

21, 19-1-48

No. 2 of 1945.

In the Privy Council.

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL, GOLD COAST SESSION.

UNIVERSITY OF LONDON W.C.1. -3 OCT 1956 INSTITUTE OF ADVANCED LEGAL STUDIES

In re PEACE PRESERVATION (LABADI) ORDER, 1942,
and

In re ROBERT DANIEL PATTERSON—HOUSE No. E.1/17.

14289

IN THE MATTER of an Application for a Writ of Prohibition

10

BETWEEN

ROBERT DANIEL PATTERSON - *Appellant*

AND

THE DISTRICT COMMISSIONER, Accra, and THE
DISTRICT MAGISTRATE, Accra - *Respondents.*

Case for the Appellant.

RECORD.

1. This is an appeal, by leave of the West African Court of Appeal, against a judgment of the West African Court of Appeal delivered on 7th March 1944, dismissing an appeal by the Appellant from a judgment of the Supreme Court of the Gold Coast delivered on the 22nd June 1943 refusing an order for a writ of prohibition against the District Commissioner, Accra, the District Magistrate, Accra, and the Sheriff, Accra. The writ of prohibition claimed was to prohibit execution proceedings under a writ of fi. fa. which had been issued by the Magistrate's Court, at the instance of the District Commissioner, to levy upon the Appellant's moveable and immoveable property, which levy the Sheriff was in process of executing. The sum to be levied was £3 18s. 9d. which sum had been (with a further sum of £1 10s. 6d. for which a separate writ of fi. fa. was issued), on the 14th January 1943, in alleged pursuance of the Peace Preservation (Labadi) Order, 1942, and under alleged powers conferred on the District Commissioner of Accra, by section 9 of the Peace Preservation Ordinance, purported to be assessed by the said District Commissioner upon the Appellant as his due proportion of a total sum of £321 16s. 11d., the cost of additional police who had been stationed in Labadi. The Appellant, and sundry other persons against whom similar writs of fi. fa. had been issued, contend that, in issuing such writs of fi. fa., the Magistrate's Court acted without jurisdiction or in excess of jurisdiction because, in violation of a fundamental principle of justice, the Appellant and such other persons had been

CASE FOR THE APPELLANT.

given no opportunity of being heard before the writs were issued and because, in any case, writs of fi. fa. were not the means prescribed by the said Ordinance for the levying of moneys payable under section 9 of the Ordinance.

Cf. p. 2, l. 35.

The Appellant and such other persons allege that, if they had had an opportunity of being heard before execution had been levied, they would have shown that the assessments upon them were illegal.

The case of the Appellant was taken as a test case.

2. Section 9 of the Peace Preservation Ordinance is as follows :—

“ Where additional constabulary or police has been sent 10
 “ up to or stationed in a proclaimed district the Governor in Council
 “ may order that the inhabitants of such proclaimed district be
 “ charged with the cost of such additional constabulary or police.

“ A District Commissioner within whose district any portion
 “ of a proclaimed district is shall, after enquiry, if necessary, assess
 “ the proportion in which such cost is to be paid by the said
 “ inhabitants according to his judgment of their respective means.

“ All moneys payable under this section may be levied under
 “ the law for the time being in force for the levying of moneys
 “ ordered by a Court to be paid.” 20

Section 305 of the Criminal Procedure Code, as to the levying of moneys ordered by a Court to be paid, is as follows :—

“ (1) Whenever a person has been ordered to pay any sum by
 “ way of fine, costs, compensation, or otherwise, the Court making
 “ the order may, subject to the provisions of section 308 and in
 “ addition to any other powers conferred by section 306 or otherwise,
 “ take action to recover such sum by levying the same on the
 “ moveable and immoveable property of the person ordered to pay
 “ the same by distress and sale under a distress warrant.

