

**RICHARD RASAMNY**, Agent for RASAMNY BROTHERS, Lebanese Merchants  
Transacting Business in Liberia, Appellants, v. **W. H. KETTER** and **P. D. GURLEY**,  
Administrators of the Estate of the Late JUAH WEEKS WOLO, Deceased,  
Appellees.

APPEAL FROM AN ORDER OF THE COMMISSIONER OF PROBATE OF  
MONTSERRADO COUNTY.

Argued May 2, 1956. Decided June 29, 1956.

The Commissioner of Probate may not properly order payment to be made by a witness who was not made a party or brought under the jurisdiction of the Probate Court by appropriate service of process.

In an investigation of the administration of an intestate estate wherein appellant appeared only as a witness, appellant's principals were found to have disbursed moneys belonging to the decedent without authority, and were ordered to reimburse the estate to the amount of such moneys. On appeal to this Court, the order was *reversed* and the matter *remanded*.

*R. F. D. Smallwood* for appellant. *T. Gyibli Collins* for appellees.

MR. JUSTICE SHANNON delivered the opinion of the Court.

This is the second time this matter has reached us. In the former instance Rasamny Brothers prayed for a remedial writ against the Commissioner of Probate of Montserrado County for alleged irregularities committed in the investigation of alleged interference with the estate of the late Juah Weeks Wolo. *Rasamny v. Bull*, 11 L.L.R. 426 (1954). This remedial writ was denied, and the Probate Commissioner was directed to resume jurisdiction over the investigation and conclude it.

In this second case the said Rasamny Brothers have appealed from a ruling of the said Probate Commissioner requiring them to pay the sum of \$12,000 into the estate of the said Juah Weeks Wolo, being an amount deposited by her during her life with the said Rasamny Brothers which they, according to the Probate Commissioner's findings, disbursed after her death without proper court authority.

Juah Weeks Wolo, a resident of the City of Monrovia, died in 1949. After her death an instrument purporting to be her will was offered for admission to probate. Ob-

jections thereto were sustained, and the said will was denied admission to probate. Administrators appointed by the Probate Court to administer said estate discovered, upon entering their duties, that the said Juah Weeks Wolo had, during her lifetime, deposited with Rasamny Brothers sums of money aggregating some \$12,000. Said administrators applied for this money, but could not get it. Neither could they obtain satisfactory information regarding same; so they reported the matter to the Probate Court. How this report was made to the Probate Court is not shown in the records before us. Suffice it to say that the Probate Commissioner summoned several persons, including the agent of Rasamny Brothers, to appear and testify.

The record of the investigation disclosed that the said Juah Weeks Wolo did deposit some \$12,000 with Rasamny Brothers. But the testimony of the agent of said company, and of Gabriel L. Dennis, went further to show that this deposit was specifically made for the education of the decedent's adopted son Jacob Cisco. It was also shown that a relatively small portion of this amount was withdrawn during the lifetime of the decedent. The balance was withdrawn after her death, while litigation over her will was proceeding. The withdrawals were shown to have been made by, or upon the orders of the said Gabriel L. Dennis, who was a confidential friend and adviser of the said Juah Weeks Wolo.

The records do not show any deposit receipts which would support the claim that the amount in question was specifically set aside, but rather they clearly show that most of the withdrawals that were made were not for the education of the said Jacob Cisco.

At the conclusion of the investigation the Probate Commissioner ordered that Rasamny Brothers pay into the estate through the court the amount of \$12,000, together with costs and interest at the rate of 6 percent per annum. Counsel for Rasamny Brothers had the following entry made upon the records of the Probate Court:

"Counsellor R. F. D. Smallwood of counsel to respondent (Rasamny Brothers) said that he excepts to the part of the ruling which requires Rasamny Brothers to pay the amount of \$12,000 with commission and all costs, and prays for an appeal to the Honorable the Supreme Court of Liberia sitting in its March, 1954, term."

