

Robert Daniel Patterson - - - - - Appellant

v.

The District Commissioner of Accra and another - - Respondents

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 3RD MARCH, 1948

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*Present at the Hearing :*

LORD SIMONDS  
LORD MORTON OF HENRYTON  
SIR MADHAVAN NAIR

[Delivered by LORD MORTON OF HENRYTON]

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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. At the opening of the present appeal, counsel for the appellant intimated that he was not pursuing the claim for a writ of prohibition against the Sheriff. Before stating the facts leading up to the present appeal, it is convenient to quote the following provisions from the Peace Preservation Ordinance (Laws of the Gold Coast, 1936 Revision, Chapter 40) hereinafter called "the Ordinance":

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

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"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.

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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 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.

On the 27th September, 1942, the area within a radius of one mile from the Labadi Market in the Accra District became a "proclaimed district" by reason of a proclamation made on that date by the Governor of the Gold Coast under section 3 of the Ordinance. On the 30th November, 1942, the Governor made the Peace Preservation (Labadi) Order, 1942, under Section 9 of the Ordinance. By that order the inhabitants of the proclaimed 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 district.

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 within seven days. In a schedule was set out a list of 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 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 District Commissioner's office in Accra, and copies thereof were posted at conspicuous places at Labadi, including the Chief's house.

The appellant and ten other assessed persons failed to comply with the notice requiring payment. 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 ten persons who had failed to pay, but it was agreed that the appellant's case should be treated as a test case.

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. In an affidavit in support of the motion the appellant alleged that he 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 appellant did not allege that he had not seen the notice. The District Commissioner swore an affidavit in answer on the 3rd June, 1943, setting out the steps which had been taken by him. On the 22nd June, 1943, Lane J. dismissed the motion with costs. The appellant appealed to the West African Court of Appeal and the appeal was dismissed with costs.

The argument of counsel for the appellant before their Lordships' Board proceeded upon the following lines. He submitted that by the Order of 1942 all the inhabitants of the proclaimed district were charged with the sum of £321 16s. 11d., and that it was the duty of the District Commissioner first to ascertain who were the inhabitants of the district at the time when the additional police were stationed there, secondly to conduct a judicial inquiry as to the respective means of these inhabitants and thirdly to apportion the £321 16s. 11d. among such of these inhabitants as possessed any means, according to the amount of their respective means. He further submitted, that if even one inhabitant with means was excluded from the assessment, the whole assessment would be invalid, and in support of this submission he cited *Rex v. The Churchwardens and Overseers of Maddern* 1 Term Rep. 625 and *Rex v. The Inhabitants of Darlington* 6 Term Rep. 468. While conceding that the appellant was an inhabitant of the proclaimed district at the material time, counsel contended that the purported assessment upon the appellant was invalid and illegal because he was given no opportunity of attending an inquiry or of showing cause why he should not be assessed. Counsel finally submitted that before the District Magistrate issued the writs of attachment he should have given the appellant an opportunity of showing cause against their issue.

Their Lordships take the view that this appeal must fail, on the ground that the proceedings whereof the appellant makes complaint were lawful and regular throughout. The appellant did not seek to challenge th:

proclamation of 27th September, 1942, or the Order of 30th November, 1942. As to the assessment made by the District Commissioner, their Lordships cannot accept the argument that Clause 9 of the Ordinance imposes upon the District Commissioner the burden of carrying out the elaborate procedure outlined in counsel's argument. It seems to their Lordships most unlikely that those who framed the Ordinance ever contemplated any such procedure for the purpose of spreading, amongst the inhabitants of a proclaimed district, the cost of providing additional constabulary or police, apart from the difficulty of ascertaining exactly what persons were "inhabiting" the proclaimed district at the time when the additional police were stationed there, and of assessing persons who might have left the district shortly afterwards, it is difficult to see how the District Commissioner could conduct a judicial inquiry into the respective means of the inhabitants without having any power of compelling parties to attend and disclose their means. Moreover, the wording of Section 9, and in particular the phrases "after inquiry if necessary" and "according to his judgment of their respective means" are, in their Lordships' opinion, quite inconsistent with the view that the District Commissioner was to be bound to hold anything in the nature of a judicial inquiry.

