

**JOSEPH T. DAYRELL, JR., JAMES B. DENNIS, and CHARLES E.
COOPER**, Trustees of the J. J. ROBERTS EDUCATIONAL FUND, Petitioners, v.
THE CITY OF MONROVIA, Respondent.

MOTION FOR ABATEMENT.

[Undated.]

While the records in the above-entitled cause were being read at this bar and while questions were being propounded from this Bench, the Honorable D. Bartholomew Cooper, Solicitor General of the Republic of Liberia, counsel for respondent, asked our permission to file an application for abatement. Said permission having been granted, the said counsel filed a motion containing six counts, three of which read as follows :

"The Honourable D. Bartholomew Cooper, Solicitor General of Liberia, representing the above named respondents-in-certiorari, respectfully moves this Honourable Court to abate these proceedings, revise the judgment of the lower court, and grant unto the Beneficiaries under clauses 7 and 8 of the Last Will and Testament of the Late J. J. Roberts permission to assert their rights under provisions of the clauses of said Last Will and Testament herein referred to supra.

"1) Because the people of the City of Monrovia not being beneficiaries according to the terms of clauses 7 and 8 of the Last Will and Testament of the Late J. J. Roberts the suit in Equity ought not to have been instituted in the name of the City of Monrovia.

"2) And also because any demand for accountability ought to have been made of the Board of Stewards of the Methodist Episcopal Church and not the Trustees as appears by the Bill of Complaint filed in the Equity [Division] out of which these proceedings have come.

"6) And also because it is elementary that the City of Monrovia cannot be Agents for the people of Liberia, and the Will provides that the Charitable Trust was intended for the people of Liberia on the understanding the school or schools would be built in the City of Monrovia, or within the corporate limits of the same only; the suit should therefore have been brought by the Attorney General, or other parties in interest, pursuant to the law in such cases made and provided. See L. 1921-22, ch. IX; 5 R.C.L. *Charities* § 98, at 359 (1914) ; Annot. 14 L.R.A. (n.s.) 51, 53-54 (1908).

"WHEREFORE Respondents-in-certiorari respectfully pray this Court as aforesaid.

"Dated this 21st day of October A.D. 1944.

[Sgd.] D. BARTHOLOMEW COOPER,

"Solicitor General of Liberia, for Respondents-in-Certiorari."

To which motion to abate, Counsellor Monroe Phelps, counsel for petitioners filed the following resistance, to wit:

"The petitioners in the above entitled cause objects [*sic*] to the Court sustaining the Motion of the respondents to abate these proceedings, for the following reasons :—

"1) Because, it appears from the records in this case, and the admission on the face of the Motion that the respondents have no right of action : that the action has been instituted without reasonable cause and legal grounds; that the petitioners have been distressed in the payment of costs and Counsel fees to maintain this suit, whilst the respondents have paid nothing.

"2) And also because, the respondents having failed to make Returns to the interlocutory Writ of Certiorari, waived all rights to attacks against these proceedings, and admitted the errors of the court complained of by your petitioners ; in the consequence, he is barred of plea in abatement at this stage of the proceedings.

"3) And also because, counts 1, 2, 4, 5 and 6 of the Motion, do not contain matters pleadable in abatement, but the averments thereof support substantially the contentions of the defendants in the court below, and admit that the Rulings of the Judge were erroneous and contrary to law.

"WHEREFORE, the Motion to Abate should not be sustained, but judgment should be entered for the petitioners, reversing the judgment of the Court below, with cost of the entire proceedings including Counsel fees to be paid by the respondents.

"Dated this 24th day of October, A.D. 1944.

Joseph T. Dayrell, Jr., James B. Dennis and Charles E. Cooper, Trustees of the J. J. Roberts Educational Fund, petitioners,

By their Counsel,

"[Sgd.] MONROE PHELPS

Counsellor-at-Law."

In accordance with said application, it is hereby adjudged that the resistance of petitioners' counsel be, and the same is, hereby overruled ; and that said action be abated and the case consequently struck from the docket of this Court without costs to either of the parties for the suit in this Court.

Motion granted.