GABRIEL W. NAH, Appellant, r. JOSEPH A.

NAGBE and W. D. RICHARDS, Appellees.

AP PEAL FROM TH B MONTHLY AND PROBATE COURT OF

MO NTS ERRADO CO U NTY.

Argued April 13, 1964. Decided May 3, 1964.

1. Where an appeal is tried on an insuficient bill of exceptions, the Supreme Gourt may review the case on the record.
2. A probate court has no j urisdiction to try an action of which the gravanien is fraud.
3. Where objectants to the probate of a deed allege that the deed is fraudulent and profer a prima facie valid prior deed to the same property, the probate court cannot properly dismiss the objections and order the allegedly fraudulent deed admitted to probate.

On appeal, a ruling of the probate court admitting a deed to probate over objections filed by appellees was *reversed.*

*D.W.B.* Cooper for appellant. *Winfred Smallwood*

for appellees.

OR. JUSTICE MITCHELL delivered the opinion of the

Court.

A close perusal of the records brought before this Court on appeal reveals that Gabriel W. Nah of the Commonwealth District of Monrovia is alleged to have bought a tract of land from one Rachel R. Banks of Mon- rovia. This land is described as Block Number 6, situ- ated at Halfway Farm, Monrovia, Montserrado County. Title deed for the said land, given to appellant by his grantor, shows on its endorsement that it was executed on April I, \*9s4, and probated and registered on the '3\*

day of December of the same year in Vol. 8o-B, page

999— ioo quite eight-odd months after its execution.

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At the Sitting of the Monthly and Probate Court of Montserrado County, in its May term, i p6o, the said Gabriel W. Nah, objectant below, now appellant, be- lieving, as it would appear, that another deed was about to be offered in probate for the identical tract of land, undertook to file the following caveat:

“Please take legal and sufficient notice and enter in your office and/or the records of the aforesaid court that Gabriel W. Nah, bona fide owner of Block 6, Halfway Farm, Monrovia, objects to the admission into probate and ordered registered any and all docu- ments such as warranty deeds, public land sale deeds, public land grant deeds, indentures of lease, assign- ments of lease, etc., in f avor of Joseph A. Nagbe or Joseph W. Nagbe from W. D. Richards *et* n/., and/or any other person or persons in connection with the aforementioned and above-described piece or parcel of land and/or property, located and described *su pra.* And that the said caveator/objectant will in due course of time file his said objections to the admission into probate and registration and/or any legalizing of such documents in keeping with law.”

This caveat was filed by the caveator on May it, ip6o; and on October 26, i p6o, according to the records before us, Joseph A. Nagbe, one of the respondents below, now appellees, appeared in the probate court and offered for probate a warranty deed for one-half of Lot Number 6, situated in Halfway Farm, Commonwealth District of Monrovia, Montserrado County, under the signature of

W.D. Richards as grantor. According to the caveat filed in the said court, the caveator was advised of the offer of this deed for probate and filed his formal objec- tions on May 27. 'g \*-Ci

The objectant averred that he possessed a genuine title

deed for the identical tract of land sought to be trans- ferred to Joseph A. Nagbe by W. D. Richards ; and he simultaneously made profert of his said title deed which

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showed on its face that it had been probated and regis- tered many years before. He alleged, further, that

W. D. Richards, the grantor to Nagbe had no legal title to the aforesaid tract of land which he was then attempt- ing to part with. He also alleged that the warranty deed issued to Joseph Nagbe was the subject of fraud which ought to vitiate and make void the transaction. In con- clusion he stated that since objectant’s interest would be adversely affected if the said instrument of conveyance were admitted into probate and ordered registered, he re- quested the court not to admit the same.

In their answer to the objections, the respondents al- leged that the property in question was not the bona fide property of the objectant; that the land was owned jointly by Rachel R. Banks, grantor to objectant, and respondent

W.D. Richards ; that the said Rachel R. Banks in her own right was not legally clothed to convey title thereto, since the property in question was acquired by inheritance from the estate of the late Jacob W. P rout; and that the deed under which objectant claimed title to the land was I raudulent in that it p urported to have been executed on

April 1. '934. whereas the endorsement on the back there- of showed that it was probated and ordered registered on the '3 th day of December of the same year; and more- over, that although it was purportedly signed by Winf red Smallwood as Registrar of Deeds for Montserrado County, the said Winfred Smallwood was not appointed by the President until '93\*-

Respondent s alleged further that the records Iroin the

archives of the State Department showed that said deed was not registered on December i 3. '934. £ts would ap- pear from its endorsement, but that it was registered on

December i 3. '937. £tfl d probated on the same day; and that besides this act of fraud, it also carried the forged signature of appellee W.D. Richards who never sub-

scribed his genuine signature thereto, which Iacts evi- denced objectant’s deed to be Iraudulent.