“ (2) The wearing apparel and bedding of a person and his 30
 “ family, and, to the value of five pounds, the tools and implements
 “ of his trade, shall not be taken under a distress issued under this
 “ section. If there is sufficient moveable property available to
 “ satisfy the warrant no immoveable property shall be sold.

“ (3) Where a person pays or tenders to the person charged
 “ with the execution of a warrant of distress the sum mentioned in
 “ such warrant, or produces the receipt for the same of the Court
 “ issuing the warrant, and also pays the amount of the costs and
 “ charges of such distress up to the time of such payment or tender
 “ the warrant shall not be executed. 40

“ (4) No warrant shall be issued or executed if the person
 “ ordered to pay the fine, costs, compensation, or other penalty,
 “ shall have undergone the whole of the imprisonment ordered to be
 “ suffered in default of payment.

“ (5) A warrant under this section may be executed within
 “ the local limits of the jurisdiction of the Court issuing the same,

“ and it shall authorise the distress and sale of any property belonging to such person without such limits when endorsed by a Magistrate holding a Court within the local limits of whose jurisdiction such property was found.”

3. (A) By a proclamation made the 27th October 1942 the area within one mile of Labadi Market was proclaimed and additional police were stationed in the proclaimed district at a cost of the said sum of £321 16s. 11d. p. 20.

10 (B) By an order of the Governor of the Gold Coast in Council of the 30th November 1942, termed the Peace Preservation (Labadi) Order, 1942, the inhabitants of the proclaimed district were ordered to be charged with the said cost of £321 16s. 11d., which gross figure is not in dispute.

(C) On the 14th January 1943 Mr. E. N. Jones, then District Commissioner for the Accra District, within which the proclaimed district lay, issued a notice that he had apportioned in an attached Schedule the said sum of £321 16s. 11d. to the extent of £320 3s. 9d. No question arises as to the difference between these two sums. pp. 6 & 21.

20 The Schedule shows such last-mentioned sum apportioned in separate sums over 565 houses, the respective locations and the respective names of the respective owners or occupiers whereof being set out in the Schedule, but without indicating whether the respective persons named were owners or were occupiers or whether such of them as might be owners were occupiers or otherwise inhabitants of the proclaimed district.

Pursuant to an order of the Supreme Court made on the 31st May 1943 in the prohibition proceedings that the Respondent should file an affidavit showing exactly what steps were taken by the District Commissioner and District Magistrate, an affidavit was made by Mr. Devaux, the succeeding District Commissioner, that Mr. Jones assessed the proportion which each person in the proclaimed district should pay but Mr. Devaux p. 5, l. 42.
30 does not show his means of knowledge of what Mr. Jones had done or what, if any, enquiry Mr. Jones had made or how otherwise Mr. Jones had judged who were the inhabitants of the proclaimed district, or at what time the facts as to habitancy were ascertained or how he had judged the respective means of such persons as he found to be inhabitants or any other information whatever as to the steps Mr. Jones had taken except that he had posted notices as stated in sub-para. (D) of the present paragraph.

40 The District of Accra is a populous district, covering the Town of Accra, the principal town and seat of Government of the Gold Coast, and the surrounding district, and, according to official figures, in the year 1928, in an area of 560 square miles had a population of over 99,000 persons, now larger.

It is common ground, however, that no enquiry was made of the Appellant, who is not shown to have been an inhabitant, as to his means; he being neither invited nor given any opportunity of stating such means or of objecting to the assessment upon him. The name of the Appellant is entered twice in the said Schedule in respect of two distinct houses against which were entered the said separate sums of £3 18s. 9d. and £1 10s. 6d. p. 2, ll. 29-34.
p. 21, l. 37 & l. 40.
p. 2, l. 18.

p. 6. respectively, he being the person in whose name these houses are registered in the books of the Accra Town Council for the purposes of the Municipal Ordinance.

