

**R. A. SHERMAN, B. P. YATES and SON, Appellants, vs. R. S. McGILL, sr., and
J. B. McGILL, of the Firm of McGill & Brother and Executors of the Estate
of S. F. McGill, deceased, and S. G. Fuller, Sheriff, Appellees.**

LRSC 2; 1 LLR 81 (1875)

[January Term, A. D. 1875.]

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

Injunction.

The first exception taken by the appellant's counsel is to the decision of the court below, that an administrator, or administrators, (here in Liberia) are allowed to retain in their own hands so much of the assets of the estate as his or their debts amount to.

This unqualified decision of the court below is an error. An administrator may retain in his own hand the amount of his own debt, provided that the assets of the estate are sufficient to meet all legal demands against

the estate, otherwise he is debarred the privilege of so doing, by the statute which declares and directs that a pro rata dividend shall be made to all the claimants against the said estate.

The second exception taken by the appellant's counsel is to the decision of the court below that Samuel F. McGill was the acknowledged administrator of the estate of the late John Brown Smith & Co. This decision can have no binding effect in law, because the Probate Court of the Republic of Liberia cannot exercise jurisdiction over the property of a company simply because one of its members dies, leaving his effects within the Republic of Liberia ; for in all such cases the intervention of a foreign agency supersedes the necessity of the action of such a court. Therefore it is obvious that the statute only directs the interference of the court in cases over which the jurisdiction of said Probate Court extends; that is, in every case where a person dies intestate within the Republic of Liberia and leaves an estate of his own, or dies out of the Republic and leaves no one to represent him.

The third exception taken by the appellant's counsel is to the decision of the court below rendered thus: "The court does not regard the appellant (defendant below now) in this case entitled to the relief asked for, because the parties have failed to show to the court that they have done all that the law requires of them in this case." Upon this point it is equitable and just to say, that the defendant in the court below (now appellant before this court), in view of the nature of the case and taking all the circumstances surrounding the same, is entitled to relief.

The fourth exception taken by the appellant's counsel is to the decree of the court below that the decree rendered on the 13th day of April, A. D. 1874, in this case is contrary to the law and facts, equity and good conscience.

The difficulty into which the creditors of the firm of John Brown Smith & Co. are placed is not the result of their own acts, but the effect of the mysterious existence of that firm, and the non-residence of an English consul. And it is strange to say, in a land where exist courts of law and justice, that the claims of creditors should be baffled by an obscure existence of a firm, for the want of a

proper representative, while the Court of Probate and Monthly Sessions would be fully and legally authorized, upon petition made to it, to appoint administrators over the effects of John Brown Smith, and over his interest in the said firm of John Brown Smith & Co. ; and the said administrators, as representatives of the said John Brown Smith, deceased, in the absence of an agent properly constituted and empowered by the said firm, or the existing members thereof, would be fully and legally authorized for and on behalf of the said firm to collect all debts due to the same, and to pay all debts due by them.

In this equity case the irregularity of the proceedings is so much opposed to equity and good conscience as to lead this court to the following determination :—

The court adjudges that the appellee, by himself, or the sheriff, S. C. Fuller, in his behalf, be forever enjoined and prohibited from carrying into effect the decree of the court below rendered in this case on the thirteenth day of April, A. D. eighteen hundred and seventy-four, and that the appellant recover all costs incurred in this appeal from the appellee.