P. J. BRACEWELL, Sheriff for Montserrado County, and DOUGBA CARMO CARANDA, Appellants, *v.* S. DAVID COLEMAN, MARIA A. CHESSON, WM. PRESLEY COLEMAN, and THOMAS C. COLEMAN, Heirs of the late WILLIAM DAVID COLEMAN, deceased, of the City of Clay-Ashland, Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Decided January 14, 1938.

1. It is the duty of a sheriff before seizing property under a writ of execution to ascertain that the property to be seized is that of the judgment debtor.
2. A judge before whom a writ of execution is returned should satisfy himself that the seizure of property made by the sheriff or other ministerial officer is legally that of the person against whom the writ issued, and in the absence of this satisfaction, the judge should refuse to issue a writ of sale.
3. A judge presiding in the probate division of a court has jurisdiction to determine objections to the probation of a deed, nor is he precluded from so doing because a colleague of his had granted the writ of sale upon which a sheriff had sold the premises to respondent.
4. If a writ of execution directs a sheriff to seize property of a judgment debtor until a certain sum of money can be realized unless the judgment debtor offers him certain property to sell, and the judgment debtor does in fact offer to the sheriff certain property to be sold sufficient to pay the amount specified in the writ of execution, the sheriff has not literally executed the writ.
5. If a sheriff neglects his duty under a writ of execution or sale, an action of damages may be maintained against him.

The appellant P. J. Bracewell, respondent in the court below, as sheriff of Montserrado County, under a writ of execution seized land belonging to appellee Coleman, judgment debtor, and sold it to appellant Caranda, the other respondent in the court below. Appellees objected to the probation of a sheriff's memorandum showing the sale of the property. The objections were sustained by the trial court, and appellants appealed to this Court. *Judgment affirmed.*

Anthony Barclay for appellants. *S. David Coleman* for appellees.

MR. JUSTICE TUBMAN delivered the opinion of the Court.

For the benefit of review and for the corrections of alleged errors, appellants have brought up to this Court the cause now before us in the form of an appeal under the appeal statutes.

The bill of exceptions contains two counts, constituting the exceptions which appellants submit for the consideration of this Court against the trial had in the lower court.

In the first count they complain:

> "1. Because when on the 7th day of June A.D. 1937 respondent Poleman J. Bracewell, Sheriff for Montserrado County, through his counsel requested the court to postpone the case until the return from the interior of the other and principal respondent Dougba Carmo Caranda, especially with reference to the question propounded by the court as to the evidence to show that S. David Coleman owned said property solely in fee simple, as the controlling and principal issue to be settled before going into the law issues as to irregularities and other questions raised in the pleadings, Your Honour refused and denied the request of said counsel and proceeded to rule, to which respondent excepts."

Having set out in this opinion the first exception, we shall before dealing with it, give a synopsis of the cause of the objections so that we may more intelligently pass upon the merits of the controversy.

From the records which we have before us sent up from the trial court, certified in keeping with law, it appears that a writ of execution was issued out of the Circuit Court of the First Judicial Circuit, Montserrado County, against S. David Coleman, to enforce satisfaction of a judgment by payment of principal and costs adjudged

against him by this Court in a cause between Matilda A. Richards and himself in an action of debt, and that the Sheriff in whose hands the writ of execution was placed for official service, seized and exposed for sale a certain piece of property, the western half of lot #2 situated in the City of Monrovia of Montserrado County and the property of S. David Coleman.

S. David Coleman, Maria Chesson, Wm. R. Coleman and Thomas C. Coleman, heirs of the late William David Coleman, hearing of the levy made by the Sheriff on the said piece of property on the 16th day of September, 1936, filed a caveat as notice and warning against the sale and purchase of the said piece of property; and it is interesting to note that this was done before the sale of the property was made; but the Sheriff persevered with making the sale and co-respondent Dougba Carmo Caranda proceeded to purchase same.

When the sheriff's deed was made out and offered for probate, appellees objected to its probate, which objections were sustained by the trial judge; and appellants, excepting to the decision of said trial court, brought the case here.

Going back now to the first objection against the trial as laid in the bill of exceptions, it appears that appellants' counsel requested a postponement of the hearing of the cause until the return of co-appellant Dougba Carmo Caranda from the interior, as he said he believed that the said Mr. Caranda was in possession of some facts that might clear the court's mind as to the ownership of said piece of property.

The appellees' counsel objected to the postponment because, as they alleged, the request was for an indefinite postponement; and also because the pleadings filed made no definite refutation of the allegations of objectors as to the ownership of the property being vested in them.

The court sustained the objections of the appellees and added that the said Mr. Caranda could give no better

evidence of the ownership of the property than the records of the court would, that the question was as to whether the said piece of property had been apportioned to the said S. David Coleman in his own fee or not, and also further because it would be a violation of the rule of practice to grant the postponement in the manner and form asked for, and denied the request. To this ruling of the trial judge, the appellants took no exceptions, but they have made it a point in their bill of exceptions. His Honor the trial judge having approved the bill of exceptions without disallowing it, we shall therefore consider the merits of the contention set up therein.

