SARAH KING-HOWARD, Attorney in Fact for

## ENID BUCHANAN, JOSEPH W. GARB ER, Attor-

ney in Fact for MARY JANE RATAZZI, and MILLIE BL\*CHANAN COOPER, by her Husband, JULIUS

E. COOPER, Appellants, e. JUAH E. KARPEH and

J. GBARFLEN DAVIES, Commissioner of Probate,

Montserrado County.

APPBAL FROM RULING IN CHAMBERS ON APPLICATION FOR WRIT OF PROH I BITION TO TH E MONTH LY AND PROBATE COURT OF MO2'iTSERRADO COU2'iTY.

Argued March 12, 1964. Decided May 22, 1964.

The administration of a decedent’s estate by a commissioner of probate is

reviewable only for error of law or abuse of discretion.

1. The requirement that a will cannot be admitted to probate, prior to one calendar month after it has been offered for probate does not restrict the court from exercisinq• its supervisory powers over the estate before the expiration of that period of time.
2. The appointment of administrators *pendente like* to conserve the property of a decedent’s estate pending determination as to which, if either, of two documents offered as wills should be admitted to probate is not an abuse of discretion by a commissioner of probate.
3. Pending appeal of a ruling in Chambers denying an application for a writ of prohibition to a commissioner of probate, the Justice presiding in Chambers may order the appointment of administrators *pendente lite.* R. Sup. Ct. xII (3).

Appellants applied to the Justice presiding in Cham- bers for a writ of prohibition restraining the respondent commissioner of probate from appointing administrators *pendente* ltte of a decedent’s estate pending determination of a contest as to which, if either, of two documents of- fered as wills should be admitted to probate. The Jus- tice presiding in Chambers denied the application for a writ of prohibition and ordered the commissioner of probate to appoint the administrators *pendente* ltte and to direct them to assume control of the estate pending disposition of appellants’ appeal to the full Court. On

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appeal, the full Court *affrmed* the ruling of the Justice presiding in Chambers.

*Cllarenc e E. Sum pson, Sr.,* for appellants. *Darren ce*

A. *Mor gan* for appellees.

MR. ,JUSTICE MITCHELL delivered the opinion of the Court.

This case of prohibition took its root from a ruling made by the Commissioner of Probate for Montserrado County in the exercise of his surrogate function to appoint administrators *p endente lite* to su pervise the estate of Thomas Eric Buchanan pending a disposition of a con- test involving two purported wills of the aforesaid de- cedent.

The petition out of which this ap peal has grown, as filed in the Chambers of Mr. Justice Wardsworth by the within-named appellants on February 8, i Q62, Contained eight counts reading as follows:

“i. That the petitioners are legal heirs and lega- tees under the last will and testament of the late Thomas Eric Buchanan, which last will and testament was offered for probate in the Monthly and Probate Court of Montserrado County and has been contested by yuah E. Karpeh, also an heir and legatee under the said last will and testament ; moreover, she has also offered for probate another will of the deceased which was presented and offered by her to the probate court on y anuary 2Q, i Q62, as will more Iully appear by copy of said will marked Exhibit A, hereto attached to form a part of this petition.

# “z.

And also because petitioners aver that since the

offer of the subsequent will On January 29. i p6z, by yuah E. Karpeh, the 3o-day period



“3-



*=y.*

within which the will should be probated has not expired ; and that, without the submission of any petition to court, His Honor, J. Gbar- flen Davies, correspondent herein, summoned the petitioners and respondent Juah E. Kar- peh to appear in court and name a representa- tive each, whom the court intends to appoint as administrators *ft endente lite,* to take over and administer the estate of the late Thomas

E. Buchanan before the said will is probated, which petitioners maintain is contrary to the requisite legal procedure to be adhered to in reference to the probation and registration of a will, as will more f ully appear by copy of the summons attached and marked Exhibit C to form a part hereof.

And petitioners further aver that they, on February 8, '9°', in keeping with the sum- mons, appeared before His Honor, J. Gbarflen

Davies, and objected to the precedure as as- sumed and pursued by the court ; but His Honor, J. Gbarflen Davies, over and above petitioners’ objections, ruled that administra- tors be appointed, as will more fully appear by copy of said objection and ruling, being a part of the probate court’s records, hereto at- tached and marked Exhibit D to form a part of this petition.

