ELLEN H. PAGE, Widow of the Late JAMES H. PAGE, SR., deceased, Appellant, v. **LOUISE BROWN WARD**, Administratrix of the Intestate Estate of the Late JAMES H. PAGE, SR., deceased, Appellee.

APPEAL FROM THE MONTHLY AND PROBATE COURT FOR MONTSERRADO COUNTY.

Heard: November 22, 1983. Decided: December 22, 1983.

1. Although a lawyer is obligated to his client and in accordance with his oath of office to protect only his legal interest, he is also bound under the same oath and ethics of the profession to aid the court to conform to the very statutes the lawyer has sworn to defend and uphold.

2. The probate court is the guardian of such unfortunates as widows and children and it is its legal duty to protect them, give appropriate orders and instructions for the proper administration of an estate within the time limit allowed by statute and for the preservation of the estate in status quo ante, including maintenance and support of minors and widows of the decedent.

3. If an administrator acts in pursuance of and in accordance with law, he need not secure an order of court to protect him in the discharge of his duties.

4. A wife who leaves her husband and renounces all conjugal intercourse with him for a considerable period prior to his death is not as a rule entitled to administer his estate nor is she to object to the granting of the administration thereof to others.

5. The law conferring the right of administration on a widow contemplates the case of a wife who lives with her husband until his death.

6. A wife who has been divorced has no right to administer on the estate of her husband.

7. A probate judge has no authority to review a decision of his predecessor, absent fraud or misrepresentation.

The decedent, James H. Page, Sr., was married to Louise Brown Ward, appellee, out of which marriage six children were born. This marriage was dissolved and Mr. Page subsequently married Ellen H. Page, appellant, who remained his wife up to the time of his death. Upon the death of James H. Page, Sr., his former wife, Louise Brown Ward, petitioned the Probate Court for Montserrado County for letters of administration to administer his intestate estate. The letters were granted and she proceeded to administer the estate along with co-administrator William H. Washington, curator of intestate estates. Thereafter, the widow, Ellen H. Page, filed a petition before the Probate Court for Montserrado County praying for the revocation of letters of administration granted by the Court in favour of Louise Brown Ward and to be appointed administratrix instead.

A lease agreement entered into by one of the administrators of the estate for a period of fifteen (15) years, without first obtaining permission of the court, was admitted into probate by then Probate Judge His Honour H. Victor Stryker. Subsequently, Her Honor Luvenia Ash-Thompson became probate judge and ordered the cancellation of the agreement on the grounds that Judge Stryker was misled when he ordered the admittance into probate of the lease agreement.

The letters of administration of Louise Brown Ward were revoked and Ellen H. Page, the widow, was appointed administratrix of the intestate estate of the late James H. Page, Sr. From this decision of the judge, an appeal was announced to the Supreme Court.

The Supreme Court, in passing upon the issues presented in the case, held that the ruling of the probate judge, dated November 3, 1982, though erroneous in certain respects, be confirmed as to other aspects, with certain modifications, as follows: 1. that the appointment of appellant, widow of the late James H. Page Sr., as administratrix to administer her deceased husband's estate is confirmed; 2. that in the absence of a petition filed by any eligible heir of the late James H. Page Sr., to administer the estate within seven (7) days from the date of the reading of the Court's mandate in the trial court, with due notice to the parties, the widow who was appointed administratrix, should act as the sole administratrix of her husband's estate for the purpose of closing same as the law directs; 3. that the decree of Judge Stryker, dated February 9, 1976, be enforced; 4. that the allowances that were being paid by the lessees, as per the lease agreement dated April 16, 1977, to the only minor child and the widow, respectively, of the decedent, be paid retroactively, from the date the payment thereof ceased to exist with due consideration given to the increase of the rents that were being received and deposited in escrow from the lessees aforesaid.

James G. Bull appeared for the appellant The Carlor, Gordon, Hne & Teewia Law Firm appeared for the appellee.

MR. JUSTICE YANGBE delivered the opinion of the Court.

