ANNA A. BROWN, legal guardian of the heirs of the late Coy C. Brown's Estate, Petitioner in Error, v. **JOHN L. ALLEN** and **MARTHA L. DIGGS**, formerly Martha L. Brown, Administrator and Administratrix of the Estate of the late Coy C. Brown, and **N. B. WHITFIELD**, acting in his capacity as Judge of the Monthly and Probate Court, Grand Bassa County, Respondents.

ARGUED JUNE 5, 1913. DECIDED JUNE 13, 1913.

Dossen, C. J., McCants-Stewart and Johnson, JJ.

1. A sale of real property can only be legally made by an administrator by virtue of an express order of the Probate Court when it has been shown to the satisfaction of the court that the personal property of the estate is insufficient to discharge the lawful debts against the estate.

2. Real property can not be lawfully sold to satisfy the claim for dower.

3. An allegation made by heirs that administrators sold property to themselves through the medium of third parties and paid themselves out of the estate an amount in excess of their lawful commission should be heard and determined by the Probate Court before discharging the administrators and cancelling their bond.

4. An allegation made by the heirs that certain property belonging to the estate had not been included by the administrators in the inventory should be heard and determined by the Probate Court before discharging the administrators and cancelling their bond.

Mr. Chief Justice Dossen delivered the opinion of the court:

Illegal Administration of Estate—Writ of Error. This case is brought before this court upon a writ of error sued out by the petitioner in error to have the records of the case in the court below brought before this court, and the rulings and judgment of the inferior judge reviewed and errors alleged to have been committed in the premises corrected. The assignment of errors filed embraces seventeen points upon which it is contended by the plaintiff in error the court below committed manifest error.

We do not deem it necessary to the decision of the case to pass upon all points laid in the assignment of errors ; and shall, therefore, only consider those which we deem important to the decision of the cause.

Before proceeding, however, to consider the points in the assignment of errors, we

deem it proper to give a brief synopsis of the case as appears from the records filed.

Coy C. Brown, a citizen and resident of the County of Grand Bassa, in this Republic, died intestate, in the year 1908, and, under the provisions of the statute relating to the management of intestate estates, the judge of the lower court commissioned the defendants in error as administrator and administratrix, to administer the estate. An inventory of property, real and personal, was duly returned by appraisers appointed, showing personal assets to the value of $2,310.13, and real property valued at $3,189.13. Upon this inventory a bond was duly filed by the administrator and administratrix, defendants in error and the estate went into their hands for administration.

Incidentally, we would observe that throughout the whole administration of the estate, there appears from the records to have arisen from time to time, and by divers persons interested in the estate, objections to the manner in which it was being administered; but the judge below seemed not to have given weight to these objections nor to have taken the proper steps to correct them and prevent a devastavit of the assets. To the contrary, the court allowed the estate to remain in the hands of the administrator and administratrix, defendants in error, and to continue open for a period of time beyond the statutory limitation for the settlement and closing of estates, without justifiable reason as far as the records show, thereby indirectly contributing to the devastavit of the assets, against which complaints were made from time to time, as aforesaid.

Several reports appear in the records which were designated by the administrator and administratrix, defendants in error, as their final report; but the report which we are to consider in relation to the case before us is that made at the August term of the court below, A. D. 1912, which was admitted and the estate ordered closed.

To this report the attorney for the plaintiff in error, at the time the report was presented, made objections, showing material grounds why the report should not be received and the estate ordered closed. Said objections were disallowed by the judge below, aid the clerk ordered not to enter same upon the records. Whereupon the plaintiff in error applied to the Chief Justice for a writ of mandamus to compel the judge below to cause the said objections to be entered upon the records of the case. The application was granted, and the writ duly issued and served.

It does not clearly appear from the records that the objections after having been entered upon the records in obedience to the mandamus, were heard and determined by the court below; but it seems that at this stage of the proceedings, the cause was trans mitted to the Supreme Court, although the mandamus issued in the premises did not contain a mandate to that effect. At the January term of this court A.

D. 1913, the case came on for hearing, when, upon the consent of both parties, the proceedings then pending were dismissed, and leave was granted the petitioner (now plaintiff in error) "to apply for a writ of error, and to use the records then before this court as the records in such proceedings." The application was made and the writ duly issued out of this court on the sixth day of February, 1913, by virtue of which the case is before us for the second time for review.

We would just here remark that the imperfect manner in which the records have been prepared and transmitted by the clerk of the court below, and the unintelligible manner in which the entire proceedings are recorded have caused the court an unnecessary amount of labour to enable it to get such a grasp upon the facts as is necessary to a proper adjudication of the errors assigned. This fact suggests to the court the importance of a rule which will not only require that all records transmitted from any of the lower courts be clearly typewritten, but also that a standard of competency should be fixed for such clerks to measure up to. It is idle to insist upon reforms in the practice and procedure of our courts unless we by some rule fix proper standards for those who are the medium through which the greater part of the business of our courts is transacted.

We shall now proceed to consider, specifically, the several errors assigned, so far as we regard them important to our decision.

The first exception is to the administrator and administratrix, defendants in error, disposing of real property without first showing to the lower court that the personal assets of the estate were insufficient to liquidate the claims against it; and also for selling lands to pay widow's dower.

