. During for the plaintiff;
Kamara for the defendant.

LUKE, Ag.J.:

This is an interpleader issue between a claimant, who was made plaintiff, and the judgment creditor, the defendant in this issue, on two questions: (i) whether the judgment debtor was owner in equal shares with the claimant of property No. 44 Westmoreland Street on the date when the judgment creditor levied execution on the said property; and (ii) whether the defendant could levy execution under the Execution against Real Property Ordinance (*cap.* 75).

The facts in issue have been admitted by both parties, and by consent the writ and memorial of judgment have been put in evidence and marked Exhibits A1 and A2.

The real question to be determined is the second—whether the defendant, by Exhibits A1 and A2, could levy on the property as he has done if on the date of this execution a moiety of this property was the judgment debtor's. Exhibit A1 is a writ of *fi. fa.* directed to the Sheriff to levy on the personal effects of the judgment debtor within the jurisdiction of the court, if the same be sufficient, and if not then on the personal estate, lands, tenements etc. of the said judgment debtor, and the sum of £37. 3s. 0d. being the taxed costs on the said amount. Exhibit A2 is the memorial of judgment which was registered in the office of the Registrar-General, the Land Registry in Sierra Leone, under s.6 of the Registration of Instruments Ordinance (*cap.* 200).

Section 2 of the Execution against Real Property Ordinance, a special piece of legislation passed in 1906 making all real estates liable to be seized for debts, has this to say and the full text reads:

> "The houses, lands and other hereditaments and real estate situate or being within any part of the Colony, belonging to any person whatsoever indebted, shall be liable to, and chargeable with, all just debts, dues and demands, of what nature or kind soever, owing by, or due from, any such person to His Majesty, or any of his subjects, and shall be and are hereby made chattels for the satisfaction thereof, in like manner as personal estates within the Colony are seized, extended, sold or disposed of for the satisfaction of debts."

The defendant's solicitor in the course of his arguments referred to two cases, but the principle which these two cases enunciated

was that in England, when cases are brought on contracts entered into abroad, the contract is to be interpreted according to the foreign law but the remedy is to be taken according to the law in England; and that this is not because a Frenchman in France is subject to a disability which should be perpetuated in England.

In this case it is admitted that both parties are aliens, and there arises no difficulty in arriving at the conclusion that they are not persons contemplated by the legislature when the Ordinance was passed. Before the passing of this Ordinance, lands and other real estate of a debtor could be attached only by a writ of *elegit*. This process is still available. The nature of this writ is described in 14 *Halsbury's Laws of England*, 2nd ed., at 73, para. 127, and its applicability is also described in the same volume of *Halsbury*, at 74, para. 128. It reads:

> "Whenever execution may issue upon a judgment or order of the High Court for the recovery, or payment to a person, of a sum of money or costs, the judgment creditor who desires to execute such judgment upon the lands of the judgment debtor may immediately apply for the issue of one or more writs of *elegit*."

As to what property may be taken under a writ of *elegit*, see the same volume of *Halsbury*, at 78, para. 133. It will be discovered when reading the law on the writ of *elegit* that it is necessary to register any writ or order affecting land in the Land Registry in the name of the judgment debtor. If it is not so registered, the writ of every proceeding taken thereunder is void as against any purchaser for value of the land. In Yorkshire, it is necessary that the judgment or order should be registered to obtain priority for execution upon it.

By O.XXX of the Supreme Court Rules, 1947, provision is made for the way in which a judgment for payment of money may be enforced and r.8 shows the different kinds of writs which are included in the term "writ of execution"; among them is the writ of *elegit*. Order XXXI, r.3 provides that *elegit* could be used in aid of a writ of *fi. fa.*: see the case of *Underhill* v. *Devereaux* (1) (2 Wms. Saund. at 68; 85 E.R. 702–704) and the notes on it.

Having taken the trouble to ascertain the history of writs of execution, I now turn my mind to the proceedings in this case. Exhibit A1 is a replica of Schedule A to the Execution against Real Property Ordinance. The form which should have been used in this case is what could be found in the forms attached to O.XLIII, r.1

of the English Rules of the Supreme Court or any books on sheriff law or law on execution, and the formalities to be observed in connection with such writ are also different. The process which the judgment creditor has issued will not avail him, and not having at that date when he filed his *praecipe* issued the proper writ to the Sheriff, whatever priority he may have against other processes or judgments in connection with this property is lost. Without entering into the other aspects or issues of the case, I rule that Exhibit A1 will not avail the defendant to levy execution on this property and secure the fruits of his judgment. There will be judgment for the plaintiff with costs.

Judgment for the plaintiff.

WILLIAMS *v.* REGINAM

SUPREME COURT (Luke, Ag.J.): July 29th, 1953
(Cr. App. No. 15/53)

[1] **Criminal Procedure—institution of proceedings—title of summons—title should name party by or on whose behalf information laid:** A summons is not properly worded if its title names as prosecutor a party by or on whose behalf the information was not laid: where the information is laid on behalf of the King or the Government, the title "Rex" should be used in the summons; where it is laid by or on behalf of the head of a Government department, the title should relate to that particular head of department; and where the summons is taken on the information of a private individual, the name in the title should be that of the complainant (page 323, lines 7–11; page 323, line 38—page 324, line 8).

[2] **Criminal Procedure—police—police as prosecutors—police officer should not conduct prosecution of offence not committed in his presence:** A police officer should not be allowed to act as advocate in a court to conduct the prosecution of an offence not committed in his presence (page 323, lines 23–33).

[3] **Criminal Procedure—summonses—title—title should name party by or on whose behalf information laid:** See [1] above.

The appellant was charged in the Magistrate's Court, Port Loko, with threatening behaviour occasioning a breach of the peace, contrary to s.21(1) of the Summary Conviction Offences Ordinance (*cap.* 225).