And petitioners further aver that said proceed-

ings were not conducted in conformity with those rules which ought to be observed at all times ; and therefore, petitioners submit, prohibition will lie.

And also because petitioners submit that in so I ar as they knew, there exists no statute author- izing the probate commissioner to appoint anyone as administrator *p endente late* in the

instant case where the deceased Thomas Eric Buchanan died testate even though his last will and testament are being contested and the legal issues relative to their genuineness or validity have yet to be determined by the appropriate legal forum.

“Wherefore, in view of the foregoing, petitioners pray that Your Honor will order the alternative writ of prohibition issued against the above-named respond- ents, restraining and prohibiting them I rom appoint- ing said administrators pendenfr fife because, indeed and in truth, the appointment of such administrators would entail extra expense on the estate which might work a hardship to petitioners ; and that Your Honor will cause them to be summoned to appear before you and show cause, if any they have, why the peremptory writ of prohibition should not issue against them ; and that Your Honor will grant unto your petitioners such other and further relief as the nature of the case may require, and the ends of justice demand.”

Upon the filing of the foregoing petition, it became the duty of the Justice before whom it was filed to order the respondents upon the alternative writ to file their returns and appear for a hearing of the *pro ct co n* to determine whether the peremptory writ would lie ; but we will stop here for a while and proceed to quote herein respondents’ returns, which read as follows:

“I. Because respondents say that on January , 1962, formal objections were filed by them against the admission into probate of a will and codicil dated May 8, '9s , and July 18, I 96o, respec- tively, as being the genuine last will and testa- ment of Thomas E. Buchanan, late of the City of

Monrovia, and offered for probate on January z$, i96a, Sm other will executed on July 23, 19 9, by the said Thomas E. Buchanan as being his

genuine last will and t.estament. In answer to

# “z.





respondents’ objections to the admission to pro- bate of the will of May 8, i 9 8, petitioners de- nied the validity of the will of July •3› 9s9› on

grounds set out in said answer, which issues are

still pending for determination by the Monthly and Probate Court of Montserrado County.

That, predicated upon respondents’ objections to the admission into probate of the will of May S, i9 8, together with the codicil, as well as peti-

tioners’ attack upon the validity of the will of

July '3. 9s9. which was subsequently offered for probate by respondents, His Honor the re- spondent commissioner, in the exercise of his

surrogate functions and the duties devolved upon him as commissioner of probate, and guardian of estates, summoned the parties together and re- quested them to nominate two persons who might be appointed by the court as administrators § ert- *denle file* for the purpose of safeguarding the properties of the estate and saving the estate I rom waste during the pendency of the objections to the two wills. This act on the part of the com- missioner is legal and in keeping with his au- thority.

That pursuant to the attacks made upon the will

of July •3. 959. by petitioners, the said peti- tioners did formally, on February •3› 9\*°, file objections to the admission into probate of the

said will of July '3› \*959-

Respondents submit that the petition for the al-

ternative writ of prohibition should be dismissed because there is no showing in said petition that the respondent commissioner had no jurisdic- tion over the matter of the estate of the late Thomas E. Buchanan, or that, having ju risdic- tion, he exceeded said jurisd iction or proceeded according to rules contrary to those that ought

“j.

to be observed at all times. For it is within the province and jurisdiction of the commissioner of probate where an estate, as in this case, has been placed in suspense by the objections to the will, thereby making it impossible to qualify the nominated executors or executrix, leaving no person to handle the affairs of the estate, for the commissioner of probate to appoint persons to serve as administrators / *endeiif e lite* and thereby safeguard the interests of the estate.

That the method pursued by the respondent com- missioner of probate being within the ju risdic- tion and competence of his court in a proceeding to appoint administrators / *endenfe like,* said re- spondent commissioner is entitled to exercise his discretion in the matter before him. Respond- ents submit that, the court having jurisdiction of both the subject matter and of the persons, pro- hibition will not lie since the respondent com- missioner was entitled to exercise his discretion in the matter before him ; and the writ of pro- hibition cannot control such exercise to prevent it being made in any manner within the jurisdic- tion of the court ; and therefore this Court could not review the merits of the cause upon the ap- plication for the writ of prohibition.”

