

21.1945

In the Privy Council.

No. 2 of 1945.

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

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IN RE PEACE PRESERVATION (LABADI) ORDER, 1942
AND

IN RE ROBERT DANIEL PATTERSON HOUSE No. E. 1/17
AND

IN THE MATTER OF 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 RESPONDENTS.

RECORD

1.—This is an Appeal from a Judgment of the West African Court of Appeal dated the 7th March, 1944, which dismissed with costs an Appeal from a Judgment of the Supreme Court of the Gold Coast dated the 22nd June, 1943, rejecting a motion by the Appellant for writs of prohibition directed to the District Commissioner, the District Magistrate, and the Sheriff, all of Accra, in connection with proceedings taken to levy execution under an assessment order.

pp. 16-19
pp. 8-11
pp. 1-2

10 2.—On the 30th November, 1942, the Governor of the Gold Coast made the Peace Preservation (Labadi) Order, 1942, whereby the inhabitants of the area within a radius of one mile of Labadi Market in the Accra District were ordered to be charged with £321 16s. 11d., being the cost of additional police who had been sent up to and stationed in that area. The area had become a proclaimed district by virtue of a proclamation made on the 27th September, 1942. The proclamation and the order were made respectively under Section 3 and Section 9 of the Peace Preservation

p. 20
p. 20, ll. 8-12
p. 20, ll. 22-24

CASE FOR THE RESPONDENTS.

Ordinance (Laws of the Gold Coast, 1936 Revision, Chapter 40) (hereinafter called "the Ordinance") which contains the following material provisions:

2. In this Ordinance, unless the context otherwise requires—

* * * *

"Proclaimed district" means and includes any specified part of the Gold Coast as to which any proclamation under Section 3 has been made so long as such proclamation is in force.

3. Whenever it shall appear to be necessary for the preservation of the public peace in any part of the Gold Coast, the Governor may declare by proclamation that it is unlawful to have or carry arms or ammunition within any specified part of the Gold Coast after the date specified in such proclamation and subject to any exceptions in the said proclamation provided for. 10

* * * *

9. Where additional constabulary or police have been sent 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 20 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.

p. 21

3.—On the 14th January, 1943, the District Commissioner at Accra gave notice of his assessment of the proportion which each person should pay and required payment to be made. In a schedule was set out a list of the houses in the proclaimed district with the name of the owner or occupier of each house and the amount to be paid by such owner or occupier. The 30 Appellant was assessed in respect of two houses, and was required to pay £3 18s. 9d. in respect of one and £1 10s. 6d. in respect of the other. The notice was posted at the first Respondent's office in Accra, and at conspicuous places at Labadi, including the Chief's house.

p. 21, l. 18

p. 21, ll. 37-40

p. 6, ll. 1-5

p. 22, ll. 20-34

p. 23, ll. 14-36

4.—The Appellant and 10 other assessed persons failed to comply with the notice requiring payment. Accordingly on the 10th May, 1943, on the application of the District Commissioner the District Magistrate, Accra, issued two writs of attachment to the Sheriff, Accra, for the levying of the sums of £3 18s. 9d. and £1 10s. 6d. out of the property of the Appellant. Other writs were issued in the cases of the other 10 persons who had failed to 40 pay, but it was agreed that the Appellant's case should be treated as a test case.

p. 8, l. 41

5.—On the 18th May, 1943, the Appellant gave notice of motion in the Supreme Court for an order calling on the Respondents and the Sheriff, Accra, to show cause why an order for writ of prohibition should not issue to prohibit them from attaching the Appellant's property. p. 1

6.—In an affidavit in support of the motion the Appellant alleged that the Appellant had not attended or been invited to attend or given the opportunity of attending any enquiry; that there had been no valid and lawful assessment; that he had not been served with any order or decree for payment; and that the execution proceedings were illegal. The District Commissioner swore an affidavit in answer on the 3rd June, 1943. p. 2, l. 17—p. 3, l. 10
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7.—On the 22nd June, 1943, Lane J. dismissed the motion with costs. He held that the District Commissioner's procedure was a ministerial, not a judicial, act and entirely in accordance with Section 9 of the Ordinance. The writ could only be directed to an inferior court, and so could not be directed to the District Commissioner. p. 8, l. 19—p. 9, l. 25;
p. 10, l. 40—p. 11, l. 3

8.—Lane J. also held that the attachment of the Appellant's house was in conformity with the Ordinance. The issue of the writ was a judicial act by an inferior court. The third paragraph of Section 9 of the Ordinance brought into play Rule 5 of Order 43 of the Rules of the Supreme Court which says "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." Lane J. then pointed out that by Rule 6 of Order 40 "A person directed by a decree or order to pay money is bound to obey the decree or order without any demand for payment or performance." The Ordinance did not require any notice to the person assessed, though he thought the notices publicly posted were proper and reasonable notices. In his opinion, however, the Ordinance allows attachment without demand to the individual assessed. The District Magistrate had not exceeded his jurisdiction, and the authority on which the Appellant relied was distinguishable. Accordingly the writ should not issue against the District Magistrate, and clearly could not issue against the Sheriff who has no jurisdiction in a judicial sense. p. 9, l. 26—p. 10, l. 40
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9.—The Appellant appealed to the West African Court of Appeal which, after a preliminary objection by the Respondents that the Appeal was incompetent, heard argument on the merits, and reserved judgment. pp. 11-12
p. 12, l. 27—p. 13, l. 43
p. 13, l. 44—p. 16, l. 8

10.—On the 7th March, 1944, the Judgment of the Court was delivered by Sir Donald Kingdon, Chief Justice of Nigeria. After stating the facts and setting out Section 9 of the Ordinance, he stated the contention that under the Ordinance the District Commissioner was a judicial officer who by holding no enquiry and giving no notice to the persons concerned had acted illegally, and referred to authorities cited by the Appellant. p. 16, l. 18—p. 19, l. 19
p. 17, ll. 24-42
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p. 17, l. 42—p. 18,
l. 11

Sir Donald Kingdon then stated and agreed with the Respondents' submission that under the Ordinance the District Commissioner is an executive officer throughout against whom the writ will not lie. A second reason for refusing the writ was that the District Commissioner was *functus officio*, and there was nothing which he could then be prohibited from doing.

p. 18, ll. 11-17

p. 18, l. 18—p. 19,
l. 4

11.—Sir Donald Kingdon then dealt with the position of the District Magistrate who was also *functus officio*, and who had merely carried out his clear ministerial duty under the law which did not require notice before the writ was issued. As to the Sheriff, obviously he was not acting judicially and the writ did not lie. In the Court's view the whole prohibition 10 proceedings were misconceived.

p. 18, l. 5

p. 18, l. 6

12.—The Respondents submit that Lane J. and the West African Court of Appeal were right in holding that writs of prohibition could not issue against the Respondents or either of them, for the following amongst other

REASONS.

1. Because the Appellant sought the prohibition of lawful and regular proceedings.
2. Because under the Ordinance the functions of each of the Respondents are purely ministerial, and no writ of prohibition 20 can issue in respect of ministerial acts.
3. Because when application for a writ of prohibition was made each of the Respondents was *functus officio* and was not about to do any further act which could be prohibited.
4. Because the application for a writ of prohibition was misconceived.

FRANK GAHAN.

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CASE FOR THE RESPONDENTS

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