(D) This general notice was posted up at the District Commissioner's office, Accra, and copies were posted at conspicuous places at Labadi, including the Chief's residence, but it is not alleged on the part of the Respondents that specific individual notices were given to the Appellant or to the other persons named in the list either before or after the said notice was posted (and it is common ground that no such notices were given or any opportunity of objecting).

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p. 6, l. 6.
p. 22, l. 20. (E) The Appellant, among others, did not comply with the notice requiring payment to be made at the District Commissioner's office.

p. 22. (F) On the 22nd April 1943 Mr. Devaux, who had succeeded Mr. Jones as the District Commissioner, filed an affidavit in the District Magistrate's Court at Accra in support of an application that writs of fi. fa. (therein referred to as "writs of attachment") should be issued in order to levy the respective amounts assessed and unpaid.

p. 22, ll. 15-19. The said affidavit did not prove that any demand for payment had been made upon any of the persons assessed or any person or that any notice of the assessment had been given to them or to any person. No 20 notice of the application for a writ of execution was given to the Appellant.

p. 23. (G) On the 10th May 1943 the District Magistrate issued two writs of fi. fa. directing the Sheriff to levy from the property of the Appellant the said respective sums of £1 10s. 6d. and £3 18s. 9d.

p. 2, ll. 21-25.
p. 3, ll. 1-3. (H) On the 17th May 1943 notice of attachment of the premises No. 1/17 under the writ of fi. fa. to levy £3 18s. 9d. was shown to the Appellant and these premises were advertised for sale under the writ.

p. 4, l. 18.
p. 1. The Appellant forthwith challenged the validity of the proceedings, as did others in a similar position; and notices of seven motions to the Supreme Court for writs of prohibition were given on the 18th May 1943, 30 on behalf of the Appellant and the other aggrieved persons respectively and served upon the District Magistrate, District Commissioner and the Sheriff; but six of these motions were stood over for the argument of the motion affecting the legality of the levy upon house E.1/17, which was taken as a test.

p. 9, ll. 12-15. 4. The Supreme Court (Mr. Justice Lane) held that the District Commissioner's procedure (that is to say in assessing under section 9 of the Peace Preservation Ordinance) was in accordance with the section and was a ministerial act and not a judicial act, therefore it was not the act of an inferior Court, accordingly a writ of prohibition would not lie to 40 him.

p. 9, ll. 26-40. As regards the writ of execution, the Court held it was a judicial act by the District Magistrate and was in accordance with the Ordinance (that is to say, section 9 of the Peace Preservation Ordinance), that the District Magistrate had jurisdiction to issue the writ, the enactment which is brought into play by the latter part of said section 9 being Order 43 Rule 5 in the 3rd Schedule to the Courts Ordinance (Chapter 4 of the Laws

of the Gold Coast—1936 Revision), in connection with which rule the learned Judge referred to Order 40 Rule 6 as showing that section 9 of the Peace Preservation Ordinance, read in conjunction with the said Order 43 Rule 5, allows the attachment under the writ of execution to be enforced without demand to the person assessed. He held that there was in the Peace Preservation Ordinance statutory authority to assess inhabitants at the discretion of the Executive without any enquiry and to enforce the assessments made by execution without giving the person upon whom execution was levied an opportunity of showing cause. He appears to have considered that the assessment by the District Commissioner was equivalent to an order of a Court to pay money, saying “the assessment and order is made by the executive as a ministerial act and not as a Court of law.”

p. 10, ll. 5-8.

p. 10, ll. 5-50.

p. 10, l. 51.

For these reasons the Supreme Court held that the principle upheld in *Rex. v North, ex parte Oakey* [1927] 1 K.B. 503, did not apply and that the writ did not lie against the District Commissioner or the District Magistrate and he further held that it did not lie against the Sheriff, as the Sheriff had no judicial jurisdiction in the matter.

p. 11, ll. 1-5.

