

M. E. WHITE, Appellant, v. **W. G. HARMON**, Appellee.

1. In matters of probate, notification to interested parties that a petition has been filed in court against them and that their presence is needed in court is a sufficient summons.
2. There is a difference in the legal meaning of complaint and a petition in probate matters.
3. The widow of an intestate decedent not authorized as such to interfere in any way with the intestate estate.
4. She may, however, if authorized by competent court, or if appointed executrix by a will.
5. In the absence of an appointment of either executors or administrators the estate lies in the hands of the judge of the Probate Court until such appointment is made.

Interfering with an Intestate Estate. On appeal for error from the District Probate Court of Marshall.

In this case a writ was served from the Supreme Court on Judge Z. T. Walker, of the District Court of Monthly and Probate Sessions, Marshall, ordering him to sign a bill of exceptions to his judgment in the above entitled cause, on a petition to the Supreme Court for the same : the defendant, now appellant, having appealed from the decision of the said judge, and having complied with the law governing appeals, as the petition shows. But it appears that owing to the judge below not filing his returns, of his disobedience to the writ served on him, in the Supreme Court, the plaintiff, now appellee, took advantage of his dereliction of duty and applied to the Supreme Court for a writ of error, hence the case comes up before this court on a writ of error.

This court, however, does not accept the dereliction of the judge below as a contempt, but as a want of clear conception of his duty, he is therefore excused. This procedure however is established, that when a mandate is sent down in future to a judge of inferior jurisdiction touching the right and duty of signing a bill of exceptions to his rulings and judgment he is not only to obey such mandate, but he is also to show cause why he did not sign said bill, at the next session of the Supreme

Court as directed in the mandate, and especially so when all the legal requisites relating to appeals have been complied with.

From the records of the case it appears that while the said J. C. White was yet dying the said appellant, without any respect or consideration of the heirs and creditors of the said J. C. White's, entered the store-house and carried away, or caused to be carried away, a wooden chest containing money, cheques, bonds, Government bills and other valuable papers which chest required the combined strength of two men to remove it, and which when returned contained only \$4.25. And, also, it appears from the records, substantiated by the evidence in the case that the said appellant carried, or caused to be carried away from the store, articles of merchandise to the amount of \$848.50. The facts above stated, by all of the witnesses, more or less sustained the truth of the petition of the plaintiff now, appellee, in the case.

This court, now says, that there is a difference in the legal sense of a complaint, and a petition in probate matters before a court of jurisdiction. If a notice is served upon a defendant that the plaintiff has filed a petition in the court against the defendant's proceeding in the estate, without the right or warrant in any matter referring to an intestate estate where there be guardians of heirs to the estate, or not, the said plaintiff is legally put in court to affirm or deny his unwarranted action.

This court further says, that no evidence has been adduced to conclusively show that W. G. Harmon, was not the legally appointed guardian of the heirs of the late J. C. White; but to the contrary, as the records show, the judge of the said Provisional District Court acknowledged him, the said W. G. Harmon, as his appointee as guardian, and that he acted officially. And this court further says, that even if there were no legally appointed guardian of the heirs of the said deceased, or administrators of the said estate, the said appellant had no legal right to interfere with her late husband's estate, except the court gave her that privilege, or unless she, by will, was appointed executrix of said estate. In the absence of such appointment the estate was in the hands of the judge of Probate, and not the widow.

And further, there is no statute law in Liberia that guarantees to a wife the right to make whatever alteration or repairs of her husband's property; to move away anything, or to pull down or build up in any sense the property belonging to an intestate estate. If such a doctrine should be upheld, what would become of the rights of legal heirs and creditors? And further, from an inspection of the records, this court finds no evidence to prove that the late deceased J. C. White authorized his wife to be his agent. And, again, suppose that said plaintiff has been, by will, consti-

tuted the executrix of the said estate, even then, her powers to act would not be legal until after the probation of the said will of the testator, and not while he was dying.

The records further show, that the appellant was notified that the said petition had been filed in court, and her presence was needed on the day mentioned, that she might show cause why she interfered with the estate before the court and legal authorities had acted. She first refused to obey, but subsequently she went to court and apologized for her disobedience and contempt, which the court accepted.

Now then, this court says, that the court below did not err in overruling the motion of the appellant in the case for the legal reason already named ; and that her haste made waste against her own interest.

The decision of the judge below is that the said appellant return the goods and money, according to the additional inventory, and evidence in the case ; or the goods and money named, if she elects, to keep them and it, they will complete her dower. This court *says*, it is now practically impossible for the said appellant to make the return of goods, and perhaps, all of the money taken away, to be inventoried, for it is certain from the evidence in the case that a part of the goods were perishable. The judge, therefore, in his decision, took *an* equitable view of the matter, which this court upholds, since nothing better could have been done in the premises; for no one knows how much money was in the chest carried away. This court further adjudges that the residue of the property, remain in the custody of the legal representatives of the estate, to be administered upon in the interest of the creditors and heirs and that the appellant is ruled to all cost in this action.

The clerk of the court, is hereby ordered to notify, immediately, the judge below of this decision.

Given under our hands this 10thday of February, A. D. 1909.

By the Court.