

In re Estate of JOHN W. H. McCLAIN, Deceased, on
Application of DAISY HERRINGTON DAVIS.

APPEAL FROM THE MONTHLY AND PROBATE COURT OF
MONTERRADO COUNTY.

Argued April 10, 1961. Decided May 19, 1961.

Moneys payable to the estate of a decedent must be paid to and disposed of by the personal representative of the decedent, and cannot properly be paid directly to beneficiaries of the estate while the estate is under administration.

On appeal from an order of the probate commissioner, the *order* was *reversed* with directions by the Supreme Court as to the disposition of the matter.

Momolu S. Cooper for appellants, Edward B. McClain and Stanley Clarke, executors. *James Garnett* for applicant, Daisy Herrington Davis.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

A letter addressed to His Honor, I. Van Fiske, Commissioner of Probate, Montserrado County, by the Morgan, Grimes and Harmon Law Firm in the interest of their client Mrs. Daisy Herrington Davis, and a letter addressed to the Disbursing Officer of the Treasury Department relative to a check, which letter emanated from the probate court, were responsible for the birth of these proceedings. We quote hereunder the two letters referred to. The letter from the Morgan, Grimes and Harmon Law Firm reads as follows:

"HIS HONOR, I. VAN FISKE,
COMMISSIONER OF PROBATE, MO. CO.,
MONROVIA.

"YOUR HONOR:

"Mrs. Daisy Davis a resident of this City, has asked us to inform you that a government check is being

processed in favor of the estate of the late J. W. H. McClain, which estate is not yet closed. Further that she has a minor son for the late Mr. McClain who is beneficiary under said last will and testament, and to request Your Honor's intervention in order that he might receive the portion of the value of the check that is due him.

Respectfully yours,

[Sgd.] C. WELLINGTON CAMPBELL,
Attorney at Law,
Morgan, Grimes and Harmon Law Assoc."

The letter addressed to the Disbursing Officer of the Treasury Department by the commissioner of probate with reference to said check, reads as follows:

"MONROVIA, LIBERIA,
July 30, 1959.

"THE DISBURSING OFFICER,
TREASURY DEPARTMENT, R.L.,
MONROVIA.

"MR. DISBURSING OFFICER:

"It has been reported that a check is forthcoming issued in the names of Edward B. McClain and Stanley Clarke, who are the executors under the last will and testament of the late J. W. H. McClain, who died in the year 1949. You will kindly refuse to deliver said check to the executors hereinabove named until you shall have received orders from the Monthly and Probate Court, Montserrado County, R.L.

"Take note that said estate has not been closed. The said executors have been requested to report on their activities since their appointment before orders can be given for the delivery of same.

"By order of His Honor, the Commissioner of Probate, Montserrado County,

[Sgd.] S. E. WILLIAMS,
Acting Clerk of Probate Court"

Predicated upon the letter addressed to the probate

commissioner, the executors, Edward B. McClain and Stanley Clarke, were ordered to submit a full report on the activities in the estate of the late John W. H. McClain, by August 5, 1959, with the view of closing the said estate. The said order was dated August 3, 1959. The said executors, in acknowledging receipt of the said order, informed the court of their inability to make a report at the time specified in said order because testator John W. H. McClain was owing government taxes together with an indebtedness which he incurred as a result of a mortgage transaction with the Bank of Monrovia prior to his death. In view of these circumstances they requested the court to grant them an additional three months during which they would endeavor to settle the said outstanding debts.

The application to court by the executors of the above-named estate for extension of the time to render a report engendered a protracted controversy between the parties, which resulted in the court giving orders that the executors render a report including the following:

1. What was the actual indebtedness of this estate at the death of decedent?
2. What amount had been collected?
3. How was the amount collected expended towards the liquidation of any indebtedness?

During the rendering of this report, the executors were ordered to issue deeds to all legatees who were to receive legacies under the will. It was ordered that this report be submitted not later than September 30, 1959, and that if such a report was not rendered, the law which gives the probate court the right to displace executors and administrators be applied.

To this ruling the executors excepted and announced that they would appeal to the Supreme Court of Liberia sitting in its October term. Subsequent to this ruling the commissioner had entered a second order which reads as follows:

“Pending the appeal to the Supreme Court, the clerk

is hereby ordered to write the paymaster of the Treasury Department that the check in the name of the estate be delivered to Mrs. Daisy Herrington Davis. And it is so ordered."

To this second order the executors also noted exceptions and announced appeal to the Supreme Court of Liberia sitting in its October, 1959, term. Being dissatisfied with the above rulings, appellants have come up to this Court on a bill of exceptions which reads, in part, as follows:

"Said executors submit that Your Honor erred in ruling that the check in the name of the estate be delivered to the said Daisy Herrington Davis, when indeed she is not an executrix of said estate and is without authority to receive and disburse moneys receivable on account of said estate."

In defining the duties of an executor, an outstanding authority says:

"The office of personal representative, that is, executor or administrator, is of extreme importance in Anglo-American law. This is not only because he has important rights and duties in connection with the settlement of his decedent's affairs, but also for the reason that the estate is not recognized as a legal entity. The representative is not regarded as an agent for the estate for, in legal contemplation, there is no such principal. He is regarded rather as the owner of the decedent's personal property though his ownership is not beneficial and will be terminated upon completion. He is also an officer of the court and as such vested with certain rights and burdened with certain duties. Though we often speak of claims against, or in favor of the estate these expressions are apt to be misleading if taken too literally. The personal representative and not the estate is the one with whom the courts and third persons are concerned." ATKINSON, WILLS, 541, § 104 (2nd ed. 1953); see also 1956 Code, tit. 9, § 23.

It is obvious that the assets of the estate under consideration should be handled and disposed of by the executors thereof for the benefit of the estate. Therefore, the order of the probate commissioner under review is hereby reversed. The executors are authorized to apply for, receive and encash the check, the subject of these proceedings, and deduct therefrom the existing indebtedness of the above-named estate, in the sum of \$270, and deliver the balance of the amount to Mrs. Daisy Herrington Davis for the benefit of John Wesley Sehle, minor son of the testator. The commissioner of probate will then have the executors execute deeds, and thereby transfer the legacies to the legatees in keeping with the terms of the will. The estate should then be closed in keeping with the law in such cases made and provided. Costs of these proceedings ruled against the appellee, applicant herein. And it is so ordered.

Reversed.