After the Justice conducted a hearing he made a ruling from which this appeal has been taken, which ruling he closed in these words:

“It is obvious that the commissioner of probate has acted upon the authority of the law in the appoint- ment of the administrators *p e ndente life* for the ex- press purpose of preserving the estate of the late Thomas E. Buchanan pending the final disposition of the objections to the alleged wills offered for probation. In vzew of the foregoing, the petition of petitioners for the issuing of the peremptory writ of prohibition

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is hereby denied with costs against the petitioners.

And it is so ordered.”

As we have said before, petitioners became dissatisfied and excepted to the said ruling ; meanwhile they re- quested an appeal for their case to be brought before this Court *en banc* for review. The appeal was granted ; but in the exercise of his discretion to protect the estate from waste, and also for the purpose of conserving the interests of the parties therein concerned, the Justice applied Part

3 of Rule XII of the Revised Rules of this Court ( i3

L.L.R. yo4) , under which he ordered the probate com- missioner, one of the respondents herein, to proceed to appoint the administrators *pendente lite* and direct them to assume control until such time as the Iull Court had disposed of the appeal. Appellants, then petitioners, again excepted to the application of this rule and also made that a ground of their appeal.

When this case was called and heard on March i z, i q64, appellants’ counsel centered his argument on three main issues: ( i ) that the law requires the expiration of

3 days after the offer of a will in probate before action can be taken thereon and that it was before the expiration

\* S days when the probate commissioner, *sua sp o rite,* summoned the parties to come forward and nominate two persons to be appointed administrators *§ettdettfe lite,*

which was illegal and contrary to the provisions of the statutes ; (z) that unless either or both of the parties who had offered the two wills for probate appeared and re- quested the probate commissioner to appoint adminis- trators *§ettdettfe lite* in the estate, the court was not au- thorized by law to do so ; hence, by doing so, the court acted contrary to the rules which should be observed at all times in such cases, especially since this action was

taken over the strong objections of the appellant ; and (S) that it was the ruling of the Chambers Justice which af-

firmed the act of the probate commissioner in appointing the administrators *p ende rite lite* which they sought to

have reviewed because they held the view that the court had erred ; and to order the identical act continued was in violation of the law which gives the right of appeal ; so that if, regardless of the appeal to the full Court, the Jus- tice ordered the enforcement of the respondent commis- sioner’s ruling, the right of appeal would be nullified as a supersede as.

The respondent argued that prohibition was not the proper remedy and that therefore the appeal should be dismissed as without merit; and further, that the applica- tion of the rule of Court was within the sole discretion of the Justice presiding in Chambers.

Dilating on the points of argument, we have to make it positively clear that the law makes the probate com- missioner guardian of all estates, whether testate or inte- state ; and his exercise of discretion is not subject to re- view except for error of law or departure from standards of good conscience. It is a requirement of law that a will cannot be admitted to probate sooner than one calendar month after it has been offered; but this provision is made expressly for the purpose of affording sufficient time in which objections may be filed thereto if there be any person or persons desiring to do so ; and the law does not restrict the court from exercising its supervisory powers over the estate if good reason arises for so doing within the one month period. In this case, both wills of- fered were contested ; and it was within the province of the respondent commissioner to have sought or provided some way to secure and protect the interests of the estate against waste ; moreover, the law does not require that the probate commissioner sit idle and refuse or hesitate to take measures for the preservation of a contested estate merely because the parties in interest make no formal ap- plication for md ta/rr/in supervision. This would surely connote the incapability of the judge to exercise the func- tions of his office.

“Where the performance of an official duty or act involves the exercise of judgment or discretion, the

officer cannot ordinarily be controlled with respect to the particular action he will talte in the matter.” *King v. He card, g* L.L.R. u ( ig46) , Syllabus z.

As we have said before, the law gives the probate com- missioner jurisdiction over all estates. Within the scope of that jurisdiction, the law gives him the right to exer- cise his discretion in the handling of estates to prevent waste and illegal control ; hence, in our opinion, he was authorized by law to appoint administrators §endenf e fife ; nor can this be properly termed an abuse or arbi- trary exercise of discretion. Therefore, prohibition will not lie against him in this case.

