

**McGILL'S TRUSTEES, Appellants, VS. MODDERMANN, Agent for H. Muller
& co., Appellee.**

LRSC 1; 1 LLR 170

[January Term, A. D. 1884.]

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

Debt.

Trustees and trust estates—Partnership affairs—Jurisdiction of the Court of Quarter Sessions and Common Pleas over partnership estates.

Intestate estates, whether of an individual or a firm or co-partnership, are under the statute regarded alike. Where no provision is made in the articles of partnership for the winding up of the same in the event of the death of all the partners, the court will appoint administrators over the same upon the happening of such a contingency.

This case is an appeal from the Court of Common Pleas and Quarter Sessions of Montserrado County, heard and determined at its March term, A. D. 1883. The appellants (defendants in the court below) were sued for the recovery of debt due to the appellee (plaintiff in the court below) by the firm of McGill & Bro. of Monrovia, and R. S. McGill & Bro. of Cape Palmas, upon a note of hand or written contract.

The defendants in the court below denied the right of the plaintiff to recover, because the Court of Common Pleas and Quarter Sessions "as a court of law had no jurisdiction over this suit," etc., and denied both the law and the facts in this case.

The plaintiffs maintained that though the defendants were styled "trustees," they were mere "receivers or managers" to settle up the affairs of said firm, and can be sued at law like administrators and executors. After argument on this question raised, the court below ruled that it had jurisdiction over the case and proceeded to hear it. After a deliberate hearing the case was handed to a jury, who returned a verdict in favor of the plaintiff for ~~\$1,314.49~~¹. Defendants excepted to the verdict and final judgment of the court thereon, and brought the action here for review, upon these grounds: (1) That the court below had no jurisdiction over this case. (2) Because the court below admitted in evidence certain letters and receipts of J. B. McGill, Chas. Sumner McGill and U. A. McGill from the 10th of September, 1879, to 23rd December, 1881. (3) That the court below refused to charge the jury as requested by defendant, "that plaintiff must prove every allegation expressed or implied in his complaint." (4) Because the court refused to set aside the verdict of the jury and grant them a new trial.

Now in respect to the jurisdiction of the Court of Quarter Sessions as a court of law, over trustees or trust estates, it must be remembered that in the strict meaning of our statute "To prevent fraud in the management of intestate estates," all estates intestate are regarded alike, whether the estate be of one individual or of a firm or co-partnership. We take the general rule to be this: The concerns of the partnership must be wound up by some person. The parties may provide for this at their pleasure. If they do not provide for it, the law provides for it in the only possible way. And this power of a former partner or partnership has been held to pass to his or their administrators to close all business transactions of the late firm, to settle all business of the

firm, to use the name of the firm in liquidation only of past business. And here the court emphatically states that the intestacy of a partnership estate is to be considered as being so, when it is not expressed in partnership articles of agreement who shall manage and settle up the business of the partnership should all the parties die before the concern is wound up.

We notice that the variance of opinion in this case is summed up in the title of the custodians of the estate of the late firms of McGill & Bro. of Monrovia, and R. S. McGill of Cape Palmas.

Generally speaking, in the management of estates an executor or administrator is a "trustee," and is the proper representative of the deceased parties, and until the final distribution and settlement of the estate, is answerable under our statutes, at law; for we are of opinion that the management of all estates in this Republic are confined to the *lex loci*. See 1 Liberian Statute (Judiciary Act), Article II, sec. 1. By this act, only the monthly and probate courts of this Republic have any authority over estates. See also the act above cited (Judiciary Act), Article III. The law therefore presumes the appellants in this cause to be administrators of the estates of the late firms of McGill & Bro. of Monrovia, and R. S. McGill of Cape Palmas, who are answerable as such to a court of law; therefore the court below did not err in overruling defendant's plea and adjudging that it had jurisdiction over the case, for it is rightly an action to recover a debt and not one to enforce the performance of a trust.

Though the defendants below only raised a plea to the jurisdiction of the court below to try this action, they concluded by denying the law and the facts, upon which denial they exercised the right to raise any law question that arose in their minds during the progress of the trial, all of which, upon careful inspection of the record in this case, we are of opinion have been justly disposed of.

We see no error in the admission of the written evidence, as it was within limitation and had direct reference to the matter at issue. We do not think the court erred in refusing to grant the defendants a new trial, because we fail to see the grounds upon which it was asked for. They allege that the court refused to instruct the jury as they requested in the fifth point of exceptions, but we find in the record of the case the court did instruct the jury in the very words suggested by the defendant's counsel, hence in this particular we are of opinion that no error has been committed.

Therefore this court adjudges that the judgment of the court below is affirmed; appellants are ruled to pay all costs incurred.