Maxwell on p. 81 describes as "Presumption against Implicit Alteration of Law" which reads:

> "One of these presumptions is that the legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares, either in express terms or by clear implication, or, in other words, beyond the immediate scope and object of the statute. In all general matters outside those limits the law remains undisturbed. . . . General words and phrases, therefore, however wide and comprehensive they may be in their literal sense, must, usually, be construed as being limited to the actual objects of the Act."

If that is so, then the words "any person" found in section 2 (2) of the Tribal Administration (Colony) Ordinance should be read alongside the whole Ordinance, including the preamble and not limited to the one section. I have been unable to find any judicial interpretation of the words "any person" in our judicial decisions and, therefore, I shall refer to English decisions, and the case which seems to lend itself as a guide is *Metropolitan Board of Works* v. *London and North Western Railway Co.* (1880) 14 Ch. 521, 528, decision of Hall V.-C., which reads:

> "It is said that the Act of Parliament uses language wide enough to embrace anybody, and that the words 'any person' apply to and include the defendants. But I must read these words 'any person' with reference to the scope and provisions of this Act of Parliament as a whole; and 'any person' must, in my judgment, be taken to mean throughout all these sections any person entitled to participate in or make arrangements with the board with regard to the user of the drainage system and the benefit of the Act of Parliament. I feel no difficulty whatever in saying that that is the true construction of the Act of Parliament."

Having read the dicta of Hall V.-C. as to the meaning of the words "any person" I hold that the words "any person" used in section 2 (2) of the Tribal Administration (Colony) Ordinance should be read with the whole context of the Ordinance and mean "Any person belonging to the particular tribe for which an election for a Tribal Headman is being held." In the case before the court this was not observed as the D.C. allowed a Madingo not only to register but to be elected. Under the circumstances it is declared that the recognition of the second defendant as Tribal Headman for the Mende Tribe of Bonthe by the first defendant is invalid and ultra vires. There will be an injunction as prayed restraining him from acting as such Headman. Plaintiffs to have the taxed costs of the action.

Freetown
May 25, 1961
Cole J.

[SUPREME COURT]

BRIMA KORMOR . . . . . *Plaintiff*

v.

NICHOLAS COOSAH AND ASINU K. LAMIN . . . . *Defendants*

[C. C. No. 20/60]

Real property—Action for possession—Conveyance executed by illiterate man—Whether he had full knowledge of effect of document—Native law and custom—

Courts Ordinance (Cap. 7, Laws of Sierra Leone, 1960) *s.* 38—*Illiterates Protection Ordinance (Cap.* 104, *Laws of Sierra Leone,* 1960).

Plaintiff, an illiterate man, was the owner of a building at Morfindor Road, Kailahun, consisting of a house and shop. Sometime in 1952, soon after the election of Ngobeh as Paramount Chief of the Luawa Chiefdom, Kailahun, the chiefdom people decided to give Ngobeh a house which was then occupied by one Asinu K. Lamin. As a result of this decision, Lamin was turned out of the house. Plaintiff agreed to take Lamin into his house and let him use a room and the shop free of rent.

About two months after Lamin took possession, plaintiff was asked by Ngobeh, in the presence of Lamin, to sign a document, which was, he was told, connected with his allowing Lamin to live in his house. Plaintiff signed by affixing his thumbprint. This document (Ex. "A") dated August 22, 1952, turned out to be a conveyance which purported to transfer to Lamin all plaintiff's right and interest in the house at Morfindor Road. On the strength of this document, Lamin entered into an agreement on November 4, 1959, with Nicholas Coosah whereby Lamin let to Coosah the house and shop for a period of three years at a rent of £150 per annum. When Coosah tried to evict plaintiff from the house, plaintiff brought an action for possession, damages and mesne profits.

Held, for the plaintiff, (1) since the parties to Ex. " A " were both " natives " living in the Protectorate, and since there was no evidence that the transaction embodied in Ex. "A" was to be regulated exclusively by English law, native law and custom had to be applied in determining questions arising out of Ex. "A".

(2) According to native law and custom, Ex. "A" was invalid, because the prior consent of all the relatives of plaintiff was not obtained before Ex. "A" was executed.

(3) Lamin could not rely on Ex. "A" because it " was never truly presented nor properly explained to the plaintiff and he did not appreciate its full effect before executing it."

(4) The lease given by Lamin to Coosah on November 4, 1959, was invalid, because Lamin was not owner of the premises but merely a tenant at will.

Gershon B. O. Collier for the plaintiff.

No appearance for the defendants.

COLE J. The plaintiff claims from the defendants possession of certain premises at Morfindor Road, Kailahun; damages for trespass and mesne profits.

