

RICHARD RASAMNY, Agent for RASAMNY BROTHERS, Lebanese Merchants
transacting Business in Liberia, Petitioner, v. His Honor J. **EVERETT BULL**,
Commissioner of Probate of Montserrado County, Respondent.

APPEAL FROM THE CHAMBERS OF MR. JUSTICE BARCLAY.

Argued October 21, 1953. Decided January 22, 1954.

Prohibition will not lie when there is an adequate remedy at law.

On appeal to this Court *en banc* from a denial of a writ of prohibition by Mr. Justice Barclay in Chambers, *petition denied*.

R. F. D. *Smallwood* for petitioners. S. *Raymond Horace* for respondent.

MR. JUSTICE SHANNON delivered the opinion of the Court.

The estate of the late Juah Weeks Wolo, of Monrovia, is under administration before the Monthly and Probate Court of Montserrado County. Upon representation to the said court that monies of the estate were in the hands of Rasamny Brothers, having been deposited by the said Juah Weeks Wolo, the agent of Rasamny Brothers was summoned to testify in the matter and explain the true situation. The said agent appeared and testified, after which the investigation was suspended. When a citation was later issued for the parties to appear to hear the findings and conclusions of the court, the petitioners, possibly laboring under some impression that a ruling would be entered against them, fled hither on a petition for writ of prohibition to restrain the court from concluding the said investigation.

Mr. Justice Barclay, presiding in chambers, denied the petition with an order to the Monthly and Probate Court of Montserrado County to proceed in the matter and conclude same. Thereupon the said petitioners appealed to this Court *en banc*.

It is axiomatic that prohibition will not lie where there is an adequate and complete remedy at law; and there is no gainsaying that such a remedy in the form of an appeal was available to the petitioners herein in the event of a ruling against them.

"In the absence of any statutory provision to the contrary, it is a general rule that prohibition, being an extraordinary writ, cannot be resorted to when ordinary and usual remedies provided by law are adequate and available. Accordingly, if there is a

complete remedy by appeal, writ of error, certiorari, injunction, mandamus, motion, or in any other manner, the writ should be denied. . . . Failure to resort to another recognized remedy which is available and adequate does not alter the general rule or take the case out of it. Even an indirect and inconvenient remedy may be sufficient to prevent the issuance of a writ." 42 Am. Jur. 144-45, *Prohibition*, § 8.

"While the superior court will be slow to use the writ where there is an appeal, its valuable office to the citizen who is being oppressed by unlawful assumption of judicial authority will not be limited by set rules. Wherever there is anything in the nature of the action or proceeding that makes it apparent that the rights of a party litigant cannot be adequately protected by any other remedy than through the exercise of this extraordinary jurisdiction, it is not only proper to grant the writ of prohibition, but it should be granted." 22 R.C.L. 10, *Prohibition*, § 8.

There is no showing that the petitioners were being oppressed by any unlawful assumption of judicial authority by the Commissioner of Probate; nor did the nature of the proceeding herein indicate in any way that the rights of petitioners could not be adequately protected by an appeal. We consequently sustain the order of our colleague.

The care and protection of the estates of deceased persons is entrusted by our statutes to the probate courts. The course adopted by the petitioners in seeking the intervention of this Court prior to entry of a decision in an investigation gives confirmation to that passage of Scripture which says : "The wicked fleeth when no man pursueth, but the righteous is as bold as a lion." Their flight to this Court, when there was no apparent pursuit except an effort to ascertain the truthfulness of representations made in a given matter, could support an inference of some consciousness of wrong, especially in the absence of any showing of oppression or wrongful assumption of judicial authority.

The petition for a writ of prohibition is therefore denied, and the Commissioner of Probate is ordered to conclude the investigation with as little delay as possible. Costs of these proceedings are against the petitioners ; and it is hereby so ordered.

Petition denied.