5. The Rules and Orders in the Third Schedule to the Courts Ordinance, referred to by the learned Judge, are wholly and solely concerned with civil proceedings between parties. Part 4 of such Third Schedule is devoted to “Hearing and Judgment” and Order 40 in this part is devoted to “Judgment” and relates solely to judgments and decrees of the Court between parties. Rule 6 in this Order referred to by the learned Judge has the sidenote “Decree to be obeyed without demand” and reads as follows :—

“A person directed by a decree or order to pay money or do any other act is bound to obey the decree or order without any demand for payment or performance, and if no time is therein expressed he is bound to do so immediately after the decree or order has been made (except as to costs, the amount whereof may require to be ascertained by taxation) unless the Court shall enlarge the time by any subsequent order.”

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Order 43, Rule 5, referred to by the learned Judge, is contained in Part V of Schedule 3 to the Courts Ordinance. Part V is entitled “Proceedings to enforce decrees and orders” and also solely relates to decrees and orders made by a Court inter partes in the exercise of its civil jurisdiction. Order 43 is entitled “Practice as to issuing execution” and Division 1 thereof, in which Rule 5 appears, is entitled “Modes of enforcing decrees.” Rule 5 reads as follows :—

“If the decree be for money, it shall be enforced by the attachment and sale of the property of the party against whom the decree is made, or, subject to the provisions of order 45, by his imprisonment or by both.”

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It is humbly submitted that the learned Judge was in error in holding that either of the rules he cited were applicable to the levying of moneys assessed under section 9 of the Peace Preservation Ordinance, but that such rules were wholly inapplicable to the levying of compensation or punitive sums such as sums charged and assessed under section 9 of the Peace Preservation Ordinance. The Appellant submits that the reference

in said section 9 is to the said section 305 and to the ancillary sections 307, 308, 309, 310 and 311 of the Criminal Procedure Code (Chapter 10 of the Laws of the Gold Coast), which are expressed to relate to the levying of moneys ordered by a Court to be paid by way of fine, costs, compensation, or otherwise. The Appellant humbly submits that these provisions, when read with section 9 of the Peace Preservation Ordinance, predicate an Order by the executing Court to pay the amount assessed, to be obtained after the issue and hearing of a summons to the assessee to appear and show cause why he should not pay the amount assessed.

p. 17, l. 44.

p. 18, l. 11.

p. 18, ll. 11-16.

p. 18, ll. 41-42.

p. 18, ll. 43,

p. 19, l. 1.

p. 19, ll. 1-4.

6. Upon appeal to the West African Court of Appeal, that Court 10 held that the act of the District Commissioner in making assessments under the said section 9 is purely executive and he is under no duty to act judicially in making the assessments, nor does he have to make an enquiry if the matter is within his knowledge and that therefore prohibition did not lie to him. They held that a further reason for refusing the writ was that, having completed his assessment, he was functus officio. As to the District Magistrate, they held that he also was functus officio, so prohibition did not lie to him. They held that a further reason for refusing the writ to him was that his act in issuing the writ was a ministerial act and not a judicial one and also it was his clear duty to issue the writ 20 of execution, as the law made no provision for giving notice previously to the issue.

p. 19, ll. 5-6.

They agreed with the Court below that the Sheriff was not acting judicially and not liable to prohibition.

7. The refusal of the writ of prohibition prayed for was based on a number of grounds by the Supreme Court and the Court of Appeal, namely :—

p. 17, l. 48.