In the first place, we fail to see how Mr. Caranda could have known more about the ownership of the property than the Sheriff who levied upon it, and seized it, and sold it; for the execution upon which he acted commanded him to seize and expose to sale the lands, goods and chattels of S. David Coleman, and it was his solemn duty to have diligently and vigilantly satisfied himself with legal certainty that the piece of property that he had seized was the bona fide property in severalty of S. David Coleman before he seized upon it, and more especially so when the appellees, before he, the said Sheriff, effected the sale, had filed in court a caveat giving warning against the sale and purchase of said piece of property.

Our opinion in this respect is borne out by the Act of the Legislature, approved March 8, 1936, entitled, "An Act amending the Act granting time for payment of debts or damages in courts of record, passed and approved January 19th, 1934."

> "*Section 2.* That immediately upon receipt of the writ of execution by any sheriff of the County for service, he shall forthwith proceed to execute same in the following manner: To vigilantly ascertain and seize the prima facie property of the defendant, both real and personal, make a schedule thereof, report the

same to the court or judge, and forthwith proceed to sell the same to the highest bidder to satisfy the judgment of the court with interest thereon."

We consider it necessary for the benefit of the sheriffs and other officers of courts in executing writs of execution and similar processes of court to enter here upon a treatment of their rights, powers, duties and liabilities, for there seems to be a growing disposition on the part of such officers to ignore and disregard, either wantonly or unthinkingly, private as well as public rights in executing such processes.

We must in a degree concede the contention of appellants when they set up in their brief that His Honor the Judge for the First Judicial Circuit Court ordered issued the writ of sale for said piece of property, and that the Sheriff was compelled to carry out his orders. We quote that portion of the brief:

"(a) That the Sheriff being the ministerial officer of the court was compelled to carry out the orders of His Honour Judge Brownell, and it was therefore illegal and unjust for His Honour Judge Shannon to order him to pay costs for carrying out instructions of his colleague."

We concede this connection to the extent that we are of opinion that a judge before whom a writ of execution is returned should satisfy himself that the seizure of property made by the sheriff or other ministerial officer is legally that of the person against whom the writ issued, and in the absence of this satisfaction, should refuse to issue a writ of sale, especially where a caveat is filed against said sale. In any case, it is the duty of the court to inquire into all such matters in a summary way before placing the purchaser in possession. Liberia Statute (Old Blue Book), ch. XVIII, § 15.

"The purchaser of lands or goods at sheriff's sale, may have a writ of possession, requiring the sheriff to deliver such lands or goods to him, upon showing suf-

ficient evidence of his title, and that the lands or goods were in possession of the sheriff or of the party, as whose property they were sold. All of which matters the court may inquire into in a summary way, without a jury, giving such notice as it may deem reasonable to the parties in possession."

As no summary investigation was held by him concerning the property as to whose it was, the record of neither the probate court nor any other public office where deeds are recorded seems from the record before us to have been consulted with a view of ascertaining whether or not the piece of property had been rightly seized.

This the records in the case show that the court failed to do; but the Sheriff had legal warning prior to his executing the sale and deed to co-appellant Caranda by appellees' caveat filed in court, which Judge Bouvier defines to be:

"A notice not to do an act, given to some officer, ministerial or judicial, by a party having an interest in the matter. It is a formal caution or warning not to do the act mentioned, and is addressed frequently to prevent the admission of wills to probate, the granting of letters of administration, etc."

The appellants contended further at the bar of this Court that His Honor Judge Brownell, resident Judge of the Circuit Court for the First Judicial Circuit, having ordered the sale, His Honor Judge Shannon could not refuse probate of the deed. It seems strange indeed that appellants should have raised such a contention; for while it is a recognized and well settled principle of law that one Circuit Judge cannot review and revise the action of another Circuit Judge, it is easily discernible that in this case this principle of law is inapplicable, for Judge Brownell gave his order for a writ of sale of the property in the Law Division of the Circuit Court, and as we have observed in a previous part of this opinion, he did so

without investigating the fact in whom was vested the right of said piece of property. The deed was offered for probate in the probate jurisdiction of the Circuit Court, an entirely different and exclusive jurisdiction of the Court, and the question of the legality of title to said piece of property had not been passed upon by Judge Brownell in the Law Division of the Court.

The Probate Division of the Circuit Court is the proper division of the Court in which all deeds, mortgages and other conveyances are by statute required to be offered for probate, and in which all objections are required to be filed.

The said Judge Shannon sitting and presiding over the Probate Division of the Circuit Court had full power, and was legally correct in hearing and determining the objections against the probation of said deed, for he had jurisdiction over the cause.

> "Jurisdiction of the cause is the power over the subject-matter given by the laws of the sovereignty in which the tribunal exists." B.L.D., "Jurisdiction," p. 1761.