The plaintiff, an old and illiterate man, was the owner of a building at Morfindor Road, Kailahun. This building consisted of a house and shop. About August of 1952, soon after the election of the present Paramount Chief Ngobeh as paramount chief of the Luawa Chiefdom, Kailahun, the chiefdom people decided to make a gift to the newly elected Paramount Chief of a house then occupied by the second defendant Asinu K. Lamin. As a result of this decision Asinu Lamin, the second defendant, was turned out of that house. The plaintiff, who had known Asinu Lamin before that date, since Lamin's mother had been previously plaintiff's sweetheart, agreed in the circumstances to take Lamin into his house. Plaintiff offered Lamin a room in the house and also the shop premises. Lamin was to stay in the room and use the shop free of rent. It should be noted that before the election the plaintiff was the chiefdom speaker holding a position next to that of the Paramount Chief; but after the election he was deposed. Plaintiff said that he

made the arrangement I have already referred to at the request of the new Paramount Chief Ngobeh. According to the plaintiff the second defendant Lamin lived in his house and used his shop. He said that about two months after second defendant Lamin took possession he (plaintiff) was called into the Paramount Chief's bedroom where he met the Paramount Chief and second defendant Lamin. There he was shown a paper and was told by the Paramount Chief that he had previously asked him (plaintiff) to give the shop portion of his building and a room in the house to second defendant Lamin. If he (plaintiff) agreed he should sign the paper. He (plaintiff) thought it was perfectly all right, and so he signed the paper by putting his thumbprint on the paper. I should here note that, like the plaintiff, the Paramount Chief is illiterate, but the second defendant Lamin was and is a highly educated gentleman, having attended the Bo Government Secondary School. This paper in question turned out to be Ex. "A" dated August 22, 1952, which purported to transfer to the second defendant Lamin all the plaintiff's right and interest in the plaintiff's house at Morfinder Road. This document, Ex. "A," as it came out in evidence, was drafted by the second defendant Lamin and typed by the then Luawa N.A. Clerk Vandi Kallon, now a Regent Chief of Jawi Chiefdom. This gentleman gave evidence for the defence and was third defence witness. On the strength of Ex. "A," the second defendant Lamin entered into an agreement on November 4, 1959, with the first defendant Coosah, Ex. "B," whereby second defendant Lamin let to the first defendant Coosah the house and shop in question for a period of three years at a rent of £150 per annum. The plaintiff was at that time living in the premises and when first defendant Coosah took possession he tried to forcibly evict plaintiff from the house. These proceedings are the result of the first defendant's attempt at eviction. It is clear that the second defendant Lamin bases his title on Ex. "A" and the first defendant on Ex. "B." For the second defendant to succeed I must be satisfied not only that the title on which he relies is valid but also that the plaintiff fully appreciated what he did, and voluntarily and without any misrepresentation did what it is alleged he did. The parties to Ex. "A" are both natives and I have no evidence before me that the transaction contained in Ex. "A" was to be regulated exclusively by English law. I am therefore bound by the provisions of section 39 of the Courts Ordinance (Cap. 50, Laws of Sierra Leone, 1946) to take into consideration and apply native law and custom in the determination of matters arising between natives in the provinces. Evidence was led for the plaintiff that according to native law and custom the prior consent of all the relatives of a native was required before there could be an out-and-out transfer of a house built on family land. This is the uncontradicted evidence that I have before me. I have also evidence before me that the land in question on which plaintiff's house was built was family land. I also have evidence before me given by one of the witnesses for the defence, Moriwa Nyele, fourth defence witness, who claims to be a relation of plaintiff, that neither his own personal consent nor that of the other relatives at Borbordu was obtained before Ex. "A" was executed. This witness agreed that such consent was a prerequisite. On this ground alone, the document Ex. "A" becomes invalid, even if it was voluntarily entered into by plaintiff with full knowledge of its effect. But after careful scrutiny of the evidence as a whole I am far from being satisfied that at the time Ex. "A" was thumb-printed by plaintiff he knew that document was an out and out transfer of all his interest in his house

