In his submission nothing had been alleged against the co-defendant by the plaintiff in his statement of claim nor any evidence led by the plaintiff from the witness-box against the co-defendant.

The question of no case to answer is to be decided not by weighing the evidence of the plaintiff against that of the defendant or co-defendant, but by disregarding altogether the evidence of either the defendant or co-defendant, and by asking whether that of the plaintiff is, per se and apart from any contradiction, sufficient or insufficient to bring conviction to a reasonable mind. I have applied this test to the evidence in this case and I find that the evidence before me is insufficient for me to say that a case has been made out either against the defendant or the co-defendant. There is no evidence before me that the act which caused the injuries of which the plaintiff complains is that of the defendant, his servant or agent. I agree with Mr. Hotobah-During that neither in the pleadings nor in the evidence before me has there been any allegation by the plaintiff against the co-defendant—Mr. Harding asks me to treat the case against the defendant as one to which the maxim res ipsa loquitor applies. With respect, I differ. In the leading case of *Scott* v. *The London and St. Katherine Docks Co.* (1865) 3 H. & C. 596; 159 E.R. 665, it was stipulated that this maxim can properly be invoked only "where the thing is shown to be under the management of the defendant or his servants and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care." In the case before me as I have already found there is no evidence to show that the car was at the material time under the management of the defendant his servant or agent.

Mr. Harding strenuously urged me to treat as evidence in this case his affidavit and exhibit filed in support of his application for leave to add the co-defendant as a party in this case. This I cannot do because the practice which the law requires to be followed in a matter of this kind has not been followed. By Order 37, rule 24, of the English Rules of the Supreme Court it is stated that "No affidavit or deposition filed or made before issue joined in any cause or matter shall without special leave of the court or a judge be received at the hearing or trial thereof, unless within one month after issue joined, or within such longer time as may be allowed by special leave of the court or a judge, notice in writing shall have been given by the party intending to use the same to the opposite party of intention in that behalf."

I hold therefore that counsel for the defendant and co-defendant succeed in their submission. This action is dismissed with costs—such costs to be taxed.

Freetown
April 10,
1961
Luke Ag.J.

[SUPREME COURT]

REGINA . . . . . *Applicant*

v.

WILLIAM S. YOUNG, ACTING MASTER AND REGISTRAR, SUPREME COURT

EX PARTE BERTHAN MACAULAY . . . . . *Respondent*

[Misc.App. 3/61]

Practice—Mandamus—Application for order directed to Master and Registrar compelling him to accept Supreme Court documents filed in District Registry at Bo—Whether district registries constituted—Whether district registrars

appointed—Courts Ordinance (Cap. 7, Laws of Sierra Leone, 1960) ss. 7 (3), 24, 26, 27—*Supreme Court Rules (Vol. VI, Laws of Sierra Leone, 1960) Order I, Order LII, r.* 3—*Rules of the Supreme Court (England) Order 35, rr.* 1–5, 19.

Berthan Macaulay, a barrister and solicitor of the Supreme Court, applied for an order of mandamus to be directed to William S. Young, Acting Master and Registrar of the Supreme Court, to compel him to accept as filed any documents filed in the District Registry at Bo by Macaulay & Co.

Held, application refused. Documents could not be accepted for filing in Bo, because, although district registries had been constituted, no district registrars had been appointed.

Berthan Macaulay pro se.

William S. Young pro se.

LUKE AG. J. This is an application for an order of mandamus directed to one W. S. Young, the Acting Master and Registrar, compelling him to accept as filed any documents filed in the District Registry at Bo by Macaulay & Co., the name and style under which the applicant practises as a barrister and solicitor of the Supreme Court, and more particularly all documents required by law to be filed in court in the Supreme Court case C.C. No. 469/60 entitled *Fatmattah Mustapha* v. *Shine Salmaise.* On February 23, 1961, leave was granted to him for this application.

Mandamus is described in Halsbury (2nd ed.), Vol. 9, p. 744, paras. 1269 and 1270, as a high prerogative writ of a most extensive remedial nature and is in form a command issuing from the High Court of Justice directed to any person, etc., etc., requiring him to do some particular thing therein specified which appertains to his or their office and is in the nature of public duty. The grant of a writ of mandamus is, as a general rule, a matter for the discretion of the court. It is not a writ of right and it is not issued as a matter of course. Accordingly, the court may grant the writ even though the right in which it is applied for appears to be doubtful and on the other hand the writ may be refused, not only upon the merits but also by reason of the special circumstances of the case. The court will take a liberal view in determining whether or not the writ shall issue, not scrupulously weighing the degree of public importance attained by the matter which may be in question, but applying this remedy in all cases where, upon a reasonable construction, it can be shown to be relevant.

The ground on which relief is sought is that the Master of the Supreme Court is under a duty to accept as filed any document filed in the District Registry of the Supreme Court by a solicitor who has an address for service within three miles of such district registry, in view of Order I and Order LII, r. 3 (English R.S.C., Ord. 35, r. 19) of the Supreme Court Rules.

In arguing this application counsel referred to the Courts Ordinance (Cap. 7, Laws of Sierra Leone, 1960), s. 24, which makes provision for Supreme Court Rules and the amendment by Ordinance No. 3 of 1946 (j) thereby providing for the establishment of district registries and for the appointment and jurisdiction of district registrars and for the areas in which such district registrars shall exercise their jurisdiction. Under Order I the interpretations of what a district registry and a district registrar mean are stated, and, starting from there, he went through the other Orders dealing with writ of summons and other procedural matters in which reference will be found made to a district

registry. After appearance has been entered no reference is made in any of the other matters such as filing of pleadings, entry of trial, etc., and other interlocutory matters. Learned counsel, however, sought to bridge that gap by reference to the White Book (English R.S.C.) under Order 52, r. 3, which reads:

> "Where no other provision is made by these rules the procedure, practice and forms in the High Court of Justice on the 1st day of January, 1957, so far as they can be conveniently applied, shall be in force in the Supreme Court."

