

THOMAS E. BEYSOLOW, Appellant, v. M. DUKULY, one of the Administrators of the Estate of the late MARY FERGUSON, deceased, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,  
MONTSERRADO COUNTY.

Decided December 22, 1936.

1. Whenever an attorney claims the right to retain moneys in his hands belonging to a third party on the ground of having rendered legal services to him, it is first incumbent upon him to conclusively establish that the relation of attorney and client did in fact exist, and that there was a definite sum agreed upon to be paid him for his legal services.
2. Should he, however, be able to establish the relationship, but not the amount agreed to be paid, he may recover upon a *quantum meruit* only after having presented a bill of particulars. In said case the bill of particulars becomes an account stated.

Appellant sued appellee for money due him from the estate of which appellee was administrator. The Circuit Court allowed a set-off for a debt between the two parties and ordered appellee to pay only the difference. On appeal, *judgment reversed* in favor of appellant.

*T. E. Beysolow* and *A. B. Ricks* for appellant. *M. Dukuly* and *P. Gbe Wolo* for appellee.

MR. JUSTICE DIXON delivered the opinion of the Court.

These proceedings were instituted by Thomas E. Beysolow, petitioner, by the filing of petition to the Circuit Court of the First Judicial Circuit, in the Probate Division of said Court, His Honor Nete-Sie Brownell, Judge presiding, against Momolu Dukuly, one of the administrators of the estate of one Mary Ferguson, deceased, of the City of Monrovia, as respondent.

The petition sets forth in substance the following: That the said deceased at the time of her death was indebted to him, petitioner, in the sum of £82:0:0, which amount the court had ordered Momolu Dukuly, re-

spondent, and Moses Ferguson, the two administrators of said estate, to pay in full.

When the amount had been realized by the estate, administrator Dukuly assumed to pay out same to T. E. Beysolow in installments although the whole amount was available, and could have been paid in one installment. The reason why administrator Dukuly undertook to pay the amount to petitioner Beysolow in such manner was unknown to the said petitioner, yet he did not demand the payment in one lump sum, but accepted same in the various installments at intervals of a few days. When the last amount of £17: 10: 0 was sent for by petitioner, administrator Dukuly having required a receipt in full for same, the petitioner wrote a receipt in the full amount of £82: 0: 0 and sent his son in company with A. B. Ricks, a counsellor-at-law, to receive the balance of the amount. Counsellor Ricks having delivered the receipt to the administrator Dukuly, the latter said to Counsellor Ricks that the amount of £17: 10: 0 was the balance due the petitioner and that he had it there in his hand bag. He thereupon took possession of the receipt, and thereafter said to Counsellor Ricks that the money was at the waterside in care of Counsellor W. E. Dennis, and that they should go down thither, and he would pay it over. When they arrived at Counsellor Dennis' business place, administrator Dukuly said something to Counsellor Dennis *sub rosa*, and he obtained the amount of £7: 10: 0 from Counsellor Dennis, and gave it to Counsellor Ricks, saying that it was the balance due the petitioner and that he was on his way up the river. Counsellor Ricks carried the amount of £7: 10: 0 to the petitioner who, when he received it, claimed that it was not the full balance due him as the total balance was £17: 10: 0; that Mr. Dukuly had retained £10: 0: 0 of the petitioner's claim for his personal benefit. When this fact was made known to petitioner Beysolow he

rushed to the water front, where, at the public landing, he met administrator Dukuly whom he accosted, and the said administrator attempting to temporize over the situation so as to prevent a scandal in a public place, said to petitioner, that they would arrange the matter when he returned to Monrovia.

On the return of the said Mr. Dukuly from the river, petitioner approached him on several occasions by messengers, and also in writing, but the said Mr. Momolu Dukuly continued to baffle the petitioner, now appelland, whereupon he, petitioner, filed a petition as aforesaid in the Monthly and Probate Division of the Circuit Court, before His Honor Nete-Sie Brownell, Circuit Judge, resident in the First Judicial Circuit, complaining of the action of the said M. Dukuly, respondent, one of the administrators of the estate of the deceased Mary Ferguson, asking relief of the court for the illegal and fraudulent action of one of the administrators of said estate; and that His Honor the Judge would cause the said Momolu Dukuly, respondent, one of the administrators aforesaid, to pay over to petitioner the balance of £10:0:0 which he, the said administrator, refused to pay over to him, without any cause whatsoever although the said administrator had demanded a full receipt in the sum of £82:0:0.

Momolu Dukuly, one of the administrators aforesaid, and the respondent in the court below, thereupon filed an amended answer, he having withdrawn his original answer which had been attacked by petitioner, and set forth that he did not owe the petitioner the sum of £10:0:0 as he held in his possession a receipt from the said petitioner, acknowledging the full receipt of the amount of £82:0:0 due him by the estate of Mrs. Mary Ferguson, which receipt he filed with his amended answer; yet in counts two and three of his said amended answer he averred that he had retained £10:0:0 of the balance of

£17: 10: 0 that was due the petitioner from the estate of Mary Ferguson, because of professional services which he had sometime previously rendered the petitioner.

In reply to the said amended answer of respondent's, petitioner filed an amended reply in which he denied being indebted to Momolu Dukuly, respondent, for any special professional services rendered. The evidence on part of the petitioner in the court below substantially proved beyond our doubt, even the respondent having himself admitted in his amended answer, that he had retained £10: 0: 0 of the amount that was due petitioner by the estate of the late Mrs. Mary Ferguson, deceased, of this city, of which estate he was one of the administrators. There is nothing further that this Court can say with respect to Mr. Dukuly having made himself responsible as an administrator to petitioner T. E. Beysolow for the balance of the £10: 0: 0 due said petitioner from the estate, except to pass upon the decree of Judge Brownell, who determined the cause in the court below.

