the pattern aimed at. Without endeavouring to see that that was done, we find introduced very early into the Rules of the Supreme Court in Orders relating to writs of summons, references to a " district registry," thereby causing confusion doubly confounded. Surely it could never have been intended as mentioned aforesaid that District Commissioners in the different judicial districts should be the district registrars, even if we concede, as I have already done in my answer to question (i), that the district registry means the magistrate's office of that place. These Rules of the Supreme Court were drawn up when the magistrates' offices were being established and qualified magistrates were being appointed throughout the length and breadth of the Protectorate, and there is some mix-up in them which needs to be looked into.

I now pass on to the third question which reads: " If not, what is holding back such appointments?" It has not been easy to ascertain the cause for such a hold up, but I can only attribute it to the frequent changes in the holder of the office of Chief Justice within the last few years which may have made it impossible for the holder of that office to look into such an important aspect of the administration of justice. Suffice it to say it is a matter which should be looked into with the least possible delay.

Having answered into the affirmative that a district registry is established can I make the order asked for? It is quite clear that in order to operate the district registry effectively there should be appointed a district registrar and this has not yet been done. For as Order 35, r. 1, states:

> " Where a cause or matter is proceeding in a district registry, all proceedings, except where by these Rules it is otherwise provided, or the court or a judge shall otherwise order, shall be taken in the district registry, down to and including the entry of final judgment. . . ."

Should I make such an order it would mean that until a district registrar is appointed all such pleadings and other documents will have to be accepted at Bo or any of the several district registries as enumerated in the judicial districts and then sent down to Freetown for filing. Such procedures would be quite foreign to Order 35, which constitutes a district registry; in the alternative there will always be an unending application to the court or judge for an order to regularise the proceedings. Under all the circumstances, I refuse the application for an order for a mandamus to W. S. Young, Acting Master and Registrar, compelling him to accept as filed any documents in the District Registry at Bo by the applicant.

Freetown,
May 19,
1961
Cole J.

[SUPREME COURT]

GEORGE BERESFORD COLE . . . . . *Plaintiff*

v.

MICHAEL J. M. HAROUN . . . . . *Defendant*

[C. C. 117/59]

Valuation of property—Compensation for making valuation.

Abraham J. Milhelm Haroun died testate, leaving an estate which included a third share in several properties in Freetown. Defendant was one of the executors of the will, and he instructed Mr. C. B. Rogers-Wright to obtain probate. To do this it was necessary to know the value of the deceased's share

in the properties, and Mr. Rogers-Wright instructed plaintiff to make a valuation. Plaintiff did so, arriving at a value of £104,000, and then made a charge for his services of 3 per cent. of this sum, amounting to £3,120. Defendant paid £2,100, but refused to pay the balance of £1,020. Plaintiff brought suit against defendant for £1,020.

Held, for the plaintiff, (1) 3 per cent. of the value of the property was a reasonable charge for plaintiff's services.

(2) The percentage was correctly based on the total value of the properties rather than just on the value of testator's one third share.

Note: This decision was reversed by the Court of Appeal on July 5, 1961 (Civil Appeal 22/61).

Zinenool L. Khan for the plaintiff.

Rowland E. A. Harding for the defendant.

COLE J. The plaintiff, a licensed auctioneer and appraiser, was by a letter dated January 12, 1959, Ex. "A," instructed by one C. B. Rogers-Wright, solicitor and advocate, to inspect and value certain properties for the purpose of ascertaining the one-third undivided share and interest in them which interest belonged to the estate of one Abraham J. Milhelm Haroun, decd. The properties in question were: 24 East Street (corner of Westmoreland Street); 5 Westmoreland Street (corner of East Street); two houses at Signal Hill in Wilberforce; one house (in course of construction) at Spur Road, Wilberforce.

