

GOULSBY, Appellant, vs. DAVIS & MARSHALL, Appellees.

LRSC 2; 1 LLR 173

[January Term, A. D. 1884.]

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County. Damages.

Administrators—Bond.

Where an administrator has complied with the law regulating the management of intestate estates, and has been discharged from his obligation as such, his responsibility ceases and no action can be maintained against him as such.

This is an appeal brought up from the Court of Pleas and Quarter Sessions of Montserrado County at its September term, A. D. 1883. This action was brought in the court below, by the plaintiff, appellant in this court, to recover damages from the appellees for an alleged injury committed in their capacity as administrators of the estate of T. E. Dillon of the County of Grand Bassa.

The defendants below in answer to plaintiffs complaint denied both the law and the facts, and when the case came up for hearing, they motioned the court below to dismiss the case because, 1st, "That defendants as administrators of T. E. Dillon's estate had settled up the same; and having made satisfactory returns to the Court of Monthly and Probate Sessions, Grand Bassa County, their bond had been returned and they discharged, therefore are not now responsible for any of their acts as administrators of said estate." 2nd, "Because if responsible this action should have been brought on their bond." 3rd, "Because the complaint does not contain an intelligible statement of the cause of the action," etc.

The court below, in noticing this motion, referred to the decree of this court in the cases Liles vs. Battham, and Smith vs. Hills, in which this court expressed the opinion that when the defendant denies both the law and the facts he has a perfect right to raise any law questions thereon. He may question the legality of the process against him; he may raise issues on matters usually pleadable in abatement or taken advantage of by motion in arrest of judgment, or by a motion to dismiss the case.

Upon these principles of law the court below sustained the motion and dismissed the case, to which judgment the appellant in this action excepted as follows: 1st, "Because after issue was joined the court allowed defendants to put in a motion to dismiss the case." 2nd, "Because the said motion contained questions of law which were raised in their answer and rejoinder, and by order of the court had been struck off the files because they were not framed according to law." 3d, "Because the court decided that the judgment of the Probate Court of Bassa County is conclusive, etc., and that defendants are no longer responsible as administrators." 4th, "Because the court below decided on the first point in the motion to dismiss without reference to the other points." Upon a careful review of the record, and a critical inspection of the judgment of the lower court, we are bound to arrive at the same conclusions. The fact that defendants had been discharged from their administratorship is fully established in the plaintiff's pleadings. Then if, as the plaintiff admits, the

defendant had complied with the law regulating the management of estates and had been legally discharged by the Probate Court, we regard that as conclusive and as divesting the said administrators of all further responsibilities in this particular.

Therefore this court adjudges that the judgment of the court below is affirmed, and the appellant ruled to pay all costs in this action.