

**D. C. CARANDA**, and **R. OPITZ**, Agent of J. W. WEST, Appellants, v. **DANIEL PORTE**, Appellee.

APPEAL FROM THE MONTHLY AND PROBATE COURT, MONTSERRADO COUNTY.

Argued October 23, 28, 1957. Decided December 20, 1957.

1. Where an information is filed in the Monthly and Probate Court alleging unlawful interference with an estate over which that court has jurisdiction, the respondent should be summoned to appear and show cause why he should not be held liable for all the shares and legacies of all the heirs and legatees of the estate in question.
2. An agent's authority terminates upon the principal's death.
3. The Monthly and Probate Court has general jurisdiction of decedent estates.
4. The Monthly and Probate Court has authority to punish for contempt by imposing a fine of not more than twenty dollars and imprisonment during its sitting.
5. Imposition of excessive bail, fines, or punishments is unconstitutional.
6. A bond tendered to a court as bail must be deposited by the sheriff in a government depository or reliable bank and may be released only upon the written order of the court or of a duly authorized officer of the court.

Appellants excepted to a ruling in contempt proceedings arising from a suit for unlawful interference with the administration of a decedent estate. This Court having found exceptions well taken, the ruling appealed from was *reversed* and the contempt proceedings *remanded* for disposition by the court below.

*T. Gyibli Collins* for appellant. *M. M. Johnson* for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

Contempt proceedings were instituted against D. C. Caranda and R. Opitz in the Monthly and Probate Court, Montserrado County, based upon information of Daniel Porte, heir of John Porte, deceased, for unlawful interference with the estate of the aforesaid John Porte. From the records before us in this case, the facts and circum-

stances leading up to the institution of the contempt proceedings were substantially as follows :

The late John Porte departed this life on May 21, 1955. A few days prior to his demise he deposited through Counsellor D. C. Caranda, is then agent, the sum of \$1,860 with the J. W. West firm of Monrovia, for the purchase of a diesel truck. For this amount he obtained a deposit slip. During the last illness of the said late John Porte the amount of \$460 was withdrawn from the said deposit account by Daniel Porte, heir of the said late John Porte, against his receipt. Shortly after the burial of John Porte, Counsellor Caranda and Daniel Porte each presented to the Monthly and Probate Court an instrument purporting to be the last will and testament of the late John Porte. Thereupon the Probate Commissioner ordered that the usual thirty-days notice be placarded for objections and/or proving of the authentic will. Pending the elapse of the statutorily prescribed period of time for the proving or their objecting of either of the wills then offered for probate, Counsellor Caranda demanded payment of the deposit amount of \$1,400 to him as the authorized agent and legal representative of the late John Porte's estate, and said amount was delivered to him in good faith upon his returning the deposit receipt to the agent of J. W. West with the understanding that the truck purchase transaction was entirely cancelled.

Information having been given the Probate Commissioner by Daniel Porte respecting the withdrawal of the deposit amount from the firm of J. W. West by Counsellor Caranda, pending disposition of objections filed against the will offered by him for probate, the Probate Commissioner forthwith ordered the arrest and detention of R. Opitz, agent of J. W. West, Monrovia, and of Counsellor Caranda, for contempt of court for alleged interference with the intestate estate of John Porte, deceased, based upon the report of Daniel Porte, as aforesaid. The arrest was accordingly made on July 5, 1955. R. Opitz tendered a cash bond in the sum of \$1,600 for his release, which was accepted by the court and deposited with the O. A. C., Monrovia. Counsellor Caranda was detained for failing to give the required appearance bond ; and in the meantime he filed an application with this Court for a writ of prohibition to the Monthly and Probate Court. Said application having been denied, the Probate Commissioner was instructed to resume jurisdiction over the said contempt of court matter and investigate facts surrounding said cause. The Probate Commissioner resumed jurisdiction and rendered final decree in the contempt case on June 27, 1956. To this final ruling of the said Probate Commissioner, R. Opitz took exceptions and prayed an appeal to this Court for review.