Speaking of their rights, powers and duties generally, we have the following given in *Cyc.,* a standard American treatise on the common law of that country insofar as is applicable to the laws of this country:

> "Although the sheriffs and constables are common-law officers with common-law powers and duties, which are inherent in the office, their powers and duties are, at the present time, to a very large extent regulated by statute, and the sheriff is obligated to perform such duties as may be constitutionally imposed upon him in his capacity as a county officer. . . . A sheriff, while in the discharge of his official duties, cannot divest himself of his official character and do as an individual that which he cannot do as a public officer." 35 Cyc. 1527.

Specifically regarding the rights, powers and duties of the Sheriff in matters of writs of execution, the statutes

of Liberia, *Old Blue Book,* Chapter XVIII, sections 5 and 13, lay down the following:

> "The sheriff shall literally execute the commands of the writ of execution, and shall cause an appraisement and schedule of all property seized by him, to be made, as in the case of attachment, and annexed to the writ."

> "Every sheriff, to whom a writ of execution or sale has been directed, shall have authority, and it shall be his duty to put the purchaser or purchasers of any property moveable or fixed, sold by virtue of such writ, in possession of such property; if the sheriff himself or the person against whom the writ was issued, is in possession of the same. It shall also be his duty and he shall have authority to execute all instruments of writing or other evidence of title, which may be necessary or proper for the security of such purchaser or purchasers."

So that the sheriff had the right and power, and it is his duty, to execute literally the commands of the execution.

The main point of command in the execution under attack in the case before us is that the execution ordered the seizure of the lands, goods and chattels of Samuel David Coleman until the said Sheriff had realized a certain sum of money, unless he, the said S. David Coleman, would show him lands, goods or chattels to seize and sell to realize said amount.

It was then the right, power and duty of the said sheriff to have seized the lands, goods and chattels of S. David Coleman and of no one else; but if S. David Coleman showed him lands, goods or chattels other than that which he was about to seize or had seized, to sell and realize the amount named in the execution, or paid him the said amount, then in that case he, the sheriff, was not authorized to continue seizing.

The record shows that S. David Coleman showed the

Sheriff a piece of land for which he paid five hundred dollars and handed him a bona fide title deed for same to be sold for meeting the demand of the execution; but the Sheriff without having a writ of sale issued or endeavoring in any legal way to dispose of the piece of property so handed him, the value of which according to the purchase price paid for same was in excess of the demand of the writ of execution, returned said deed to co-appellee S. David Coleman and seized and levied upon the said piece of property, which turned out to be that of the heirs of the late W. D. Coleman.

The said Sheriff co-appellant therefore did not literally execute said writ of execution. We must turn our attention to their liability.

Because a sheriff has great powers in serving writs of execution, much responsibility attaches to him and he is liable for any misuse or neglect in the exercise of these powers. If he should seize property under a writ which belongs to a person other than defendant, he is liable for the resulting damages. If he seizes property of another person of the same name as defendant, he is liable in damages to such person, and we desire by these references to settle the question raised by appellants in their brief that the judge erred when he ruled the Sheriff to cost. *Cyc.*, volume 35, pages 1652, 1653, reads thus:

> "Where a sheriff or constable, acting under a writ which specifies no particular property to be levied on thereunder, levies on property belonging to a person other than defendant in the writ, he is liable to the owner of the property for the resulting damage; and the sheriff's liability for such a wrongful seizure is not dependent upon his selling the property. The officer is liable for taking property in which the execution debtor has no interest, although he assumes to levy only on the interest of the execution debtor therein. But where property levied on belongs to the execution debtor, the sheriff, levying execution thereon, is not

> liable to a third person claiming the same, although there is an agreement, unknown to the sheriff, between such person and the execution creditor, whereby the creditor is estopped to question such person's ownership of the property.
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> ". . . Although two persons or corporations have the same name, the sheriff is liable for executing against one of them a writ directed against the other."
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> ". . . One who, during the pendency of an action of replevin and with notice thereof, purchases the property from defendant, does so at his peril, and must abide the result of the action, and the sheriff incurs no liability by taking the property from his possession."

Co-appellee Caranda, having had notice together with the Sheriff of appellees' claim to said piece of property, should have taken warning, but they having failed to do so and sold and purchased the said piece of property one from the other did so at their peril.

In chapter XVIII, section 12 of the statute, *Old Blue Book,* it is provided also that a sheriff who neglects his duty is liable in an action of damages.

> "If a sheriff neglects his duty under a writ of execution or sale, an action of damages may be maintained against him."

Co-appellee Caranda filed a submission in this Court after the records had been read and the case submitted which contained matters not raised in the lower court nor in the bill of exceptions. With the exception of these, which we cannot legally pass upon in this opinion as they are not properly before us, the rest of his points have been fully covered by this opinion.

In view of the circumstances attending this cause and the law controlling it we are of opinion that the judgment of the trial court should be affirmed; and it is hereby so ordered.

Affirmed.