

F. SAWIE WEEKS, Substituted for JOHN ADOLPHUS WEEKS, Representing Heirs of the Late JUAH WEEKS WOLO, Appellant, v. W. H. KETTER and P. D. GURLEY, Administrators *Pendente Lite* of the Intestate Estate of the Late JUAH WEEKS WOLO, Appellees.

APPEAL FROM THE MONTHLY AND PROBATE COURT,
MONTERRADO COUNTY.

Argued November 25, 1959. Decided January 15, 1960.

1. The Commissioner of Probate erred in declaring a homestead exemption notice to be forged and invalid when no issue had been raised as to the validity of the notice.
2. An issue not raised in pleadings may not properly be determined on trial.

On appeal from a ruling of the Commissioner of Probate in the matter of the homestead exemption notice of a dwelling house on inventory of the intestate estate of the late Juah Weeks Wolo, the property, and proceeds of rent therefrom, were declared to be not a part of the estate, and the *ruling* invalidating the homestead exemption notice was *reversed*.

Edward N. Wollor for appellant. *William A. Johns* and *O. Natty B. Davis* for appellees.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

Since the demise of Juah Weeks Wolo in the year 1949, there has been a multiplicity of suits at the instance of distributees or creditors of the estate; this is borne out by the several opinions of this Honorable Court in quelling the clamor or bickering agitated by those who felt themselves entitled in some way or the other to the estate of the

decedent. These proceedings, in common with the usual trend of legal controversy relative to estates under administration, were instituted by William A. Johns, for himself and for his colleague, Counsellor Nete Sie Brownell, as purported claimants of the estate of the late Juah Weeks Wolo, protesting, *inter alia*, against the collection and receipt of the rents from the claimed homestead property situated at 118 Carey Street, Monrovia, Liberia, subject to these proceedings.

A careful perusal of the records in this case reveals that, in the year 1949, the late Juah Weeks Wolo of the City of Monrovia, Montserrado County, executed a homestead exemption notice in respect to Lot Number 200, on Carey Street, on which is situated house Number 118. The homestead exemption notice was legalized on the same day of its execution. On August 29, 1949, Juah Weeks Wolo died without revoking the said homestead exemption notice issued by her.

In an attempt on the part of the purported nominated executors under an instrument alleged to be the last will and testament of the aforesaid Juah Weeks Wolo to carry out the provisions of the aforesaid instrument, a series of suits arose between the immediate family who were contesting the said last will and testament of the decedent. As a result of aforesaid litigation, more than one set of administrators *pendente lite* were appointed to take inventory of the estate and administer same. Their reports show that the property, subject matter of these proceedings, was excluded from the inventory submitted to the court.

At the institution of an action of debt by appellant John Adolphus Weeks against Counsellor William A. Johns for recovery of rents due by the aforesaid William A. Johns, the latter filed a protest in the Monthly and Probate Court, Monteserrado County, for and on behalf of himself and his colleague, Counsellor Nete Sie Brownell, as one of the claimants of the estate of the late Juah Weeks Wolo.

In his protest, Counsellor Johns alleged, *inter alia*, that he and Counsellor Brownell were retained by the appellant in the Juah Weeks Wolo contested will case and that as his portion of the compensation for the alleged services rendered, Counsellor Johns was promised or allowed the occupancy of one room in the homestead at the rate of five dollars per month, which said amount was to serve as a set-off against his rent account which had accumulated for some years.

The records in these proceedings fail to indicate whether appellant John A. Weeks filed a formal answer to appellee's protest. It would appear, however, that before it could pass on the legal merits of the protest, the basis of these proceedings, the Probate Court ordered W. H. Ketter and P. D. Gurley, administrators *pendente lite*, to investigate the validity of the allegations set forth in Counts "1" and "2" of the protest, and to submit a report thereupon.

On February 14, 1956, the administrators submitted a report which, in essence, denied the truthfulness of the allegations contained in the protest, whereupon, a ruling on the proceedings was handed down by the Commissioner of Probate in the February, 1956, term of Court, divesting appellant and members of the late Juah Weeks Wolo's family of the use and enjoyment of the said homestead property, declaring same to be a portion of the property purportedly disposed of in the contested will, which had been declared a nullity by this Honorable Court. The records in these proceedings are silent as to whether the appellant excepted to this ruling of the Probate Commissioner.

On May 2, 1956, a second ruling was handed down by the Probate Commissioner on the same subject matter. It is to be observed that no formal pleadings were interposed during the period intervening between the two rulings. This would seem rather perplexing and irregular.