We deem it proper to quote, hereunder, the relevant portion of the Probate

Commissioner's ruling in said contempt matter, which reads as follows :

"After having received the mandate from the Honorable, the Supreme Court of Liberia, dated February 17, 1956, notice of assignment was issued to all parties concerned for the Monthly and Probate Court to resume jurisdiction and to proceed summarily with the contempt proceedings. At the calling of the case in keeping with the assignment, Counsellor Caranda had filed a demurrer for want of jurisdiction and sundry other frivolous causes, which the Monthly and Probate Court considered to be a means of employing de-lay tactics for the purpose of baffling the case. Said demurrer or motion, having been argued, was overruled by the Probate Court, and the case was ordered assigned to be heard on May 3, 1956, at which time Mr. Caranda, in his usual attempt to delay, baffle, and defeat justice, appeared and filed a four-page document containing sixteen counts, styled : 'Defendant Doughba Carramo Caranda's Answer.' The Monthly and Probate Court, being puzzled at this foreign procedure, especially so in contempt proceedings, informed the said Counsellor Caranda that, since he had admitted in open court: 'Yes, I withdrew the money from J. W. West because John Porte turned himself and his people over to me,' the court was satisfied that it had sufficient information to make its final ruling in the matter ; and the court further observed that Counsellor Caranda was still trying to baffle the case from being heard ; upon which he acquiesced to the Court's making its final ruling. When it comes to that part of Counsellor Caranda's platitudes, that is, the four page document which he styled as 'Defendant D. C. Caranda's Answer,' wherein he admits having drawn the late John Porte's last savings from J. W. West because he was the said late John Porte's agent, we here quote the following:

" 'Since the agent can and only does act in the name of the principal and executes his will, it therefore follows as a general rule that the death of the principal ordinarily works an immediate revocation of the authority of the agent by operation of law. Accordingly any acts subsequently done or transactions entered into by the agent as such are not binding on those claiming under or through the principal, and afford the agent no basis for a claim against the principal's estate; but on the contrary they expose the agent to liability to the representatives of the deceased principal, and to the third persons with whom the subsequent dealings are had, for acting without authority.' 31 CYC. 1312-14 *Principal and Agent*.

"Speaking of the jurisdiction of the Monthly and Probate Court, the applicable statute confers upon said court jurisdiction, *inter alia*, over the following matter :

" '8. To have general charge, supervision and direction of the estates of deceased

persons, and of lunatics and all affairs connected with them, and to administer justice therein.' Rev. Stat., § 1268 (8).

"And since it came to this court's knowledge that the authority of D. C. Caranda as agent of the late John Porte expired upon the death of the said John Porte, and further, before the prescribed thirty days could elapse for the probate of either of the wills, he undertook to collect from Mr. R. Opitz, agent of J. W. West, the entire savings of the decedent, the court has no other alternative than to hold him in contempt under section 1269 of the Revised Statutes which reads thus : 'Said Court shall have the following powers, namely: To punish for contempt by imposing a fine not more than \$20.00 and imprisonment during its sitting.' Such irregular and unlawful procedure pursued by Counsellor D. C. Caranda was the basis of the proceedings for contempt against the said Counsellor Caranda.

"When it comes to Messrs. J. W. West, who, after having been informed by a representative of the estate of the late John Porte not to interfere with his savings unless authorized by the Monthly and Probate Court, nevertheless paid said amount without the order or seal of court, the said Messrs. West may collect, if they so desire, said amount from the said D. C. Caranda; for courts of law cannot do for litigants what they should do for themselves. Their counsel who gave them this advice to pay out a dead man's money to a person who had neither letters testamentary, letters of administration, nor an authority of court, understands this maxim of law quoted, *supra*. The said D. C. Caranda is hereby fined in the sum of \$20 for contempt of court, or to be imprisoned in the common jail until same is paid, together with all costs in these proceedings. And since he waived his rights by refusing to answer the objections which charged the will he offered for probate naming himself as sole executor of the late John Porte's estate, the second will brought into court, which carries the name of Daniel Dweh Porte, the elder and legal son of the late John Porte, is hereby ordered probated and registered, and letters testamentary issued him; and it is so ordered."