The probate judge consolidated the petitions that were filed before her and made one ruling, notwithstanding that the appellant had filed two separate approved bills of exceptions, which were the subjects of this appeal. Following the hearing of the arguments before this Bench, we adopted the same procedure by consolidating the two bills of exceptions, all the briefs filed and we heard the arguments of the parties; we will now rule accordingly.

Among the several reasons numerated in the two bill of exceptions, is the ruling of His Honour H. Victor Stryker, former probate judge, dated February 9, 1976, and because of the importance we attached to it, we decided to quote its relevant portion, as follows:

“Administrator, James Page, Junior, is present in court, likewise administratrix, Ellen Page. It is the orders of this court that this estate be closed by Monday the 16 th instant and the

administrators report as to how the estate was handled must be filed by 2:00 p.m. on the 16 th. This is a simple estate and there is no reason for protracted delay thereof. There is one building located on United Nation Drive which is bringing in an annual rent of $1,500.00 and since the widow does not receive realty from an intestate estate in fee, but for her lifetime, it is hereby ordered, that $500.00 be given to the widow annually which is 1/3 for her lifetime and after her death, the children of James Page will apply to the probate court for the appointment of an administrator pendent lite to issue an administrator's deed to them for the property on which the building stands. All other real property of the intestate estate are to be divided in the following manner; 1/3 to the widow for life, for this they .should not issue a deed, the court will decree that the remaining 2/3 must be divided share and share among the children. This is simple, therefore, if by the 16th the administrators fail to carry out these our orders so that this estate which has been opened since 1971 can be closed, the court reserves unto itself to take necessary action against the administrators."

Neither party was dissatisfied with this ruling, nor noted exception thereto; therefore, it is final nor was the only thing remaining for the full implementation thereof by the lower court the report of the administrators. It is also crystal clear that, had the above quoted ruling been fully executed by the lower court, the controverted contentions that developed after the 16 th of February 1976, would have definitely been avoided. The report of James H. Page Junior, administrator of the estate, showed that the only minor child of the late James H. Page Senior and widow of the intestate were being supported out of the income from the estate. It was admitted that both the allowances had ceased, as a result, the minor child is out of school and is being supported at the mercy of friends.

Among the many factors featuring in the records are the many changes of counsel on both sides in this case and each new sets of lawyers for the parties adopted a different approach to the case, which, instead of minimizing the delay to close the estate, to the best interest of their respective clients, blocked the timely implementation of Judge Stryker's ruling. We agree that a lawyer is obligated to his client and in accordance with his oath of office to protect only his legal interest, but he is also bound under the same oath and ethics of the profession to aid the court to conform to the very statutes the lawyer had sworn to defend and uphold. The delay to timely and fully carry out the ruling of February 9, 1976, had certainly occasioned the inconvenience suffered by the minor child and the widow. This is ridiculous, for while we can postpone the constructions of buildings, bridges and monuments, we cannot postpone education or defer daily bread. Allowances for maintenance and support are of extreme necessity and the halting thereof has and will surely continue to take adverse effect by creating social and economic problems on the recipients.

The probate court is the guardian of such unfortunates and it is its legal duty to protect them and to give appropriate orders and instructions for proper administration of an estate within

the time limit allowed by statute and for the preservation of the estate in status quo ante, including maintenance and support of minors and widows of decedents.

The decree of Judge Stryker further required that the administrators should have reported to the court on the 16 th of February 1976, as to how he administered the estate and as a prerequisite for closing of same on that date. The records show that the report was submitted to the court as per the decree without any objection. There is no evidence whatsoever in the records before us, that the estate is indebted to anyone, and verse versa, therefore, why the estate was not closed, as per the decree referred to supra, is a puzzle in this case. This estate was opened since November 1971 and up to 1976 is over and above the statutory period of one year within which it should remain open. Consequently, one of the crucial questions that has presented itself in this case, which we cannot accept in reaching a final conclusion on the contention germane to the points tendered in the two bills of exceptions is, what is the legal effect of the acts of the lower court, subsequent to February 9, 1976, the date of the decree of Judge Stryker quoted above, and the validity of the lease agreement for fifteen years, dated April 16, 1977 to expire 1997, signed by James H. Page Junior as co-administrator of the estate?

