

**IRENE JACKSON**, Appellant, v. **HENRY B. DUNCAN**, Appellee.

APPEAL FROM THE MONTHLY AND PROBATE COURT OF MONTSERRADO COUNTY.

Argued March 21, 1951. Decided May 11, 1951.

1. A party has no right to intervene in the appointment of another's agent.
2. One who has given care and attention to another may claim against the other's estate.
3. Liberian law does not require that the signature of an American notary public be authenticated by a representative of the United States government.
4. When neither the proper issuance nor the genuineness of a power of attorney has been challenged its sufficiency is presumed.

Petitioner sought to probate a power of attorney given by the sole heir of Eleanor Louise Jones, deceased, in order that petitioner might represent such heir in probate proceedings. On objections by the sole executor the Commissioner of Probate refused to probate the power of attorney. On appeal to this Court, *judgment reversed and power of attorney ordered probated*.

*T. Gyibli Collins* for petitioner. *R. F. D. Smallwood* for objector.

MR. JUSTICE SHANNON delivered the opinion of the Court.

On appeal from the Monthly and Probate Court of Montserrado County, the records certified to us disclose the following:

Eleanor Louise Jones, one of the oldest women of the city of Monrovia, died, leaving testamentary papers which, when offered for probate, were objected to by appellant, who claimed to represent one William H. Jones, presently residing in the United States of America. Appellant's authority to act for William H. Jones was objected to by appellee, sole executor and legatee under said last will and testament, who also was its proponent, on the grounds that appellant was without a power of attorney.

William H. Jones, from the records, appears to be sole heir of Eleanor Louise Jones. Appellant procured his "power of attorney" which she sought to have probated and registered. At its offer for admission to probate, objections were filed by appellee on the grounds that: (1) the purported power of attorney is not supported "by a notary certificate countersigned and approved by the Secretary of State of the United States of America from whence said document emanated," as is required by law; and (2) that the purported power of attorney :

"Is contemptuous in that it attempts to subtly mislead this court to subvert and repudiate its own acts, by granting Irene Jackson a right in and about the establishing of William H. Jones's right of inheritance to the real estate known as lot number 68 in the City of Monrovia which is at present the subject of controversy before the court between respondent and objector aforesaid, besides it having the tendency to affect the appointment by the court of an administrator pen-dente lite who had already been duly commissioned . . .";

and, (3) that the said document would have no legal effect, that is to say the said Irene Jackson would be incompetent to act, she being a *feme covert*.

The Commissioner of Probate, entered an extensive ruling sustaining Counts "1" and "3" of the objections, and refused to admit the purported power of attorney to probate. He did not pass upon Count "2." From this ruling an appeal is brought.

Before considering the appeal, it appears necessary to inquire whether a party has the right to object to a second party appointing a third party to represent him. Or, as in the case at bar, can a third party contest the appointment by a first party of a second party as the first party's agent in the establishment of the first party's right of inheritance, as well as to take care of same after establishment of that right? The answer cannot but be in the negative. No person has a right to intervene in the decision of who should be another's agent. Any effort so to intervene cannot but involve a veiled objective.

One would not have to go far, or exert much effort, to discover the objective in this case. The records and arguments before us have disclosed conclusively that William H. Jones is the sole heir of the late Eleanor Louise Jones ; that he has been in America for a number of years; and that his return to Liberia is problematical. Eleanor Louise Jones, his mother, is alleged to have made and executed a last will and testament devising her real estate to appellee, as has been shown, in consideration of the attention and care that the appellee gave the testatrix during her lifetime. A condition is, however, said to have been made in said will that, should testatrix's son, William H. Jones, ever return to Liberia, he would assume his heirship and pay over to appellee the amount of the bill she would make for said care and attention.

Since the matter of the probate of said will is said to be still *sub judice*, we would hesitate to say much ; but suffice it to say that, regardless of whether the will is proven and admitted to probate, appellee is not without right to assert a claim against Eleanor Louise Jones's estate for any care or attention given to the decedent during her lifetime. William H. Jones, the accepted sole heir, would thus require a representative in Liberia with whom appellee could deal in the assertion of his claim in view of the terms and conditions of the devise made in the alleged will. The return of William H. Jones to Liberia is seriously calculated not to happen, which would leave appellee in absolute and undisturbed possession of the property should said will be proven and admitted to probate.