It is to be noted that there is a severance in the matter of the appeal in this cause, in that each of the respondents-appellants herein is prosecuting a separate appeal before this court in the same cause.

The bill of exceptions submitted by R. Opitz, respondent-appellant, contains four counts. The first exception laid in the bill addressed to our consideration is taken as follows :

"Because respondent-defendant submits, that notwithstanding the Monthly and Probate Court is not authorized by law to arrest and hold in contempt anyone who is charged with intermeddling with the estate of a deceased, yet still Your Honor acted without the pale of the law and did, upon information of the complaining heir, arrest and hold this respondent-defendant in custody and ordered him to give bail, being cash-bond, which Your Honor subsequently adjudged forfeited and seized in lieu of decedent's deposit money, which was drawn upon presentation of the receipt and demand therefor. To which said ruling of Your Honor said respondent-defendant excepts."

We shall refer to the statute controlling estates of de-ceased persons to determine whether contempt proceedings would be the proper legal course to be adopted in case of interference :

"Any person who shall interfere with the estate of any deceased person, unless authorized so to do by the Probate Court, shall become liable for all the debts of the decedent, and for the respective shares and legacies of all the heirs and legatees of said estate." Rev. Stat., § 1056.

The statute quoted, *supra*, is specific in its provisions, in that, where an information is filed in the Probate Court alleging an unlawful interference of estate over which the court has acquired jurisdiction, the party respondent should be summoned to appear and show cause, if he so desires, why he should not be held liable for all the debts and respective shares and legacies of all the heirs and legatees of said estate. After a careful examination of the facts as laid in the information by the Monthly and Probate Court, the unlawful interference is considered established ; and the respondent should be made to file an approved bond double the amount of the estate involved, conditioned upon his complying with the provision of the statute hereinabove quoted. Count "r" of the bill of exceptions is therefore well taken and is sustained.

We now quote the second exception in the bill which reads as follows :

"And also because this respondent-defendant submits that, notwithstanding no action at law has been instituted against him by the complainant-heir, or any creditor, lawful executor or administrator, to enforce the alleged liability for surrendering decedent's deposit money upon presentation of the deposit-receipt, yet still Your Honor has given a final judgment against this respondent-defendant under the so-called contempt of court without even requiring him to show cause before rendering a ruling of forfeiture and seizure of his cash bond. To which said ruling of Your Honor said

respondent-defendant excepts."

The primary object of the bond filed by R. Opitz, respondent-appellant in these proceedings, was to secure his appearance in court from day to day until the final determination of the contempt proceedings. Upon his failure so to appear he would have been subject to foreclosure of bond proceedings. In case the court adjudged the bond forfeited, the penal sum involved would have vested in the state. Forfeiture is defined as follows by Blackstone :

"Forfeiture is a punishment annexed by law to some illegal act, or negligence, in the owner of lands, tenements, or hereditaments ; whereby he loses all his interest therein, and they go to the party injured, as a recompense for the wrong which either he alone or the public together with himself, hath sustained." BL. Comm., Bk. II, Ch. XVIII, sec. IV.

A regular foreclosure of bond proceedings should have been instituted so as to allow the party defendant an opportunity to defend himself. Therefore Count "2" of the bill of exceptions, being based upon good legal grounds is hereby sustained.

Having passed upon Counts "1" and "2" of the bill of exceptions also which substantially cover Count "3" we now proceed to the fourth and last count of the bill, which reads as follows :

"And also because this respondent-defendant submits that, notwithstanding during the sitting of this court at the July, 1955, term, he filed a petition on the 12th day of said month 'for an order of court to discharge him from liability based on information of the heirs and legatees of the estate of the late John Porte, deceased, that said petitioner neglected to pay the amount deposited into the estate,' Your Honor then and there denied said petition and granted an appeal, provided said appeal was perfected within statutory time ; still Your Honor afterwards refused to approve the bill of exceptions and appeal bond duly presented, on the ground that a prohibition proceeding in said contempt case was pending before the Supreme Court's Justice then presiding in Chambers; which said remedial proceedings having been finally adjudicated, yet still Your Honor refused to grant the appeal, but rather proceeded to render the final judgment in this case without due regard to the appeal prayed for and granted, thereby denying this respondent-defendant his legal rights in the case. To which said ruling of Your Honor in said cause, and under the circumstances of this matter of contempt of court, said respondent-defendant excepts and prays an appeal to the Honorable Supreme Court of Liberia, at its

October, 1956, term."