In our opinion, the answer to this question will finally resolve the problems in this appeal. In the ruling of Her Honour Luvenia Ash-Thompson, dated the 3`a of November, 1982, she quoted verbatim the report of the administrator, James H. Page Junior yet, the command of the ruling of Judge Stryker was not carried out by the closing of the estate.

The probate judge, Her Honour Luvenia Ash-Thompson, ruled, inter alia, that with reference to the authority of the administrator, James H. Page Junior, to unilaterally dispose of the property of the estate without orders of court, and in her opinion, her predecessor was mislead when he ordered the passing into probate the lease agreement, demising the only piece of property earning an income. In accordance with one of the seven counts of the bills of exceptions, the learned Judge Ash-Thompson, is blamed for failure to uphold the ruling of Judge Stryker only as far as it relates to James H. Page Junior to continue to lease the only income producing property of the estate for support of the widow. We cannot understand why appellant focused her mind upon and is only interested in the execution of the lease agreement or support of the widow and totally ignored the closing of the estate as per orders of Judge Stryker, which in our opinion, if done, would have surely put a final end to all the disputes. This act on part of appellant has reminded us of the story of Shylock and the exact pound of flesh without shedding a drop of blood.

Whilst it is true that a judge cannot review the acts of his predecessor except where the courts acted upon fraud or misrepresentation, in this case, there is no evidence whatsoever showing deception perpetuated at any stage, or apparent in the report of Administrator James H. Page Junior, or that there was any objection interposed thereto by either party.

Consequently, in our opinion, there was no justification for the holding that Judge Stryker was mislead instead of the full execution of his ruling within the time limit specified therein. Judge Stryker having ordered the closing of the estate upon the filing of the report by the Administrator James H. Page Junior, on the date stated in his ruling supra, there was absolutely nothing remaining to be done save the filing of the report and closing of the estate in accordance with law. Therefore, in our opinion, anything that was done after filing of the report that was not geared towards the objective of the February 9, 1976 ruling quoted earlier, was void ab initio under the doctrine of concurrent jurisdiction.

However, an apologetic but not a legal excuse in this direction is that the estate was not closed and therefore it had to be managed; hence, we are told, this Court should review what had transpired subsequent to February 9, 1976, in the best interest of the estate, and in regard to the public importance which is attached to the issues tendered in the two bills of exceptions. We will, therefore, address ourselves to the remaining points of contentions of the party litigants which we deem pertinent for our final decision in this appeal.

Appellant asserted in the first paragraph, page two, count one of one of her briefs, that on the 20 th of September 1982, appellee, as administratrix of the estate of the late James H. Page Senior, filed a petition praying the probate court to order the lessees of the lease agreement, signed by James H. Page Junior, administrator of the estate, to surrender the leased property of the estate on the ground that the lease is invalid. Later on the 21st, the appellant also filed before the probate court a petition praying for the removal of the appellees as administratrix of the estate and to appoint her as such administratrix. Appellant claimed that the two petitions are unrelated, therefore, the probate judge erred when she consolidated the two petitions in her ruling in which she raised the issue of the validity of the lease agreement. We will discuss infra the legal standing of the appellee as she relates to the entire estate, therefore, we will here only focus our attention and pass upon the question of consolidation of the petitions.

The issues raised in the two petitions contained facts and law that are common to each, except that the reliefs prayed for in each are separate - removal of appellee as administratrix of the estate and to appoint appellant in her stead, for the lessees to the lease agreement, signed by administrator, James H. Page Junior, to vacate and surrender the leased property for alleged invalidity of the lease. Therefore, in our view, it was not error in the trial court when the judge consolidated the two petitions in her ruling. Civil Procedure Law, Rev. Code 1: 6.3 (1 & 2).

Appellant has argued that the appointment of the curator for Montserrado County to administer the estate of the late James H. Page Senior is illegal and cited as reliance the Decedents Estates Law, Rev. Code 9: 111.1.

Recourse to the joint letters of administration granted to Mrs. Louise Brown Ward and Mr. William H. Washington, does not indicate that he, Mr. Washington, was appointed in his official capacity as curator for Montserrado County, but rather as a private individual, appellee contended.