(A) The act of the District Commissioner under section 9 of the Peace Preservation Ordinance, and the Peace Preservation (Labadi) Order, 1942, in assessing the proportion in which the 30 £321 16s. 11d. total cost of maintaining additional police in the Labadi district should be paid by the inhabitants of Labadi was a purely executive act on the part of the District Commissioner. They held "The District Commissioner is merely an executive officer who, by virtue of his position, is in touch with the people of the District, and by virtue of his knowledge is directed to spread out the liability amongst the people in accordance with his knowledge." Therefore they upheld the Respondents' submission that no writ of prohibition would lie against the District Commissioner. It is submitted on behalf of the Appellant that the Court of Appeal 40 did not consider the full implications of section 9 of the Peace Preservation Ordinance or, if they did so, did not proceed on correct principles in thus deciding that the work of assessment was purely executive. Section 9 of the Peace Preservation Ordinance required the assessment to be made (i) on inhabitants of such proclaimed district and (ii) in accordance with his judgment of their respective means and in making his decisions as to (i) and (ii) it might be necessary to hold an enquiry as to who were inhabitants at the

material times and what were their respective means. It was arguable that the District Commissioner having to deal with such a large number of inhabitants could not in fact come to any decision within the intention of the section without holding an enquiry and hearing evidence. But the District Commissioner in any event was charged with a quasi judicial duty to consider (i) and (ii) in making each assessment. He made no attempt to discharge his duty in a judicial manner but took a list of owners and occupiers of property who had in the past been rate payers in the proclaimed district and simply divided the sum involved £321 16s. 11d. in proportion to the rateable values of 565 houses on the rating list, which was obviously no reliable test as to which of such persons were either inhabitants or whether they were being made to pay in accordance with their respective individual means. It is respectfully submitted that it is well established in law that a body or an individual in his official capacity charged with carrying out quasi-judicial functions may be restrained by writ of prohibition from carrying them out in an irregular or unjudicial manner. *R. v. North: ex parte Oakey* [1927] 1 K.B. 503 : *R. v. Woodhouse* [1906] 2 K.B. 501 : *King v. North Worcestershire Assessment Committee* [1929] 2 K.B. 397 : *R. v. Salford Assessment Committee* ; *ex parte Ogden* [1937] 2 K.B. 1 : *R. v. Electricity Commissioners* [1924] 1 K.B. 171 : *Estate and Trust Agencies (1927) Ltd. v. Singapore Improvement Trust* [1937] 1 A.C. 898 : *R. v. Boycott* ; *ex parte Keasley* [1939] 2 All E.R. 626.

(B) As a further reason why the writ of prohibition should not issue either against the District Commissioner or against the District Magistrate, the Court of Appeal agreed with the contentions of the Respondents that both these officials being *functus officio*, prohibition could not lie against them in regard to the past acts complained of. It is submitted that the Court of Appeal so came to a decision wrong in law. The District Commissioner having applied a wrong and inadmissible test in making the assessment the District Commissioner had no power to register it as a judgment and the District Magistrate had no legal power to enforce it and it is submitted that the District Magistrate can be prohibited from enforcing payment by issuing a writ of *fi. fa.* and the Sheriff from executing such writ of *fi. fa.* *Estate and Trust Agencies (1927) Ltd. v. Singapore Improvement Trust* [1937] 3 All E.R. 324 : [1937] 1 A.C. 898.

(C) The assessment was made by the District Commissioner without holding either (i) a general enquiry, or (ii) hearing any objections of any particular person assessed, including the Appellant. The question therefore arises whether these omissions render the so called assessment bad at the root so that, so to speak, all proceedings for its enforcement were contaminated by failure to hold a general enquiry and/or not giving the Appellant the opportunity to make objections. The material words of section 9 of the Peace Preservation Ordinance are : " A District Commissioner within whose district any portion of a proclaimed district is, shall, after enquiry, if necessary, assess the proportion in which

such cost is to be paid by the said inhabitants according to his judgment of their respective means.”