Coming now to the first point of the objections to the probate of the power of attorney, we find it difficult to harmonize the position of the appellant with that of the Commissioner of Probate. Notwithstanding that the objector submits the defectiveness of said foreign power of attorney on the grounds that same "is not supported by a notary certificate countersigned and approved by the Secretary of State of the United States of America, whence said document emanated, so as to show that such Official is duly authorized to practice and issue such certificates to foreign parts in keeping with law," the Commissioner of Probate, in his ruling sustaining said point, purportedly quoted the following from pages 2366 *et seq.* of "Bouvier's Law Dictionary":

"Ordinarily, notaries have no jurisdiction outside of the country or district for which they are appointed ; but, in several states, they may act throughout the state except in cases of protest of bills, the signature of a notary to an instrument going to a foreign country ought to be authenticated by the consul or representative of the country."

We looked up the citation, and could not find it as above ; and this point, perhaps, is largely

responsible for the abyss created ; for what we did come across, in the work quoted, and at the place cited, is the following:

"The acts of notaries are respected by the custom of merchants and the law of nations. Their protest of a bill is received as evidence in the courts of all civilized countries. Except in cases of protest of bills, the signature of a notary to an instrument going to a foreign country ought to be authenticated by the consul or representative of that country."

It is therefore inexplicable to us how the Commissioner of Probate could sustain the objections as to the defectiveness of the power of attorney by reference to a rule of a law which, on its face, suggests that such a power of attorney, "going to a foreign country ought to be authenticated by the consul or representative of that country."

And it is to be observed that, during the hearing before us, the appellee was unable to show us any law in support of his contention that the notarial certificate in such a case should be countersigned and approved by the Secretary of State of the United States of America.

What seems to have been overlooked by both the objector and Commissioner of Probate is that the principle invoked is based upon the statutes of some of the states in the United States of America which would have no effect in Liberia. It is necessary for us to take recourse to our own statutes.

"The President shall nominate, and by and with the advice and consent of the Senate appoint and commission as many Notaries Public for each County as he shall deem necessary and proper, and they shall hold their office at the pleasure of the President.

"They shall have power and it shall be their duty to demand acceptance and payment of cheques, promissory notes, and bills of exchange, and protest the same for non-acceptance and non-payment; to take affidavits and certify to the same, and to take and certify the acknowledgment of the execution of deeds, mortgages, bills of sale and other instruments in writing; and they shall exercise such other powers and perform such other duties as by the law of nations and commercial usage may be performed by Notaries Public." Rev. Stat., secs. 1221, 1222.

Since we have not come across any Liberian statute that would give weight to the contention which was sustained by the Commissioner of Probate, and because it has not been shown that it is the practice of this jurisdiction to have notarial certificates going to foreign parts countersigned and approved by the Secretary of State of Liberia as contended by the objector, or the signature of the notary public authenticated by the consul or representative of the country to which said instrument is being sent, we find no alternative but to reverse the ruling of the Commissioner of Probate in this respect; and, the more so, since we have been shown no common law to support it.

Neither the proper issuance of the power of attorney, nor the genuineness of the signatures appearing thereon, especially that of the notary public, has been questioned ; so that there is a presumption of legal sufficiency, especially when the seal of the notary public has been affixed. 20 R.C.L. 328, *Notary Public*, § 5.

Coming to the ruling against the capacity of appellant to hold a power of attorney, since she is a *feme covert*, we are confronted with the question previously considered as to whether a party has the right to object to the appointment by another of a third party to be his agent.

To us the garb of a duly probated and registered power of attorney is a bar against questioning the right and power of an attorney or agent on a point of legal incapacity to act.

We reverse the opinion and ruling of the Commissioner of Probate sustaining appellee's objections and refusing said power of attorney admission to probate ; and the Commissioner is hereby authorized forthwith to admit said power of attorney to probate with costs against the objector, now appellee.

*Reversed.*