We presume from the preamble of the second ruling in

these proceedings by the Probate Commissioner that the said ruling was made upon the appearance of Counsellor Anthony Barclay in the court below with a copy of the homestead exemption notice which he exhibited to the said court. But a copy thereof was not found among the records in these proceedings; and notwithstanding the absence of this important document as a part of the records in this matter, the Probate Commissioner undertook to pass upon same, which is in contravention of the statutes governing trials.

For the benefit of this opinion, we recite hereunder the protest filed by William A. Johns for himself and on behalf of his colleague, Nete Sie Brownell, which protest reads as follows:

"REPUBLIC OF
LIBERIA
MONTSERRADO
COUNTY

In the Monthly and Probate Court of Monrovia, Montserrado County, sitting in its February Term, 1956.

"BEFORE HIS HONOR I. VAN FISKE,
COMMISSIONER OF PROBATE

"William A. Johns, Counsellor at Law for himself and for his colleague, Counsellor Nete Sie Brownell (one of the claimants of the Estate of the Late Juah Weeks Wolo), *Petitioner*,

"versus

"John Adolphus Weeks (one of the claimants of the Estate of the Late Juah Weeks Wolo), *Respondent*.

"Protest against John Adolphus Weeks from collecting and receiving the rents accruing from the home of the Intestate Estate of the late Juah Weeks Wolo situated at Carey Street, Monrovia.

"Now comes William A. Johns, Counsellor at Law, for himself and on behalf of his colleague, Counsellor Nete Sie Brownell (one of the claimants of the Estate

of the late Juah Weeks Wolo), and most respectfully sheweth to Your Honor as follows, to wit:

- "1. That the Late Juah Weeks Wolo of the City of Monrovia died intestate, and among the realty possessed and owned by her, left a dwelling house situated at Number 118 Carey Street, Monrovia, which the administrators for said estate, through sympathy for the brother, the respondent in these proceedings of the said Juah Weeks Wolo, did not take inventory of, but rather left same under the superintendency of respondent aforesaid, one of the claimants against said estate, whose claims are also submitted before the administrators, and who is enjoying a portion of the claims from the rents received and collected from the said home of the decedent for a period of six years, that is to say, from 1950 to 1955, and even up to the present—an absolute gross disadvantage to the other claimants against said estate.
- "2. That the said respondent has, and is still collecting and receiving the entire rents accruing from the said home, *supra*, except only the small room on the piazza occupied by the petitioner, at the rate of \$5 per month, which goes as a set-off account against petitioner's claim against the said estate. The said rents thus received and collected by respondent since 1950 and upwards to the end of 1955, a period of six calendar years at the rate of \$1,200 a year for the several rooms to said house, total \$7,200, a gross disadvantage to the other claimants.
- "3. Petitioner submits that the aforesaid amounts thus received and collected as rents from said home could proportionately be divided amongst the several claimants instead of a claimant paying himself out of the estate. Petitioner further

submits that, if the amount just mentioned should be placed at the disposal of the administrators of the estate, same could easily be proportioned amongst the several claimants, as has been done by them with the little funds they met in the estate in settling incidental expenses.

"4. Petitioner further submits that respondent is also one of the claimants, as per records of court, against said estate which can be verified by administrators W. H. Ketter and P. D. Gurley, as by the claims submitted to them. It would therefore not be equitable and fair for respondent aforesaid to be receiving and collecting the rents accruing from the rooms of said home, and at a later day, be demanding his full claim made against the estate from the administrators.

"5. Petitioner most respectfully submits also that, since he is partially being benefited by the non-payment of the \$5 rent for the small piazza room which is and will be a set-off account against his own portion of the claims submitted before the administrators for professional legal services, and seeing that his colleague, Counselor Nete Sie Brownell is adequately maintained, it would be quite equitable for the administrators to control said rents accrued from the several rooms in said home, instead of John Adolphus Weeks, thereby affording all other claimants to partially receive portion of their claims pending final adjustment.

"Wherefore, in view of the foregoing, petitioner most respectfully protests against the collection and receipt of the rents from the said home (said home being part of the intestate estate of the said Juah Weeks Wolo), by the said respondent, and prays that Your Honor would turn over said home to the administrators for equitable adjustment amongst the claim-

ants, and also cite them to appear in court for instructions as well as summoning the respondent also to show cause why he should not be held up for interfering with the said intestate estate.

"All which your petitioner as in duty bound will pray, and is ready to prove

"Respectfully submitted,

[Sgd.] WILLIAM A. JOHNS

*"for himself and for Counsellor Brownell,
(one of the claimants-petitioners)*

"Dated at Monrovia February 1, 1956

[25¢ Revenue Stamp here.]

"Filed this 1st day of February, 1956.

[Sgd.] S. E. WILLIAMS

Acting Clerk of Court

"Certified, true and correct of the original.