If the District Commissioner omits from the list persons who should be included as “inhabitants” or makes no proper assessment of their respective means, such procedure inevitably results in persons coming within the definition of “inhabitants” and properly put on the list or correctly assessed as to their means paying a higher proportion of the £321 16s. 11d. than is properly due. It is conceded that in an area containing a few isolated native dwellings a District Commissioner knowing personally such inhabitants might, as provided by the section, properly make an assessment based on his personal knowledge of such inhabitants, their property and means of livelihood. But for the reasons stated the District Commissioner cannot make a correct assessment on one inhabitant without having knowledge, personal or otherwise, relating to the means and property of all other inhabitants liable to contribute. It is submitted that in taking merely the rating list of the district, as happened here, and making the assessment on whomsoever happened to be there entered as an owner or occupier and assessing him in accordance with the rateable value of the property on which he happened to have been liable to have paid rates in the past, amounted to a complete failure to make the assessment in accordance with the provisions of the section and it was thereafter illegal to attempt to enforce payment of the assessments made in that haphazard way. The omission to hold a general enquiry or to allow individual assesseses to be heard is material, at least to the extent that it cannot be contended that the Appellant is bound by such assessment owing to his failing to make either general or individual objections as to the mode of assessment.

p. 6, ll. 40, 21, 18.

8. Even if, contrary to the Appellant’s contentions, it be held that, owing to the wording of section 9 of the Peace Preservation Ordinance or other reasons, the legality of the assessment itself could not, or cannot now, be impeached by prohibition against its enforcement, it is submitted that it is still open to the Appellant to seek and obtain a writ of prohibition in respect of any illegality in the method by which it is sought to enforce the payment of the assessment.

The Appellant humbly submits that both the Supreme Court and the Court of Appeal failed to consider this issue at all. One of the questions before them was whether prohibition ought to go in respect of a certain writ of execution which had been issued by the Magistrate’s Court. It is submitted that, if prohibition lay to the Magistrate’s Court, it would also properly lie to the party, namely, the District Commissioner, who had applied for and obtained the writ of execution and to the Sheriff, who was in process of executing it. It is therefore submitted that it is immaterial whether the District Commissioner was functus officio because he had completed the assessment, as the Appellant was not seeking to prohibit the making of the said alleged past assessment but to prohibit the Court from further proceeding with an execution of which it happened that in fact the District Commissioner was the promoter. As to the Sheriff, the Appellant does not press for the express inclusion of a prohibition to him in any writ of prohibition to which the Appellant may be entitled, nor in any case does the Appellant claim costs against him, though the Appellant submits that the joinder of the Sheriff in the prohibition to the

ADDENDUM

TO APPELLANT'S CASE TO FOLLOW AFTER THE WORD "CONTRIBUTE"
ON PAGE 8, LINE 15.

RECORD.

It is material to notice that Mr. E. N. Jones, the District Commissioner who made the assessment which was published by notice dated 14th January 1943 did not make the affidavit which was filed as part of the Respondent's case to show cause why a writ of prohibition should not issue. His successor, Mr. H. E. Devaux, filed such affidavit, in para. 3 of which he merely stated "that the then District Commissioner of Accra assessed the proportion which each person in the proclaimed district should pay" without any reference as to how Mr. Jones decided which were "inhabitants" liable to contribute at all or how he formed estimates of the "respective means" of such "inhabitants" as he deemed were liable to contribute. If the schedule to the District Commissioner's assessment is compared with Exhibits A1, A2 and A3 to the affidavit of Mr. K. Aduma Bossman sworn 14th October 1947 and lodged in the Registry of the Privy Council (such Exhibits being certified extracts from the material part of the House and Land List for rating purposes of the Town of Accra) it will be seen that every person appearing on the House and Land List was assessed as an inhabitant, the sum to be divided among them resulted in a rate of exactly or approximately 1s. 4d. in the £ on the rating values appearing on the House and Land List of their respective properties of whatever character. Where there was no entry against the property of an assessed annual value for town rates, it will be seen that the District Commissioner has uniformly charged the person whose name appears on the House and Land List as the owner with the lump sum of 5s.

