distribution, every degree of issue taking concurrently with their descendants."

In the recent case of *In re Noad (Dcd.)*, *Noad* v. *Noad* (2), Roxburgh, J. said ([1951] Ch. at 556; [1951] 1 All E.R. at 469): "'Issue' means 'issue to all degrees' unless that meaning be restrained by the context."

On a careful construction of the context, I have come to the conclusion that the word "issue" in this will extends to all the children of Virtue Jane Harding alive at the time of the distribution, and that the persons now who take are Rowland Harding, Sweet Gabbidon, Florella Ogunti, Virtue Jane Harris, and Muriel Harding. The costs of, and incidental to, this application are to be paid out of the estate and taxed as between solicitor and client.

Order accordingly.

JABER v. RADAR (No. 2)

SUPREME COURT (Luke, Ag.J.): February 18th, 1952
(Civil Case No. 101/51)

[1] **Tort—damages—trespass—trespass to land—damages recoverable even though no actual loss suffered:** A successful plaintiff in an action of trespass to land is entitled to recover damages even though he has not suffered any actual loss (page 200, lines 14–16).

[2] **Tort—trespass—trespass to land—damages recoverable even though no actual loss suffered:** See [1] above.

[3] **Tort—trespass—trespass to land—definition:** Trespass to land is a wrongful act of commission done in disturbance of the possession of property of another; and continuing to remain in possession of such property when lawful authority has been withdrawn is an act of commission not an act of omission (page 199, lines 35–39).

The plaintiff brought an action against the defendant to recover damages for trespass to his land.

The defendant was put in possession of premises owned by the plaintiff by a judgment of the Sheriff. That judgment was subsequently set aside by a court order in which the judge felt it was unnecessary to specifically direct the defendant to give up possession. The plaintiff demanded possession but his demand was not complied with, and the defendant remained in possession until a further

court order specifically directed the defendant to give it up. The plaintiff instituted the present proceedings against the defendant to recover damages for trespass.

The plaintiff contended that, by his remaining in possession of the premises after judgment had been given against him, the defendant was guilty of a trespass which had caused him loss of business and inconvenience.

The defendant maintained that he had been lawfully put into possession of the premises and not at first directed by the court to give up possession, and therefore the plaintiff had no cause of action.

Cases referred to:

(1) *Doe d. Williams* v. *Williams* (1834), 2 Ad. & El. 381; 11 E.R. 148, distinguished.

(2) *Hiort* v. *London & N.W. Ry. Co.* (1879), 4 Ex.D. 188; 40 L.T. 674.

(3) *The Mediana*, [1900] A.C. 113; (1900), 82 L.T. 95.

(4) *Winterbourne* v. *Morgan* (1809), 11 East 395; 103 E.R. 1056.

R.W. Beoku-Betts for the plaintiff;
R.B. Marke for the defendant.

LUKE, Ag.J.:

The plaintiff's action is a claim for trespass and damages resulting from the defendant's failure to leave premises after a judgment, and its consequential effects, were set aside by an order dated December 11th, 1950.

The plaintiff and the defendant, by their respective pleadings, have agreed on the issue in dispute save that the defendant in the fourth and fifth paragraphs of his defence contends that if the plaintiff lost business and suffered inconvenience he is not responsible therefor, and that the plaintiff's statement of claim did not disclose any cause of action.

Evidence was given by both of them which disclosed that the plaintiff was the owner of certain premises, that up to December 4th, 1950 he occupied four shop doors at No. 44 Little East Street, Freetown, one shop door at Garrison Street and one bedroom in the top floor of these premises, and that the defendant did not live in these premises. On December 4th, 1950, the defendant was put in possession by the Sheriff. On December 11th, 1950, the plaintiff obtained an order setting aside this judgment, and consequent to

this order the plaintiff's solicitor wrote the defendant a letter asking him to leave the premises, but he failed to do so until March 27th, 1951.

The defence as far as I can gather is that, the defendant having been put in by process of law, there should have been in this order of December 11th, 1950 a specific order directing the defendant to give up possession. For this contention the defendant's solicitor relied on a passage from 27 *Halsbury's Laws of England*, 1st ed., which he quoted, and the cases cited therein.

This case is one of several between the plaintiff and the defendant over the premises in question. The defendant put in the witness-box the Master and Registrar, who deposed that this action was finally disposed of on March 9th, 1951, when judgment was given in favour of the plaintiff, who was the defendant in that action. I have had the opportunity of reading the judgment of the learned trial judge in which he stated, *inter alia*, that—"the plaintiff remained in possession on the ground that in my former order I did not make a specific order for recovery of possession. I did not think that necessary." See 1950–56 ALR S.L. at 114.

Learned counsel for the defendant relied for his contention on the case of *Doe d. Williams* v. *Williams* (1), but that case is distinguishable in that the facts and circumstances are different from those in this. In this case the plaintiff is the owner of the premises and the action which the defendant brought against him was to recover the premises which the defendant held under a lease granted to him by one of three owners of the property who subsequently sold it to the plaintiff. I should here add that at one time the plaintiff was a sub-lessee of the defendant, but since his purchase of the fee simple or reversion of not only one-third but the whole property, he owned a greater interest in the property than the defendant. The defendant should have realised when he chose to act in the peculiar manner he did that sooner or later the action would be determined, and if judgment went against him an action in trespass would lie against him.

Trespass is defined in 27 *Halsbury's Laws of England*, at 844, para. 1486, as "a wrongful act of commission, done in disturbance of the possession of property of another." Note (b) states that—"continuing to remain in possession of the property of another is an act of commission and not an act of omission": see the case of *Winterbourne* v. *Morgan* (4).

The plaintiff's claim is for damages consequent on the defen-

dant's entering and remaining on the property even after the judgment which gave him a right had been set aside. The defendant's solicitor, in his statement of defence, stated that the plaintiff's statement of claim had not disclosed any cause of action. The question which the court has to ask itself is whether the defendant's contention is true. The evidence which has been given clearly shows that this contention is not true, and therefore the answer is in the negative.

Having found from the evidence which has been given that the defendant, by remaining in these premises after the judgment by which he entered into possession had been set aside, has committed an act of commission which is a trespass, it then remains for the court to assess the damages which the plaintiff is entitled to. *Halsbury, op. cit.*, at 858, para. 1508, states: "In an action of trespass the plaintiff, if he proves the trespass, is entitled to recover damages, even although he has not suffered any actual loss." See also the cases of *Hiort* v. *London & N.W. Ry. Co.* (2) and *The Mediana* (3).

The plaintiff deposed that during the time he was put out of his premises he had to secure another place, not only to live with his family but to store his goods, and I therefore assess the damages at £60 together with his taxed costs.

Judgment for the plaintiff.

TIMBO *v.* JALLOH

SUPREME COURT (Luke, Ag.J.): March 3rd, 1952
(Civil Case No. 170/50)

[1] **Land Law—joint tenancy—words of severance—concurrent ownership prima facie construed as joint tenancy—any words indicating intention to divide property negatives joint tenancy—court favours construction creating tenancy in common if ambiguity:** Where property is devised to several persons concurrently, the question whether such persons take as joint tenants or tenants in common depends on the context of the whole will; and although *prima facie* they take as joint tenants, anything which in the slightest degree indicates an intention to divide the property negatives the idea of a joint tenancy, and in the case of ambiguity the court leans to the construction which creates a tenancy in common in preference to that which creates a joint tenancy (page 203, line 38—page 204, line 13).

[2] **Land Law — tenancy in common — words of severance — concurrent**