He also in his argument mentioned Order 35, r. 19, of the White Book dealing with pleadings in district registries. Looking into the White Book for 1957 dealing with district registries, it will be observed by Order 35, r. 1, if an action has been commenced in a district registry, it proceeds therein down to and including final judgment. Provision is, however, made for transfer of a case started in the district registry either to London or other registry.

Mr. W. S. Young in opposing the application stated that there have not yet been created district registries or district registrars in the true sense of what those terms really mean in relation to the Supreme Court, and that what has been considered as creation of a district registry and the appointment of a district registrar are mere interpretation of terms which if carefully considered and strictly construed relate only to a magistrate's office and District Commissioner. He went on to say that the authorities, realising that no district registry had been created nor any district registrar appointed, attempted to meet these defects by Ordinance No. 31 of 1959 (called an Ordinance to Amend the Courts Ordinance) and he refers to section 3 which amends section 7 of the Principal Ordinance by the addition next after subsection (2) of the following subsection—

> (3) The Chief Justice may by order published in the "Gazette" divide Sierra Leone into judicial divisions and allocate to each division such of the business of the court as may seem fit, and may appoint registrars, deputy registrars and assistant registrars for the divisions and confer and impose upon them such powers and duties as he shall see fit.

Reading our Courts Ordinance, its amendments and the Rules made under it, it will soon be discovered that there is nothing which can be considered as analogous to what is styled a district registry as provided by the Supreme Court of Judicature (Consolidation) Act, 1925 (15 & 16 Geo. 5, c. 49), s. 84 (1), which provides for the establishment of district registries and the appointment of district registrars. Order 35, rr. 1–5 give extensive jurisdiction to a district registrar in the matters therein mentioned. Provision is also made for removal of any cause or matter by any party to it either to London or any district registry. Order 35, r. 19, states that where a cause or matter is proceeding in a district registry all pleadings and other documents required to be filed shall be filed in the district registry. Counsel for the applicant is asking for an order that the Acting Master and Registrar be compelled to accept as filed in the District Registry of Bo any document and, more particularly, all documents required by law to be filed in court in the Supreme Court case C.C. 469/60 entitled *Fatmattah Mustapha* v. *Shine Salmaise*.

Before such an order can be made the court must be satisfied that such a registry and a registrar exist to carry out the true functions of a registry and a

registrar. As Mr. Young remarked, all that Order I has done is to state that "'District Registry' means the magistrate's office in any of the following judicial districts" therein named and "'District Registrar' means the District Commissioner of the following judicial districts" therein also named. Having gone through all the relevant laws which at present exist, three questions pose themselves for answers by me: (i) Have district registries been constituted? (ii) If so, have district registrars been appointed? (iii) If not, what is holding back such appointments?

Dealing with question (i), it is clear that in 1945 the authorities fully realised that the Judiciary should be separated from the Executive and that as far as practicable courts should be established throughout the length and breadth of Sierra Leone to be presided over, as circumstances permitted, by qualified lawyers. They first started by establishing judicial districts in the Colony area and the Protectorate (Courts Ordinance, s. 26 (1) and (2)). Having established judicial districts they went on to constitute Courts of Record subordinate to the Supreme Court (s. 27). After these acts had been done, it became evident that under section 24 (powers to make rules), there was no provision for district registries and district registrars, and so an amending Ordinance (No. 3 of 1946) was passed to provide for the making of rules providing for the establishment of district registries and district registrars. It is significant that after the passing of this amending Ordinance nothing was done to our Rules of Court to make our district registry analogous to a district registry in the White Book nor was any district registrar as such appointed. Although we can, under Order LII, r. 3, of the R.S.C., resort to Order 35 of the White Book where there are no provisions in our R.S.C. for the proceedings therein, yet we have no district registrars so appointed who will be able to perform the duties of that office. For it cannot honestly be conceived that the authorities who were trying to separate the judiciary from the executive could turn round and say that District Commissioners should be the district registrars appointed to fill such an office. In view of what I have stated the question may be answered in the affirmative that a District Registry has been constituted in Bo.

I now turn my attention to answer the second question which reads "If so, have district registrars been appointed?" It may seem rather abrupt if my answer to that question is "No" and I shall proceed to give my reasons for such an answer. In none of these Ordinance or amending Ordinances dealing with Rules of Court do we find anything to that effect except the interpretation of that term in Order I which stated that "district registrar" means the District Commissioner of several judicial districts therein named. In the Courts Amendment Ordinance (No. 31 of 1959), section 3 incidentally mentioned the appointment of registrars, etc., by the Chief Justice and stated that when such appointments are made publication of such appointments should be made in the "Gazette," but up to the present no such appointment has been made.

These Supreme Court Rules were passed shortly after the New Courts Ordinance under the Revised Laws of Sierra Leone came into operation and the references in Order I to "district registry" and "district registrars" show a marked inclination towards the magistrates courts which had been established in the judicial districts. The Rules of Court Committee lost sight of the fact that if district registries and district registrars relating to the Supreme Court were to be established a proper set up and not a makeshift should be

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