“I t is unfortunate that, in the administration of de- cedent estates, facts, circumstances, acts, and disposi- tions are east ly characterized as unjust and improper. In order to safeguard all legitimate interests from the devious machinations of woul d-be speculators our probate courts have been accorded broad discretion- ary powers, the exercise of which is not circumscribed by ordinary legal procedures.” *Dennis v.* teem, i i

L.L.R. 3 I 7› 3 8—§ IQ ( I z ) .

In an effort to make our point of view still more clear

:for better understanding, we quote as follows from com- mon-law authorities:

“ ... *administrator pendente lite ...* a special ad-

ministrator appointed by the probate court to take charge of the property of a deced ent’s estate pending a contest or other delay in the appointment of an exec- utor or administrator of the estate.” BALLENTINE, LAW DICTIONARY to *Administrator* ( ip48 ed.) .

“The application for the appointment of a tempo- rary administrator is no part of the proceeding for the probate of a will. I t is an independent proceeding

:for the preservation of the estate (pending litigation)

. and resting in the discretion of the surrogate.”

*Matter* o/ *Blair,* 6o Hun. (N.Y. i8gi) z3, z6, i

## N.Y.S. z i z, z it.

And lastly, we quote the following authority:

“An administrator pendente lite has been said to be not properly the representative of decendent, as is the general administrator, but rather an appointee, or of- ficer of the court, his office closely resembling that of a receiver in chancery. H is duties were originally merely to collect the effects, file an inventory, and hold and care for the property of the estate until the

pending suit terminated....” z4 C.J. *i i* y9 *Exe cu- tors and Administralo rs* § z8oz.

Coming now to the last point of appellants’ argument which opposes the application of Part 3 of Rule XI I of the Revised Rules of this Court by the Chambers Justice,

we do not hesitate to say that it does not appear to have been an assumption of a right or an arbitrary exercise of discretion under the rule. Since there was an estate which no one was authorized to administer because both of the wills offered for probate had been contested, the prop- erties of the testator required supervision. Exceptions had been taken to the effort of the probate commissioner to place said properties under some tentative control ; and the moment a petition was filed for remedial writ against the probate commissioner, every act of the respondent was brought to a standstill until the matter had been de- termined in Chambers. After a ruling had been made denying the writ, the instant appeal was taken, as of right to the full Court. It was therefore fair and legal for the Justice presiding in Chambers, from whose ruling the appeal was taken, to exercise his sound discretion to ob- viate miscarriage and a waste of the properties of the estate.

This Court is master of its rules and may enforce them according to circumstances, necessities and demands. The rule in question reads as follows:

“Upon a hearing had under such alternative **writ,** an absolute writ may be issued directing the perform- ance, or nonperformance, or cessation of any act, which to the Court or Justice thereof may seem

just, legal or equitable, subject to appeal to the Supreme Court upon such conditions as the \_[us tice may prescribe.” R. Sup. Ct. XII (3) . 3 L.L.R. yo4.

This rule places the condition within the absolute dis-

cretion of the Chambers ) us tice, to be applied for the ex- clusive purpose of averting Iailure of justice without abuse or ink ringement of the rights of the parties. This rule is one of long standing in our Court procedure and practice. I t was revised by this Court in i 91$ and re-

vised again in i 9s9: yet it has not lost its aim and purpose because it is intended to promote the ends of imp artial

justice and should be ap plied to protect and preserve the

rights of parties in litigation against abuse.

Considering the manner in which the application of the rule was made and the purpose for which it was in- voked, we cannot agree with appellants’ argument that the application was adverse to his legal interests, nor can we harmonize our views with his to say that there was not an urgent and posi tive necessity for the said rule to have been applied in the manner in which it was applied. On the contrary, it appears to us logical and legal for such an order to have been given by the Justice presiding in Chambers to preserve the interests of the appellants as well as those of all other parties interested in the estate of Thomas Eric Buchanan ; otherwise, the estate might well have become a prey for the hungry lions of personal aggrandizemen t.

Since the respondent commissioner did have jurisdic- tion over the subject matter and the parties at the time and it has not been shown that the court below proceeded by rules other than those which should be observed at all times in such matters, and also because the invoca- tion of Part 3 f Rule XI I of the Revised Rules of this

Court by ordering the appointment of the administrators

§enden/e *lite* pending the final determination o{ the ap- peal in this case was not an abuse of said rule by the Jus- tice presiding in Chambers, we are of the unanimous