In their Lordships' view Section 9 of the Ordinance contemplates a simple and ministerial proceeding on the part of the District Commissioner. He has to form an honest opinion as to how the sum prescribed by the Governor ought fairly to be borne by the inhabitants, acting on the principle that the greater a person's means, the greater the sum which he should be called upon to pay. It is contemplated that the District Commissioner may carry out this duty without making any enquiry but if, for instance, he has been recently appointed, he may think it right to supplement his knowledge by questioning persons more familiar with the district. Their Lordships can find nothing in the section which compels the District Commissioner to give each inhabitant, upon whom he proposes to make an assessment, an opportunity of being heard before the assessment is made.

Counsel suggested that the reference to "moneys ordered by a Court to be paid", in the concluding sentence of Section 9, indicated that the proceedings of the District Commissioner were of a judicial nature, but in their Lordships' view this suggestion is ill-founded. The sentence in question in no way indicates that the moneys payable under the section are moneys ordered by a Court to be paid. They clearly are not. All that the sentence does is to apply, to the levying of moneys payable under the section, the law for the time being in force for the levying of moneys ordered by a Court to be paid. This is no doubt a convenient method of avoiding the necessity for setting out at length special rules which are to be applicable to the levying of moneys payable under the section.

Turning now to the issue of the two writs of attachment by the District Magistrate, their Lordships can see no ground for the suggestion that the appellant should have been given an opportunity of showing cause against their issue. The assessment having been made, the District Commissioner and the District Magistrate were entitled to proceed exactly as they would have proceeded had the former obtained orders of a competent Court for payment by the appellant of two sums of £3 18s. 9d. and £1 10s. 6d. Had there been such orders, the appellant would not have been entitled to be heard before the issue of writs of attachment, and their Lordships can find nothing irregular in the proceedings up to and including the issue of the writs of attachment. These proceedings appear to have been, in all respects, the appropriate proceedings for the levying of moneys ordered by a Court to be paid, and, this being so, the provisions of Section 9 of the Ordinance have been carried out.

On this part of the case, counsel suggested that the provisions of Section 9 were in the nature of a "mass punishment" of the inhabitants of the proclaimed district, and he relied upon the well-known passage from the judgment of the Court in *Bonaker v. Evans* 16 Q.B. 162 at p. 171. "no proposition can be more clearly established than that a man cannot incur the loss of liberty or property for an offence by a judicial proceeding until he has had a fair opportunity of answering the charge