In this ruling on the petition of respondent-appellant for an order to discharge him, the aforesaid respondent-appellant, from further liability, based on the information of the heirs and legatees of the estate of the late John Porte, the Probate Commissioner, His Honor, I. Van Fiske, held, *inter alia*, that:

"Until the Supreme Court shall have disposed of this matter which concerns the estate of the late John Porte, which the said D. C. Caranda interfered with, in keeping with the records made, *supra*, the court hereby denies the petition and will only pass upon it after the Supreme Court shall have spoken."

It is regarded as legally inconsistent and repressive for a judicial officer to tamper with the fundamental rights of parties litigant in the manner set forth in respondent-appellant's bill of exceptions now under review.

The prohibition proceedings having been determined in February, 1956, it was the imperative duty of the Probate Commissioner, in keeping with the assurance given in the ruling referred to, *supra*, to have approved of respondent-appellant's bill of exceptions and appeal bond, he having already denied the said petition. Count "4" of the bill of exceptions is therefore also sustained.

With respect to the receipt, safekeeping, and final disposition of cash bonds or securities tendered courts as bail, the statute provides :

"Upon the presentation of a bond in any cause made in a form, other than by recognizance, it shall be the duty of the Judge, Justice of the Peace, Magistrate, or other officer authorized to receive bail, to approve such bond after being satisfied that such money, checks, stocks, or other negotiable securities as aforesaid, are adequate and genuine, and to order same deposited into the Government depository or some reliable bank by the Sheriff, and receipt taken for same showing amount deposited the purpose of deposit, and that same shall be released only upon the written order of the Judge, Justice of the Peace, Magistrate or other officer authorized to receive bail, as the case may be." L. 1939-40, Ch. XVIII, sec. 2.

It is obvious that the Probate Commissioner contravened the statute in depositing with O. A. C. the aforesaid cash bond tendered by R. Opitz, respondent-appellant. The command of the statute quoted is that all such bonds and securities are to be placed in some Government depository or bank, "and that same shall be released

only upon the written order of the Judge, Justice of the Peace, Magistrate or other officer authorized to receive bail." This provision should be strictly adhered to by judicial and ministerial officers.

Further, it is evident that the Probate Commissioner, in requiring respondent-appellant to file bond in the contempt proceedings in the sum of \$1,600, acted without the pale of legal authority since the applicable statute provides as follows :

"Powers—Said Court shall have the following powers ; namely: I. To punish for contempt by imposing a fine of not more than twenty dollars and imprisonment during its sitting." Rev. Stat., § 1269.

It was legally inconsistent if not oppressive for the Probate Commissioner to have demanded bond in contempt proceedings in such an exorbitant amount contrary to the organic law. The Constitution provides :

"Excessive bail shall not be required, nor excessive fines imposed, nor excessive punishment inflicted." Const. Art. I, Sec. 10th.

Therefore the Probate Commissioner erred in ordering respondent-appellant to file a bond in the amount hereinabove mentioned for the payment of such a negligible and meager amount of fine.

In view of the circumstances mentioned hereinabove, and the law cited and quoted herein, we are of the considered opinion that the ruling of the Probate Commissioner in this case, especially that part which relates to and affects respondent-appellant's interest, should be reversed, and the case remanded with the instruction that the said Probate Commissioner resume jurisdiction and dispose of the contempt proceedings according to the law controlling same, and that he should release unto respondent-appellant his cash bond immediately. Costs to abide final determination. And it is hereby so ordered.

*Reversed and remanded.*