The following considerations will show that the use of the House and Land List was no reliable indication as to who were "inhabitants" for the purposes of Sec. 9 of the Peace Preservation Order nor was the rateable value put against the property of any ratepayer on the list even an approximate indication of his "respective means":—

(A) In the first place the House and Land List does not profess to be a list of inhabitants, but of owners of property. The House and Land List is compiled in accordance with the Town Councils Ord. Chap. 51 (Vide Vol. 1 Laws of the Gold Coast, p. 865—1936 Revision). Under Sec. 5 of the Ordinance an assessment of "all houses and lands in such town takes place in the month of June every sixth year." As a consequence of the earthquake which took place in June, 1939, which destroyed many buildings in Accra, by Ordinance No. 25 of 1939 a general assessment was made in 1941 and came into force 1st January, 1942, and thereafter general assessments were to be made every 6th year. Thus the list used by the District Commissioner was the "House and Land List" compiled about September, 1941, for the year 1st January, 1942—31st December, 1942, and as a means of determining who were inhabitants on 27th October, 1942, when the Labadi District was made a proclaimed district and extra police stationed there, the House and Land List was more than a year out of date and unreliable.

(B) A District Commissioner is in no way concerned with the making of a general assessment of rates or revision of the House and Land List

and therefore has no knowledge of who are "inhabitants" or what the respective means are of persons entered on the "House and Land List," such as might possibly be obtained by those who compiled the list in the course of inquiries for that purpose.

(c) Houses with an assessed value below £6 are exempted from payment of House rates and are entered on the House and Land List without any assessment of their annual value though their occupiers may be clearly "inhabitants." The District Commissioner as related fixed the rate at 1s. 4d. as applicable to the majority of assessments on the House and Land List but inserted a round sum of 5s. in respect of 10 houses so appearing with no assessment, and then apparently made a few random minor adjustments of the assessments so as to bring the whole total to the figure of £321 16s. 11d.

(D) Many of the houses inhabited by Africans entered on the "House and Land List" house large families, including several adults. Under the African family system of ownership the head of a family is entered on the list as the owner, but in most cases the person entered as owner owns the property for himself and many junior members of the family as family property and he may not actually live on the premises himself, and therefore not be an "inhabitant." The House and Land List which was used set 20 out only the names of the owners and took no account of the inmates. As an actual example of the unreliability of the House and Land List as a guide to fixing "inhabitants" and "respective means" the two houses E 1/17 and E 2/17, of both of which the Appellant Patterson is treated by the District Commissioner as the inhabitant, may be cited. The Appellant is the sole owner of the house E 1/17 but does not and did not reside there. It is let (to a cinema proprietor who does not reside in the proclaimed district) and is and was used as a cinema and the only inhabitant was a servant of the person who rents the premises. E 2/17 was built 30 by the father of the Petitioner, and on the death of the father (D. O. Patterson) devolved on the Petitioner as the eldest son according to Labadi Native Custom as family property for himself and other brothers and sisters. The Petitioner actually lived in this house with the following brothers and sisters all of whom have means, A. A. Patterson, W. M. Patterson, S. A. Patterson, L. E. A. Patterson, D. O. Patterson, Miss B. A. Patterson and Miss A. Patterson.

(E) An owner of several properties is made to pay in respect of all of them which have a rateable value of or above £6, though he may not be an inhabitant of one of them.

(F) A European or native of the trading class may own or actually 40 occupy a house or other property of quite a mean character and its character is no indication of his means from other sources.

Court was properly asked for and might properly have been granted, as he was in fact engaged in the execution of the writ of execution.

As to the action of the Court, it is submitted that the question does not arise of whether the Magistrate's Court was functus officio when it had issued the writ of execution, for what is complained of is not the exercise of the proper office of the Court but firstly that the Court had not the office of issuing a writ of fi. fa. (otherwise termed a writ of attachment) which it purported to exercise and secondly that, even if the Court had such office, the Court had exercised it without judicial authority and
 10 contrary to law because the Court had not given the Appellant any opportunity of being heard against the issue of the writ of execution.