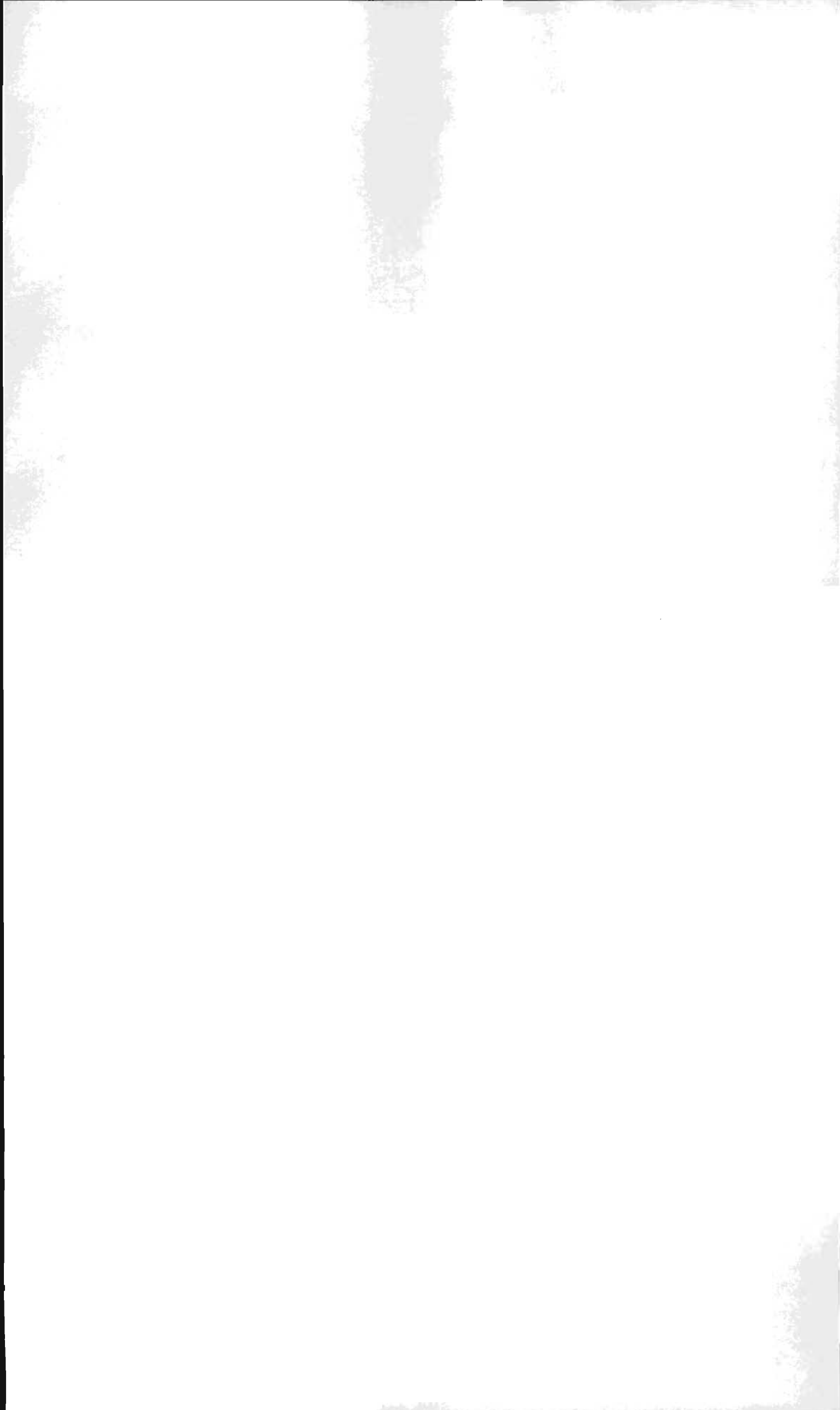
against him, unless indeed the legislation has expressly or impliedly given an authority to act without that necessary preliminary. This is laid down in (here a number of cases are mentioned) and many other cases, concluding with that of *Capel v. Child* in which Bayley B. says he knows of no case in which you are to have a judicial proceeding, by which a man is to be deprived of any part of his property, without his having an opportunity of being heard."

Their Lordships realise that if this appeal fails the appellant will be deprived of a part of his property without having had an opportunity of being heard either by the District Commissioner or by the District Magistrate, but this unusual situation arises from legislation couched in unusual terms and designed to meet what is, their Lordships hope, an unusual situation. The Ordinance contemplates that a riot has broken out in a particular part of the Gold Coast, and that it has become necessary to send additional police to that part in order to quell the riot and protect the persons and property of the inhabitants. In placing the cost of this protection upon the inhabitants of that part of the Gold Coast, the Ordinance does not inflict anything in the nature of a mass punishment. It merely provides that those who have had the protection must pay for it, and it provides a rough and ready method of securing that, in substance, the burden shall be borne by those who are best able to bear it, and who, in all probability, had the most property to be protected.

Their Lordships have already indicated that in their view the section does not contemplate any judicial proceeding, and thus a decision against the appellant does not infringe the principles stated in *Bonaker v. Evans*.

As their Lordships can find nothing irregular or unlawful in the proceedings whereof complaint is made by the appellant, it follows that the Courts in West Africa were right in dismissing the appellant's application for a writ of prohibition. It is therefore unnecessary to consider the further reasons against the issue of such a writ which were put forward by counsel for the respondents.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed. The appellant must pay the costs of the respondents.



In the Privy Council

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ROBERT DANIEL PATTERSON

2.

THE DISTRICT COMMISSIONER OF  
ACCRA AND ANOTHER

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DELIVERED BY  
LORD MORTON OF HENRYTON

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