The plaintiff carried out those instructions and submitted his certificate of valuation, Ex. "B." He valued the properties in question at £90,000. Plaintiff also submitted his bill, Ex. "C," for £2,700 being 3 per cent. of the valuation of £90,000. A couple of days later plaintiff received further instructions, on this occasion, verbal, from Mr. C. B. Rogers-Wright to inspect and value certain other properties for the same purpose. These properties were No. 28 and 28a Walpole Street and goods shed at Queen Elizabeth II Quay, Cline Town. Plaintiff valued these at £14,000 and submitted his certificate of valuation and also a bill, Ex. "C," for £420 being 3 per cent. of £14,000. Both bills and both certificates of valuation were submitted to Mr. C. B. Rogers-Wright. The plaintiff's bills totalled £3,120. The defendant in this case was and is the executor of the estate of Abraham J. Milhelm Haroun, decd. I find on the pleadings and on the evidence before me that at all times material to this case Mr. C. B. Rogers-Wright was acting on behalf of the defendant and that the instructions for both valuations were given by Mr. C. B. Rogers-Wright on behalf of the defendant: and that in doing so he acted well within his authority. I find that it was the defendant who through his agent Mr. C. B. Rogers-Wright engaged plaintiff to do the valuations in question.

After plaintiff had submitted his bills, he was on February 12, 1959, invited to the Chambers of Mr. Rogers-Wright. There he met Mr. Rogers-Wright, Mr. Moukerzel (second defence witness) and the defendant. The plaintiff was requested by Mr. Rogers-Wright on behalf of the defendant to reduce his bill and according to the plaintiff's evidence a figure of £2,700 was suggested by Mr. Rogers-Wright on defendant's behalf. According to the defendant, Mr. Rogers-Wright at the interview mentioned £2,700 but according to Mr. Moukerzel (second defence witness) £2,100 and not £2,700 was mentioned. On this point I prefer the evidence of plaintiff and accept it. Plaintiff wanted time to consider and so the interview came to an end. On the following day,

February 13, 1959, plaintiff wrote, Ex. "F," to Mr. Rogers-Wright, to the effect that he would accept £2,700 if that sum was paid on that date. No payment was made and so on February 14, 1959, plaintiff wrote, Ex. "G," to Mr. Rogers-Wright withdrawing his acceptance of £2,700 and claiming full payment of £3,120. A cheque for £2,100 was sent plaintiff by Mr. Rogers-Wright which plaintiff cashed and for which a receipt was sent. He then instituted these proceedings claiming the sum of £1,020 being the difference between his bills for £3,120 and the amount of £2,100 already received. The plaintiff having completely done the work which he was required to do is certainly entitled to demand and be paid reasonable remuneration. I find this case to be one in which the plaintiff did work for the defendant under a contract that it should be paid for; but the price for the work was not agreed upon. That being the case the plaintiff can recover only what is reasonable value. The plaintiff based his charges at the rate of 3 per cent. Evidence was led for the plaintiff that the rate payable in Sierra Leone was 3 per cent. I refer to the evidence of Percy Richmond Davies whose evidence I accept. It appears from the defendant's case that 3 per cent. was in all the circumstances considered reasonable and that the payment by defendant to plaintiff of the sum of £2,100 was calculated at the rate of 3 per cent. I find that in all the circumstances 3 per cent. was a reasonable charge. The last issue that remains to be disposed of is should the percentage have been on the whole valuation or on only a third which represents the share of the estate of Abraham J. Milhelm Haroun, decd.? The answer to this question hinges on the answer to the question "what was the contract?" I find this to be that the plaintiff was instructed to inspect and value the whole of all the properties afore-mentioned. I do not consider the purpose for which the valuation was required material in this case. The plaintiff completely performed this work and submitted his certificates of valuation. I consider £3,120 to be a fair and reasonable remuneration for the work performed by the plaintiff for the defendant and I assess on a quantum meruit basis plaintiff's remuneration at that figure. He has already been paid £2,100 by defendant. He is now therefore entitled to £1,020.

There will therefore be judgment for plaintiff for £1,020 and costs, such costs to be taxed.

Freetown
May 23,
1961
Luke Ag.J.

[SUPREME COURT]

H. J. MACFOY, GLADYS LEBBIE, FODAY H. KAMARA, CHARLES TAYLOR AND MADAM NYEMA G. LEWIS . *Plaintiffs*

v.

A. F. F. P. NEWNS (ACTING GOVERNOR) AND DURAMANI SESAY . . . . . *Defendants*

[C.C. No. 435/60]

Suit challenging validity of recognition of person as Tribal Headman—Recognition by Acting Governor—Jurisdiction of court to review Acting Governor's action—Whether person of different tribe can be recognised as Tribal Headman—Meaning of "any person" in section 2 (2) *of Tribal Administration (Colony) Ordinance (Cap.* 244, *Laws of Sierra Leone,* 1946).