

E. W. WILLIAMS et al., Petitioners in Certiorari, v. **R. J. CLARKE**, Judge of the Monthly and Probate Court, Montserrado County, and **MANSON WYNN**, Administrator of the Estate of the late H. R. Phelps, deceased, Respondents.

ARGUED JUNE 6, 1913. DECIDED JUNE 13, 1913.

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

1. The writ of certiorari is for the purpose of correcting errors committed by a subordinate court or other body while a matter is pending, when such errors materially prejudice or injure the rights of a party.
2. *Seemle*: Where there is an administrator, he should administer every part of the estate.
3. *Seemle*: When personal liberty is involved, courts should act with great care and deliberation.

Mr. Justice McCants-Stewart delivered the opinion of the court:

Administration—Rulings on Trial. This matter comes before us on a writ of certiorari, and the record shows the following facts : At the November, 1912 term of the Monthly and Probate Court of Montserrado County, John H. Phelps, co-administrator with E. W. Williams, one of the petitioners in certiorari, of the estate of H. R. Phelps, deceased, submitted to said court a report in which he made several grave charges against said E. W. Williams in connection with the administration of said estate, alleging, among other things, that, although large sums of money had been realized from said estate, his co-administrator had assumed exclusive management and had not paid a dollar to any creditor of the estate. He then asked to be allowed to withdraw as administrator. Upon the reading and filing of this report said E. W. Williams submitted to said court his resignation as administrator; but the court refused to accept the same and ordered an investigation of the management of said estate.

At said term, counsel for certain creditors appeared and prayed that certain coffee-bearing lands, alleged to have been the property of the said H. R. Phelps at his death, be placed upon the inventory of the estate. The court proceeded to hear this application as well as to investigate other matters relating to the administration of the estate, and decided among other things, that this coffee-bearing land and the sum of seven hundred dollars, being the value of certain goods in the store of the said H. R. Phelps at the time of his death, and also certain books of accounts, should be placed

upon the inventory, and that said E. W. Williams should be held liable upon his bond until discharged.

The court then appointed J. W. Parker and J. H. Davis administrators of said estate, but they prayed to be excused from serving on the ground of legal disability. Whereupon the court appointed Manson Wynn as administrator with direction to make and report an inventory of said estate, and directed said E. W. Williams to deliver to said Manson Wynn all books, papers and accounts, etc., in his possession belonging to said estate.

At the March term, 1913, Leah A. Williams, one of the petitioners in these proceedings, presented a petition to the Probate Court praying that certain property, namely the aforesaid coffee-bearing lands and certain articles of personal property be stricken from the inventory of said estate. Upon the hearing of the petition E. W. Williams, one of the petitioners in these proceedings, being the husband of said Leah A. Williams, appeared for her. On the second day of said term the hearing of said petition began and continued throughout the fourth day, and was then suspended until the following day. On the fifth day the court announced that the Circuit Court would need the court room that day, and that the further hearing of said petition would be continued to the April term. The court then appointed one Mrs. J. E. Coleman to pick the coffee growing on the real estate in dispute, and ordered her to turn it over to the court with her bill of expenses.

On the opening of the April term it was represented to the court by counsel for Manson Wynn, administrator, that said E. W. Williams had failed to deliver to said administrator the books of accounts, etc., belonging to the estate. Said E. W. Williams being present, was asked by the court why he had not complied with its order. Whereupon said E. W. Williams replied that if he had told the court that he had any books, etc., he had "lied." The court thereupon summarily ordered the sheriff to take said E. W. Williams into custody and to put him in prison for disobeying the order of the court, to which order said E. W. Williams excepted and prayed an appeal to the Supreme Court. At this stage of the proceedings petitioners applied to this court for relief under writ of certiorari.

Upon these facts petitioners in certiorari pray:

1. That this court strike the aforesaid real estate from the inventory, or order the Probate Court to do so, contending that the said court has deprived them of their property by appointing said Mrs. Coleman to pick the coffee on said real estate.
2. To render him such relief as to this court may seem just and equitable from the order of imprisonment made against him by the probate court.

Now, the writ of certiorari is invoked for the purpose of correcting errors committed by a subordinate court or other body while a matter is pending, when such errors materially prejudice or injure the rights of a party. This court cannot invade the limits of the jurisdiction of any court below and do what the law enjoins that such court should do, until at least such court has acted, and has done so erroneously.

The Probate Court is within its jurisdiction in seeking to determine what shall constitute a correct inventory of an estate before it, and in the case at bar the court is now hearing a question relating to the inventory ; and as no error is complained of, and as no decision has been made, or judgment entered in the matter, there is nothing to be reviewed by this court at least, at this stage of the proceedings. This court cannot, at least at this point, either strike said disputed item from the inventory, or order the court below to do so.

The petitioners do not raise any issue as to the appointment of said Mrs. Coleman to pick the coffee from the lands in dispute. They simply complain in a general way contending on the argument that they would have the same complaint, if the administrator Manson Wynn, had been ordered to pick said coffee. While we do not find from the record why the court appointed a stranger to administer upon property on the inventory in the face of the fact that there is an administrator under bond, we do not find any error in the mere fact that the coffee was ordered picked, as the land upon which it grows is upon the inventory as part of the estate of said H. R. Phelps, and the petition to strike said land from said inventory seems to be having a reasonably prompt hearing. But, it seems, that where there is an administrator he should administer every part of the estate.

This court finds no determinable issue at bar with reference to the order of imprisonment of said E. W. Williams. No errors are alleged in connection therewith, and petitioner is at liberty without bond or condition of any kind. The matter must be disposed of as a mere incident of the proceedings. True, the order of the court directing the sheriff to imprison said E. W. Williams may have been hastily given. It may have been a better proceeding, if an order had been made directing said E. W. Williams to show cause why he should not be attached for contempt in failing to comply with the order to deliver the said books of accounts to the administrator, Manson Wynn. The Probate Court would then have made a record showing that it was demanding obedience to an order which could not or should not be complied with. Where the liberty of the citizen is involved courts should act with great care and deliberation, as haste in this respect weakens its influence and injures it in the respect of the public. We do not, however, criticise the Probate Court in this instance, as the reply to its inquiry, which was made by the said E. W. Williams, namely, that he "lied" if he told the court he had any books of account belonging to the estate of

said H. R. Phelps, must have jarred the nerves of the court, as it was highly unbecoming a practitioner at the bar.

Now, we say with deep regret that the record before this court by which record we are bound, shows that this writ of certiorari was obtained by false representations on the part of said E. W. Williams. The petitioner alleges, among other things, that the Probate Court had refused to "strike the property in dispute from the inventory," when the record shows that the application by said Leah A. Williams to strike said property from the record was being heard by the Probate Court; that one half of the April term of said court was devoted to this hearing, and was interrupted by the meeting of the Circuit Court, causing the matter to be continued. The aforesaid representation against such a record was fraud upon this court and could result in serious consequences to said E. W. Williams. While the process of this court will issue to correct any material error, and certainly to prevent any injustice to any party before the subordinate courts, yet such processes must be applied for upon a truthful statement of the facts. If any member of this bar should deliberately mislead this court, especially in any paper he may file here, he would lay himself liable to suspension or disbarment; and if any party before this court should commit such an offense, he would be liable to answer for contempt.

We are of the opinion that the writ of certiorari should be vacated and set aside, with costs against petitioners and it is so ordered.

E. W. Williams, in person.

Arthur Barclay, and *C. B. Dunbar*, for respondents in *certiorari*.