How and why counsel for Rasamny Brothers could style his clients as respondents in the matter is beyond our imagination and understanding, especially in face of the position already taken then and stressed before us to the effect that they were never

called upon to answer any complaint or charge, but simply to testify in a matter then before the court.

The appeal is before us on a bill of exceptions containing six counts, many of which we do not deem necessary to the decision of the appeal. From the records certified to us there is no gainsaying that there was a ruthless, unjustified and unwarranted disposition of the \$12,000 deposited by the late Juah Weeks Wolo with Rasamny Brothers, particularly with respect to that part of it which was withdrawn after her death. For, even if it were conceded that the deposit was made for the purpose specified, the withdrawals after depositor's death, and in the manner done, cannot be justified or warranted. It is unexplained, however, how and why the Probate Commissioner held Rasamny Brothers responsible to pay the full sum of \$12,000 when it was shown, and not contested, that a portion of that sum was withdrawn before testator's death, obviously with her assent; or why the Probate Commissioner required Rasamny Brothers to pay interest and costs.

We consider Counts "5" and "6" of the bill of exceptions pertinent to the decision of the case. These counts read as follows:

"5. And also because His Honor the Judge did, in his final ruling, rule that Rasamny Brothers should pay to the estate the said sum of \$12,000 with 6% interest thereon, and that witness Gabriel L. Dennis be summoned to show cause why he should not be held in contempt for interfering with an intestate estate. The Judge's said ruling is considered erroneous and partial in that both Rasamny Brothers and Gabriel L. Dennis, being under the jurisdiction of the court as witnesses and not parties litigant. To which ruling witness Rasamny Brothers excepted.

"6. And also because the 6% interest ruled to be paid on the \$12,000 deposit is illegal in that nowhere in the entire investigation has it been brought out that said amount was deposited with Messrs. Rasamny Brothers at a rate of interest; the said Rasamny Brothers not being a banker nor a borrower; but this amount was for a specific purpose, the education of her son, Jacob Cisco. (See minutes of court.) To which the witness, Rasamny Brothers excepted."

In entering the ruling from which this appeal arises the Probate Commissioner made the following record: "We do not feel conscientiously that Rasamny Brothers have actually interfered with this estate but ignorantly permitted themselves to be misled. The law will not excuse them for their ignorance under such circumstances. We are compelled to order the immediate payment of said amount by them to the sheriff of

said court with interest at 6 percent and costs of these proceedings. Hon. Gabriel L. Dennis had no legal authority to have ordered the disbursement of said amount."

In the face of this clear statement on the court's records the Probate Commissioner nevertheless made Rasamny Brothers responsible and answerable for the payment of the whole amount together with interest and costs, absolving Gabriel L. Dennis who, as the records disclosed, "misled" the said Rasamny Brothers, from responsibility from making any refund, and simply ordering him to "appear and answer why he should not be attached for interfering with an intestate estate."

An order for the summons of Gabriel L. Dennis to appear and answer would have made him a party and subjected him to any judgment or ruling entered. Why was not the same privilege accorded Rasamny Brothers under the law to appear and answer? This would have been the better, yea the right, position to have taken; and it would have afforded Rasamny Brothers an opportunity to defend themselves. To call them into court to testify, as was done, to their agent, and then impose a ruling or judgment upon them, was without legal justification. Therefore the ruling given against the said company is reversed and set aside.

To make the said Rasamny Brothers responsible for the payment of the \$12,000, they must first be held to answer and defend upon some process duly issued, and an investigation or hearing held.

There is no record, nor was there even an intimation during the argument of the case before us, as to whether the order for Gabriel L. Dennis to appear and answer why he should not be attached for interfering with an intestate estate was carried out and what ruling was given thereupon.

The matter is remanded to the Probate Court for the purpose of such measures consistent with this opinion as may be required for the protection of the estate. Costs disallowed. And it is hereby so ordered.

*Reversed and remanded.*