9. As to the first point, the Appellant has already humbly submitted that the Court had no jurisdiction in any circumstances to issue a writ of fi. fa. for the recovery of an assessment made under the Peace Preservation Ordinance and now humbly submits that the issue by the Court of any such writ of fi. fa. affords proper ground for prohibition.

As to the second point, the Appellant humbly submits that, if it was contrary to law that execution should have been issued by the Court without his having had an opportunity of being heard, such illegal omission
 20 was by itself the proper ground for prohibition to issue to the Court and that, as the Appellant has not had such opportunity, it matters not on this point (and would have been improper for the Court then and there to decide), whether the Appellant would have been able, if such opportunity had been given to him, to show that, in the circumstances, execution ought not to be issued.

The question whether the alleged assessment is objectionable is (it is submitted) an issue quite distinct from the question whether the Court in granting execution to issue against the Appellant, had acted illegally on either or both of the two grounds :—

- 30 (1) that the Appellant had had no opportunity of being heard, and
 (2) that in any case, even if the assessee had been heard by the Court, the Court had no jurisdiction to issue a writ of fi. fa.

It is submitted that the right to prohibition, on either or both of these two grounds, against proceeding upon the writ of fi. fa. does not depend at all upon whether or not the assessment made upon the Appellant was a valid assessment.

10. The Appellant accordingly humbly submits that this appeal
 40 should be allowed and the decisions of the Supreme Court of the 22nd June 1943 and of the West African Court of Appeal of the 7th March 1944 should be reversed and that the District Magistrate, Accra, and the District Commissioner, Accra, should be prohibited with costs in the Privy Council and the Courts below from further proceeding with both the writs of attachment dated the 10th day of May 1943, which purported to have been issued pursuant to section 9 of the Peace Preservation Ordinance of

the Gold Coast to levy the respective sums of £3 18s. 9d. and £1 10s. 6d. for the following (among other)

REASONS

- (1) BECAUSE the District Commissioner failed to exercise judicial discretion in dividing the £321 16s. 11d., total cost of additional police stationed in the Labadi district, among inhabitants of the district and in accordance with their respective means and, the assessments on the Appellant being illegal owing to the irregular method of assessment adopted, the District Commissioner should be prohibited and the District Magistrate and Sheriff likewise prohibited from enforcing such assessments ; 10
- (2) BECAUSE the Magistrate's Court had no jurisdiction to issue the said writs of attachment ;
- (3) BECAUSE the Appellant had had no opportunity of being heard by the Court against the issue of the said writs —therefore their issue and execution violated a fundamental principle of justice ;
- (4) BECAUSE the Peace Preservation Ordinance gave the Magistrate's Court no jurisdiction to issue any writ of attachment under Rule 5 of Order 43 in the Third Schedule to the Courts Ordinance or under any other rule in such Schedule in respect of moneys assessed under Section 9 of the Peace Preservation Ordinance ; 20
- (5) BECAUSE no decree or order for the payment of the said sums of £3 18s. 9d. and £1 10s. 6d. had been made by the Magistrate's Court in any action ;
- (6) BECAUSE the decisions of the Supreme Court and of the West African Court of Appeal were wrong and ought to be reversed. 30

L. M. MINTY.

In the Privy Council.

ON APPEAL

*from the West African Court of Appeal
(Gold Coast Session).*

Re PEACE PRESERVATION (LABADI) ORDER, 1942,

and

Re ROBERT DANIEL PATTERSON—HOUSE NO. E.1/17

and

Re AN APPLICATION FOR A WRIT OF PROHIBITION

BETWEEN

ROBERT DANIEL PATTERSON

Appellant

AND

THE DISTRICT COMMISSIONER, ACCRA

and **THE DISTRICT MAGISTRATE,**

ACCRA - - - Respondents.

Case for the Appellant.

A. L. BRYDEN & CO.,

Craig's Court House,

25 Whitehall, S.W.1,

Solicitors for the Appellant.