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Pleadings progressed as f ar as the respondents’ re- joinder and rested. After a hearing was had on the sev- eral issues raised on both sides, the probate commissioner, on November I y, I 9^ , entered a ruling dismissing the objections and ordering the deed of respondent Joseph A. Nagbe probated and registered. From that ruling the objectant noted his exceptions and brought this appeal.

This case was called for hearing by this Court on the I Cth day of April of the current year ; and in our effort to delve into its merits, we have been shocked over a few points which we shall treat later in this opinion. Now to the bill of exceptions which is the framework of this appeal. I t is composed of only one count, and that one count is, word for word, as f ollows:

“Because on the i 8th day of November, I 9^ . Your

Honor did not sustain the objections and subsequent pleadings on the ground of overruling them. (See ruling of Sheet z, minutes of I 3th day’s session which

fell on November 18, iq6o.) ”

Our statute defines a bill of exceptions as:

“ . a written instrument stating that the judgment, decision, order, ruling, or other matter excepted to and the basis of the exceptions and containing a mo- tion or prayer for relief.” 19 6 Code, tit. 6, §1 O I z.

In view of this definition of a bill of exceptions, we

wonder what the appellant seeks to have us review in this appeal. Surely if his objections and subsequent plead- ings were insufficient in law and thus subject to dismissal, there was no proper alternative to the lower court’s dis- missing them. Yet, although the bill of exceptions is obscure and evasive, this Court nevertheless may, accord- ing to law, review the case on the records brought for- ward, and we shall proceed to do so, regardless of what we think about the insufficiency of the bill of exceptions. Respondents, in their answer, attacked the objectant’s right to possession of the property, and they alleged that there were many discrepancies, which indicated fraud in

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the procurement of the deed. I n addition they alleged that since the property was owned by both Rachel R. Banks and W. D. Richards, objectant’s title was not legal because Rachel R. Banks could not sell in her own right, or in other words, part with title to anyone, without the genuine signature of respondent, W.D. Richards, who claimed not to have attached his signature thereto, al- though the copy from the archives of the State Depart- ment shows his signature thereon.

Our law is not silent on this point, but makes it imper-

ative that:

“When fraud is alleged, a jury must pass upon the evidence in support of the allegation.” *Be ysolo w* v. *Cl oleman,* p L.L.R. i 6 ( i Q46) , Syllabus 3.

We are shocked at the probate commissioner’s Iailure

to recognize that, since fraud was alleged in the respond- ents’ answer, the facts in connection with the proof there- of had to be heard and disposed of by a jury. He should have known that he was without legal right to make a ruling on the Iacts because his competence only extends to disposing of law issues brought before him, and other matters concerning estates ; and equity was the proper forum to give relief.

“Upon an allegation that a party has committed fraud, every species of evidence tending to establish said allegation should be adduced at the trial.” km- *richsen v. Mo ore, $* L.L.R. 6o ( '93\*) , Syllabus z.

Evidence cou Id not have been taken in the probate

court to prove fraud because such Iacts had to be passed upon by a jury, and the probate court is not authorized to empanel a jury who are sole judges of the facts in any given case. At the same time, objectant’s deed could not be considered to be a I raudulent one unless the Iacts in connection with the alleged fraud had first been pro- duced and proven, and although the objectant’s deed had been probated and registered, and besides that, had not been cancelled, the court merely dismissed the objections

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and ordered the second deed for the identical piece of property probated and registered—an act that was ob- viously liable to engender confusion even greater than the litigation already entered into.

I n view of all these palpable errors, we are of the con- sidered opinion that the ruling of the court below should be reversed and the warranty deed for Block Number 6 at H alfway Farm in the Commonwealth District of Monrovia f rom W. D. Richards, grantor, to Joseph A. Nagbe, should be denied probate until respondents have instituted the proper proceedings and relieved themselves of the fraud alleged. Costs in these proceedings are ruled against the appe llees. And it is hereby so ordered.

*R evers ed.*