The statutes of Liberia, with respect to the management of intestate estates, permits the sale of perishable property by an' administrator without any special order of the Probate Court so to do, provided however such a sale be made either to prevent waste of the estate, or to provide monies for the liquidation of debts against the estate. But a sale of real property can only be legally made by an administrator by virtue of an express order of the Probate Court, empowering him to sell, when it has been shown to the satisfaction of the court that the personal chattles are insufficient to discharge the lawful debts against the estate. With respect to the admeasurement of a widow's dower, we hold that real property cannot be lawfully sold, or converted into money, to enable her to obtain a greater amount of personal property out of an estate. The Constitution settles upon a widow one-third of the personal estate of which her husband is seized at the time of his death. To her dower in the personal estate she acquires absolute title; whereas to her dower out of the real property she acquires only a life estate, and the title herein is reversionary and cannot be alienated by her either by sale or devise. (Const. Lib., p. 18, sec. 2; Rev. Stat. Lib., p.

118, sec. 2; Bouv. L. D., p. 611, Dower.) This objection of the petitioner (now plaintiff in error) to the court's order, winding up the estate under such circumstances was properly made in order to safeguard the interests of the heir, who held reversionary interest in the property in question: and said objection should have been heard and decided by the lower court before absolving the administrator and administratrix defendants in error from the responsibility incurred if the alleged acts could be established. We are of opinion that the court below erred in not hearing and determining said objections.

The third and fourth assignments are to the effect that the administrator and administratrix defendants in error sold property to themselves through the medium of third parties: and also paid unto themselves out of the estate double the amount allowed them by law as compensation. Without deciding whether such a conveyance, if actually made, would be valid in law, we can readily perceive the reason why the objection should have been heard by the lower court, involving as does also the allegation that they paid themselves out of the estate in excess of their lawful commission, facts relating to their actions, which it would be the right of any person injured thereby to bring suit upon the bond for the redress of such injury. We hold that it was manifest error in the court below to have disallowed the objections and to have ordered the estate closed and delivery of the bond to be made before the said exception or objections had been heard and determined. (Rev. Stat. Lib., p. 120, sec. 5.)

The seventh assignment of errors, which is the last which we shall specifically pass upon in this decision, is to the effect that the petitioner (now plaintiff in error) further objected to the closing of the estate and the discharge of the administrator and administratrix (defendants in error) at the time, on the ground that there was property belonging to the estate, which had come to the knowledge, which the administrator and administratrix had not caused to be included in the inventory, and in which the petitioner now plaintiff in error, by virtue of her relation to the heirs of the estate, as their guardian, had a right and interest in.

We do not hesitate to remark that in the entire handling of this estate, the records show that the court below showed a lack of capacity and sense of duty. The court seems to have forgotten its very high responsibility in intestate estates, conferred upon it by the law of the land; by which law it is charged, not only with the duty of discharging the legal debts against the estate, and thereby protect creditors from unjustifiable losses, but it is also made the guardian of the interest of the widow and heirs of such estates, having under its full and absolute control the persons who, in its discretion, are suitable to administer the estate, and revoking any such appointments when it shall be made clear that the interest of the estate or the parties interested therein so demands.

So careful is the law in guarding such estates against possible devastation, that a limited time is allowed for the settlement of them, which can only be extended when it is shown to the satisfaction of the court that there exists against the estate foreign claims which would prevent the settlement of the estate within *one year* (the statutory time), without detriment to such creditors. The court may, in such cases, extend the time six months longer. The practice of Probate Courts in failing to compel administrators to legally close estates within the time prescribed by law is directly against the statute governing the administration of estates, and, we believe, has, in many cases, proved injurious to persons interested as heirs. When it is remembered that a large percentage of our citizenship die intestate, and that their property after their death, goes into the hands of administrators to the exclusion of the heirs ; and that only after the debts and dower, if any, are paid and admeasured, and the estate closed, do the heirs come into possession of the residue, the wisdom of the law in prescribing a reasonable limit for the completion of those acts is apparent. It is the unquestionable duty of Probate Courts to enforce the observance of said statute, and thereby protect heirs against such losses and abuses which invariably occur when estates are left in the hands of administrators indefinitely, as in the case before us. The failure of Judge Whitfield (one of the defendants in error) to adhere to this statute, and to have permitted the estate to remain open and in the hands of the defendants in error for more than three years, and to have no regard to complaints charging the administrators with a devastavit, is positively unjustifiable, and raises a strong presumption in support of the proposition with respect to his connivance in the premises, which proposition, if established, would make him liable to be charged for malversation.

In view of the court below refusing to hear and determine the objections filed by the plaintiff in error, which objections involve questions of fact dehors the records, this court is not in a position to finally determine the cause. This court holds that the refusal of the lower court to hear and decide the objections filed by the plaintiff in error was manifest error, which this court, in the exercise of its power, feels bound to correct in the promotion of substantial justice. The case is therefore remanded, and the court below commanded to resume jurisdiction over the estate and the administrator and administratrix, defendants in error, as though no order closing the estate and discharging defendants in error was made; and, without unreasonable delay, to hear and decide the objections, granting such relief in the premises as shall appear proper and right so to do. Costs to abide final judgment.

J. H. Green and *T. W. Haynes,* for plaintiff in error.

P. J. L. Brumskine, for defendants in error.