

JOS. B. OLIVER, Appellant, vs. J. C. DUNBAR, Appellee.

LRSC 1; 1 LLR 66 (1874)

[January Term, A. D. 1874]

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

The death of a sole plaintiff or defendant pending the trial of, or before final judgment given in any cause will not abate the action, but the legal representative of the deceased may be made a party in his stead. The exception to this general rule is where the action is brought for a personal injury, which by statute dies with the party.

The executors of Jos. B. Oliver, appellant, inform the court that Oliver has died since the last session of this court and motion the court to decree that the case being abated by the death of Oliver before the final hearing of the case in this court, the appellee shall refund to appellant's representatives the amount of money collected from said J. B. Oliver on account of the judgment and execution issued out of the lower court against said J. B. Oliver in favor of said appellee.

The court has had the motion under careful consideration, and would here remark that it has been greatly assisted by the very able arguments of the counsel on each side. The authorities cited by the gentlemen managing this matter have received the undivided attention of the court, and it finds that the foreign law authorities sustain the position that the death of a sole plaintiff or defendant pending the trial of, or before final judgment given in, any cause, will not abate the action, but the legal representatives of the deceased may be made a party in his stead. Upon examination of the Liberian Statutes bearing upon the motion now before the court, we find that the legal representatives of a deceased sole plaintiff or defendant cannot be made a party in his stead in actions for personal injuries. (See 1st Lib. Stat. page 47, sec. 5.)

On page 9, sec. 4, 1 st Lib. Stat., the law reads thus: "Personal injuries die with persons and no action for them can be maintained by or against representatives or trustees." The meaning of the term "maintain" is, to wit, "Kept in any state, preserved, upheld, defended, vindicated." The Statute of Liberia being paramount, it is therefore conclusive that according to these statutes aforesaid, in any action for personal injuries the death of a sole plaintiff or defendant pending the trial, or before final judgment, in fact at any stage before final judgment, the action is thereby abated, and legal representatives of the deceased cannot be made a party in his stead.

As to the second point in the motion, which asks the court to decree that the appellee refund certain moneys said to have been collected from the appellant, the court for obvious reasons declines to make an expression, this being an act for personal injury committed by the appellant himself.

The court adjudges that by reason of the death of the appellant in this suit the action abates as if no such action or suit ever existed; each party or their legal representatives to pay their own costs.

Key Description: Abatement and Renewal (Legal Representative may continue actions other than for personal injuries)