This argument is well supported by the joint letters of administration; nevertheless, it does not erase the fact that Mr. William H. Washington is not qualified in accordance with section 111.1 of the statute cited above to administer the estate, for, in the case at bar, there are persons who are eligible for appointment, such as the widow and the daughter, Pheo Page-Askie who are present in Liberia. Additionally, prior to the appointment of Mr. Washington, on August 26, 1982, letters of administration were granted by the court to Abraham H. Butler and James H. Page Junior, and the latter is alive, therefore, the appointment of Mr. Washington, whether as curator or as private person, did not arise. Ibid.

Appellant again argued that, even though, Pheo Page-Askie is the daughter of Decedent Page, and as such she is eligible for appointment to administer her father's estate, but her appointment can only be made upon petition either filed by someone who has interest in and is eligible to administer the estate or by himself. The Decedents Estates Law, Rev. Code 9: 111.3 (1) reads, as follows:

"Any person interested in the estate of an intestate, or of a person alleged to be deceased, or any person to whose appointment as administrator all distributees consent pursuant to section 111.1, or a curator, creditor or a person interested in an action brought or about to be brought in which the intestate or the person alleged to be deceased, if living, would be a proper party, may present a petition to the court having jurisdiction praying for a decree granting letters of administration to him or to another person upon the estate of the intestate or the person alleged to be deceased."

See also the same act, section 111.4 (1).

In our opinion, these sections of the statute are not merely procedural, but they are mandatory and should be fully complied with, therefore, there is no room for discretion. The lower court and the appointee not having adhered to the statutory procedure herein quoted above, the appointment of Mrs. Pheo Page-Askie is irregular and constitutes a reversible error.

The records in this case further reveal that Mrs. Louise Brown Ward, the divorced wife of decedent and the appellee in this case, petitioned the probate court alleging: 1) That she is a former wife of the intestate and bore for him six children who all are presently within the United States of America; 2) that she and her son, James H. Page Junior, previously petitioned for letters of administration; 3) that on the 26 th of August 1971, James H. Page Junior and Abraham H. Butler were granted letters of administration; 4) that Abraham H.

Butler died and James H. Page Junior left the Country for the United State of America; and 5) that she petitioned to administer the estate, conserve it and protect the interest of her six children in the estate.

The appellant argued that the former wife of the decedent had no legal standing, her children having reached the age of maturity; and that additionally, she did not fall within the category of priority. Hence, appellant said, the former wife was not qualified to be appointed as administratrix of the estate.

Looking carefully at the contents of the petition from a maternal point of view, we certainly share the same feeling with appellee as a concerned mother of her absent children, which apparently influenced the learned judge when she granted the petition. However, we are not inclined to permit such feeling to override the accepted requirement and procedure of the law controlling principal and agent. We are, also in agreement with the argument of appellant in accordance with the Decedents Estates Law, Rev. Code 9:111.1. Therefore, we hold that since the children have reached the age of maturity and are residing outside of the Republic of Liberia, their mother should have obtained a power of attorney from the absent children to authorize her to represent them and protect their interest in the estate; in the absence of such authority or as guardian ad litem for the children, Mrs. Louise Brown Ward, the appellee, is without any legal authority to so act. Hence, the decree granting her the letters of administration to manage the estate is a reversible error.

Another authority to buttress our holding in this respect reads thus: "A wife who leaves her husband and renounces all conjugal intercourse with him for a considerable time prior to his death, is not as a rule entitled to administer his estate, nor is she in a position to object to the granting of the administration to others. The laws conferring the right of administration contemplates the case of a wife who lives with her husband till his death, and faithfully performs all her duties to his family, not one who voluntarily separates herself from him and performs none of the duties imposed by the relation. A wife who has been divorced has no right to administer the estate of her husband, and the right of either party to act as administrator may be defeated by an agreement of separation. Where there has been no agreement of separation or divorce, mere unfaithfulness on the part of the wife, if condoned, may not be sufficient to work a forfeiture of her right of administration. A wife who left her husband and lived in meretricious relations with another has been refused letters of administration on her husband's estate 11 RCL 36, § 24."