and shop to second defendant. Although the evidence for the defence was to the effect that Ex. " A " was carefully explained by third defence witness, Vandi Kallon, in the presence of all the signatories to that document (Ex. " A ") there is evidence before me by at least two of those signatories, Sinneh Borbor, the Chiefdom speaker (second plaintiff's witness) and Sampha Ngainda, the Section Chief (third plaintiff's witness) that he was not present when Ex. " A " was executed. One of them further said that they were merely told that the paper, Ex. " A," related to the room and shop that plaintiff had allowed second defendant, Lamin, to use. It is most significant that there is no mention on Ex. " A " that Ex. " A " was explained and interpreted to plaintiff before he thumb-printed it, particularly as it was a document drawn up by the second defendant and typed by the witness Vandi Kallon at the request of second defendant. Furthermore, the witness Lamin Ngobeh—educated and brother of the Paramount Chief who swore he was present at the execution of Ex. " A "—did not sign the document. Furthermore, the document Ex. " A " does not comply with the Illiterates Protection Ordinance (Cap. 105, Laws of Sierra Leone, 1946) which has been applicable to the provinces since April 7, 1898. This Ordinance, which was passed for the protection of illiterate persons, provided, inter alia, that a document written at the request, or on behalf or in the name of any illiterate person should bear the name of the writer thereof and his full and true address. The evidence here is that second defendant drafted the document, Vandi Kallon typed it and he (Vandi Kallon) signed as a witness. In these circumstances, I am inclined to the view that Ex. " A " was never truly presented nor properly explained to the plaintiff and he did not appreciate its full effect before executing it and this I so find. I am strengthened in this view by the conduct of the plaintiff. No sooner had he found the first defendant in his premises than he started making trouble to such an extent that the second defendant had to offer him the sum of £20 as a beg bone. This sum plaintiff refused and straightway consulted a solicitor. In view of this finding the second defendant cannot rely on Ex. " A " as his title. Up to the date of the agreement, Ex. " B," i.e., November 4, 1959, second defendant remained a tenant at will of the room and shop. In these circumstances the plaintiff is entitled to recover possession of the room and shop from the second defendant.

As regards the first defendant it is clear from Ex. " B " that second defendant let the premises in question to first defendant on the strength that he (second defendant) was owner of those premises. In view of my finding that second defendant was not owner but merely tenant at will he (second defendant) could not give what he did not have. A tenancy at will is a tenancy which may continue indefinitely or may be determined by either party at any time. The tenant has nothing which he can alienate. In the circumstances the first defendant when he took possession of the house and shop in question had no valid estate or interest and committed an act of trespass by attempting forcibly to evict the plaintiff. I accept the plaintiff's evidence and that of Sinneh Borbor and Sampha Ngainda that the first defendant attempted forcibly to evict plaintiff. The second defendant, having assigned his interest in the house and shop to first defendant, thereby determined his tenancy at will and should pay a reasonable sum for the period he held over after November 4, 1959, the date of the tenancy agreement, Ex. " B." On the evidence before me the whole house and shop were let at £150 per annum. I assess the mesne profits for the room and shop held over by the second defendant at £100 per annum from

November 4, 1959, until possession is given up. I award the plaintiff the sum of £50 for the trespass committed by the first defendant.

In the result there will be judgment for the plaintiff,

(a) for recovery of possession from both defendants of the plaintiff's house and shop at Morfindor Road, Kailahun;

(b) £50 general damages against the first defendant for trespass;

(c) mesne profits assessed at £100 per annum against the second defendant from November 4, 1959, until possession is given up.

Costs to plaintiff—such costs to be taxed.

Freetown
June 2,
1961
Bankole-Jones
J.

[SUPREME COURT]

THOMAS SYLVANUS WILLIAMS . . . . . *Petitioner*

v.

ANNIE LAMITOH WILLIAMS . . . . . *Respondent*

AND ELI G. RENNER . . . . . *Co-respondent*

[Divorce Case 19/60]

Divorce—Desertion—Cruelty—Adultery—Desertion and cruelty by husband—Adultery by wife—Whether wife or husband entitled to decree nisi—Whether costs to be awarded—Matrimonial Causes Act (Cap. 102, Laws of Sierra Leone, 1960), s. 7 (2).

Thomas Williams petitioned for a divorce from his wife, Annie Williams, on the grounds of desertion and adultery. The wife filed an answer in which she denied desertion and pleaded that if she had committed adultery the husband by his conduct had contributed to such adultery. She also prayed for the dissolution of the marriage on the grounds of the husband's desertion and cruelty:

Held, for the wife, (1) where a wife has committed adultery, the court is not bound to grant a divorce on the husband's petition if his desertion and cruelty preceded and contributed to the adultery.

(2) Even though a wife has committed adultery, the court may grant a divorce on her petition if the husband's desertion and cruelty preceded and contributed to the adultery.

Case referred to: *Jeffreys* v. *Jeffreys* (1864) 164 E.R. 1366.

E. Livesey Luke for the petitioner.

Alfred H. C. Barlatt for the respondent and co-respondent.

BANKOLE-JONES J. The husband-petitioner in this suit seeks a dissolution of his marriage with his wife (respondent) on the grounds of desertion and adultery. One Eli Renner is cited as the co-respondent. The respondent entered appearance and filed an answer in which she denies desertion and pleaded that if she committed adultery the petitioner by his conduct conduced to such adultery. She also prays for the dissolution of the said marriage on the grounds of the petitioner's desertion and cruelty. The co-respondent entered appearance, but filed no answer and so far as he is concerned the suit is undefended.