"[Sgd.] J. D. KENNEDY

*"Acting Clerk of the Monthly and Probate Court,
"Mo. Co., R. L."*

The above-quoted protest was obviously interposed by Counsellor William A. Johns with the view of neutralizing the efficacy, force and effect of the homestead exemption notice; more than this, he pursued this course undoubtedly to wrest the control of the premises in question from appellant, since, if merged into the assets of the intestate estate, he could be accorded a greater latitude as a tenant. Being released from the hands of the appellant, he would fall into the hands of the administrators who perhaps might extend him a more liberal degree of sympathetic consideration than he could otherwise expect.

We now come to the bill of exceptions containing three counts, as tendered by appellants in these proceedings for a review by this Court. In Count "1" of the said bill of exceptions, appellant contends that the Probate Commissioner declared in his ruling the homestead exemption notice to be invalid and a forgery without an investigation into its genuineness or validity.

The contention of appellant is supported by the records in these proceedings, which show that the Probate Commissioner filed a submission in this Court, entitled: "Submission of Commissioner of Probate in clarification of his ruling in respect to the non-existence in the records of the alleged notice of homestead exemption." Said submission reads, *inter alia*, as follows:

"Because of what seems to be a misunderstanding of the ruling given by the undersigned in the above entitled matter, and especially with respect to that portion of said ruling which makes reference to the purported notice of homestead exemption, and which reference suggests that said document was offered before Court by Mr. Weeks's Counsel and formed a part of the records in this case, the undersigned deems it proper and in the interest of justice to file and submit for consideration of this Honorable Court the following explanatory statement, to wit: that when he, in his ruling on May 2, 1946, made the following records:

'When he did bring said copy from the Department of State, it was discovered that instead of "maternal ancestors," the homestead exemption certificate reads: "Material Ancestors."

"It was never the undersigned's intention that this record should give the impression that said homestead exemption certificate, when brought to Court by Counsellor Anthony Barclay, was ever offered by him and entered in the records in the case; for what actually happened was that Counsellor Barclay only took the document from his pocket and read it, and became disgusted over the words, "material ancestors." Never was the document marked by Court or offered in evidence; but Counsellor Barclay took it away with him; consequently when the records were being certified by us to this Supreme Court, said document could not have been included in said certified records, as same did not exist in the Probate Court; nor does it now

exist in said Probate Court; nor is it before the Honorable Supreme Court as far as the undersigned's knowledge goes.

"Respectfully submitted,
"[Sgd.] I. VAN FISKE

"Commissioner of Probate, Montserrado County."

The procedure of the Probate Commissioner in declaring the homestead exemption notice invalid and a forgery in the absence of an issue being properly raised by either party in respect of any legal aspect of the said document for the court's due consideration and judicial action, is not only a dangerous precedent but questionable. This Court has held that it is the province of courts only to decide issues when raised in the pleadings of the contending parties, and not to raise issues. *Pratt v. Phillips*, 9 L.L.R. 446, 453 (1947).

The homestead exemption not being the subject of litigation in these proceedings, nor any issue having been raised relative to its invalidity, the Probate Commissioner erred both in raising and in passing upon the issue which in no wise was brought before him for adjudication. Therefore Count "1" of the appellant's bill of exception is sustained.

In Count "2" of bill of exceptions, it is stated that the Probate Commissioner, in Count "4" of his ruling under review said, *inter alia*: "To uphold the validity of the homestead exemption notice under the circumstances would be contemptuous to the Honorable Supreme Court of Liberia. . . ."

As far as we can observe, this phase of the estate under consideration has not, up to the present, been the subject of litigation before this forum nor have we made any decision thereon, especially with respect to its genuineness or invalidity. Count "2" of the bill of exceptions is therefore sustained.

Count "3" of the appellant's bill of exceptions is substantially a repetition of Count "1." Hence we do not

deem said Count "3" worthy of further consideration; and we refrain from further comment thereon.

In view of the foregoing, the ruling of the Probate Commissioner from which the appeal under review was taken is hereby reversed and made null and void; the property which is the subject of the homestead exemption is hereby ordered stricken from the inventory of the Estate of the late Juah Weeks Wolo, since it cannot legally form a part of her intestate estate in keeping with the provisions of the registered homestead notice, which was never revoked by her, provided, however, the said homestead property, subject to these proceedings, by orders of court was placed on the inventory of the above-mentioned estate. The rent from the said homestead property previously ordered held in the Bank of Monrovia pending termination of the case, is hereby ordered released and turned over to the heirs and/or relatives of the late Juah Weeks Wolo together with the property in question. Costs in these proceedings ruled against the appellees. And it is so ordered.

Ruling reversed.