The third issue for our consideration and decision is: "Whether an administrator may dispose of real property of an estate without an order of the probate court?" Before referring to the authority to resolve this contention, it is vital to observe here that the disposition of the property in this case is a lease for fifteen years and not an outright sale of the property. With regards to the need for orders of court, the authorities state: "If an administrator acts in

pursuance of, and in accordance with law, he need not secure an order of court to protect him in the discharge of his duties." 31 AM. JUR. 2d., Executors and Administrators, § 156, at 92, and 58 ALR 530.

The fourth issue of appellee's argument is, "Whether it was not ultra vires for an administrator to dispose of real property of an estate independent and exclusive of the other administrator or administrators who are present and without an order of the probate court?"

The lease of the property of the decedent by the co-

administrator, James H. Page Jr. alone, for fifteen years for valuable consideration, is not repugnant to any law. Appellee contended that the lease is inimical to the estate, but he did not point out how and he did not show anything in this regard to support the disadvantage alluded to by him. To the contrary, the records show that when the 1977 agreement signed by coadministrator, James H. Page Junior became operative, the property consisted of a two-storey building. A term of fifteen years was provided with graduated rents of $2,500.00, $3,000.00 and $3,500.00 annually.

As we have mentioned hereinabove, "a wife who leaves her husband, and renounces all conjugal intercourse with him for a considerable period prior to his death, is not as a rule entitled to administer his estate, nor is she in a position to object to the granting of the administration to others. The laws conferring the right of administration contemplate the case of a wife who lives with her husband till his death...." It is quite clear that with regard to a divorced husband's estate, as in this case, the former wife, as the appellee herein, cannot legally attack the legality of an agreement concluded by the administrator. Hence, the trial court erred when it set aside the lease agreement of April 16,

1977, signed by Co-administrator James H. Page Junior, upon the objection of appellee.

The fifth and last contention of the appellee was as follows:

"Whether the present case presents a community of interest between the widow of the estate and the lessees of the estate to be joint parties?"

The records further show that Messrs. Hansan Mokbel & George Kadim are the lessees to the agreement, dated 16 th of April 1977, which was assailed by the appellee and set aside by

the probate judge; therefore, the ruling of the Probate Judge to the effect that they were parties in interest was neither an error nor repugnant to the February 9, 1976 ruling. Hence, the same

is sustained in this respect.

Before concluding this opinion, it is commendable to observe that apart from what we have considered in our opinion as reversible errors committed by Her Honour Judge Ash-

Thompson, she consistently continued to recognize the legitimate interest and position of the widow in the estate and the fact that the closing of the estate is overdue. Accordingly, she appointed the widow as administratrix and ruled that it be closed by December 31, 1983. Perhaps if the appeal was not announced, the closure of the estate would have been concluded by now.

Considering the facts, circumstances and the citations of law controlling, the ruling of the probate judge, dated November 3, 1982, be and same is confirmed with the following modifications: 1. That the appointment of appellant and widow of the late James H. Page Senior, as administratrix to administer her deceased husband's estate is confirmed; 2. that in the absence of a petition filed by any eligible heir of the late James H. Page Senior, within seven (7) days from the date our mandate is read in the trial court, with due notice to the parties herein, to administer the estate, the widow who was appointed administratrix, should act as the sole administratrix of her husband's estate for the purpose of closing same as the law directs; 3. that the decree of Judge Stryker, dated February 9, 1976, be enforced; and 4. that the allowances that were being paid by lessees as per the lease agreement dated April 16, 1977, to the only minor child and the widow, respectively, of the decedent, be paid retroactively, from the date the payment thereof ceased with due consideration given to the increase of the rents that are being received and deposited in escrow from the lessees aforesaid.

The Clerk of this Court is ordered to send a mandate to the lower court, commanding the judge therein presiding to immediately resume jurisdiction over the estate and carry out these instructions within thirty (30)) days from the date our mandate reaches the trial judge. Costs are disallowed. And it is so ordered.

Judgment affirmed with modification.