Judge Brownell when passing upon the pleadings in this case, having probably been convinced from the evidence adduced by petitioner Beysolow that he was not indebted to Mr. Dukuly, respondent, for any legal service, nor had he retained Mr. Dukuly, the respondent, to collect this money from the estate, and probably finding that Mr. Dukuly as administrator had erred in retaining the said £10: 0: 0, gave a decision supported by the testimony of Mr. Wolo only, in whom he, Judge Brownell, claimed to have had implicit confidence. Mr. Wolo has testified to the effect that Mr. Beysolow said to him that he would pay Dukuly what he owed him, although this statement was not supported by Dukuly who only mentioned on the stand that Mr. Beysolow promised him and Wolo a *bonus*, but that he had retained this £10: 0: 0 on account of lawyer's fee in some other instances.

We here quote a portion of the Judge's unwarranted decree, to wit:

"The Court, after hearing of the evidence in this matter extending over the period from the 3rd July to the 10th October, rules as follows:

"(1) These proceedings have been instituted against respondent as administrator of the estate of the late Mary L. B. Ferguson of Monrovia. According to the records of this Court, there were two administrators appointed—Mr. Dukuly and Moses K. Ferguson—both of whom acted jointly in the management of the estate under the direct orders of the Court. The proceedings in this matter, however, have been brought against respondent as administrator of the estate of the late Mary L. B. Ferguson without joining the other administrator, Moses K. Ferguson. The court has throughout wondered why. It has become clear to the court throughout the evidence that it is because at this stage of the dealings of the two parties—the one with the other,—the relation passed from that of administrator of the estate of the late Mary L. B. Ferguson to that of Attorney-at-law and client, otherwise these proceedings would have been instituted against the two administrators who are officers and creatures of this court. That being so, it was the opinion of this Court that at the time of the transaction, the basis of these proceedings was contracted, a different relation had been established between petitioner and respondent, for which reason petitioner left out the other administrator of the estate of Mary L. B. Ferguson and instituted these proceedings against respondent alone. This action on the part of petitioner made the issue more complex than it otherwise would have been if the proceedings had been brought either as against the two administrators for

fraud or otherwise, or against Mr. Dukuly as an attorney-at-law for unprofessional conduct. If the petitioner felt that respondent as his lawyer acted in an unprofessional way in the retention of the moneys that had come to his hand, the remedy and form for the redress of same should be plain to him. The case is properly dismissable on this point alone, but the court will not do so but go into the merits of the controversy.

“(2) In proof of the first conclusion reached by court it is to be observed that according to the evidence of Counsellor Wolo, to which the Court attaches much importance and credit because of its disinterestedness in the matter of the dispute, when petitioner had knowledge that the creditors of the estate of Mary L. B. Ferguson would likely be paid, petitioner deputized him, Counsellor Wolo, to treat with administrator Dukuly to use his influence with the board of administrators of his claim against the estate of Mary L. B. Ferguson to be paid. Administrator Dukuly observed to Counsellor Wolo that he had claims against creditor of the estate Beyso-low for legal services rendered and that he wanted them paid. Counsellor Wolo testified that it was agreed to by the petitioner that respondent should be paid out of the moneys coming to him from the Mary L. B. Ferguson estate. When the money—an amount of £82:0:0: became available petitioner drew several orders on respondent and withdrew all of the money down to a balance of £17:0:0. It was when the last order for the whole balance as was being drawn that respondent felt that petitioner had no idea of keeping his promise made to him through Counsellor Wolo to pay him, respondent, for legal services rendered, wherefore respondent paid £7:10:0 against the receipt

sent and retained the balance of £10:0:0 for legal services rendered and for which acknowledged services, petitioner promised Counsellor Wolo that respondent should be paid out of the credits of petitioner coming from the estate of Mary L. B. Ferguson."

Judge Brownell's first error was when he undertook to change the relationship between the parties from that of an administrator of an estate and a claimant against the estate on the one hand to that of an attorney and client on the other. The evidence adduced at the trial which forms part of the records in these proceedings do not in our opinion support this position of the Judge whatsoever, as there is no satisfactory evidence in the record to the effect that Mr. Dukuly, respondent, ever did any legal services for Mr. Beysolow except to probate one deed for M. Massaquoi on the request of the petitioner, for which services he was paid £1:0:0. It also appears in the records from the testimony of Counsellor C. H. Taylor who was the counsel for M. C. Stevens, that Mr. Dukuly, the respondent, only happened to have come into the courtroom at the time when Mr. Beysolow had agreed on a stay in an execution in which petitioner was claiming enforcement. Mr. Taylor stated that he and Counsellor Freeman drafted a note on behalf of Mr. Stevens for Mr. Beysolow, that Mr. Beysolow asked Mr. Dukuly, the respondent, to read the note and make whatever corrections he thought necessary, and that Mr. Dukuly, the respondent, had only inserted one word in the document. There was no evidence whatsoever in corroboration of Mr. Dukuly's claims for legal services to Mr. Beysolow in a case between him and one Garnett, as set up in the amended answer to the petition of the petitioner, now appellant. Furthermore there is no evidence in the records showing that Mr. Dukuly, the respondent, sent Mr. Beysolow a notice or a bill for any claims which he, Dukuly,

the respondent, had against Mr. Beysolow for any legal service, although Mr. Dukuly himself paid the £82:0:0 by installments.

The Judge not having received sufficient evidence to establish the claim which Mr. Dukuly, the respondent, was making against Mr. Beysolow, asked Mr. Dukuly, the respondent, what was really his claim against Mr. Beysolow, to which naturally Mr. Dukuly replied in the court that it was £10:0:0. It was upon this answer of Mr. Dukuly's although there was no proof of such claim in the records, that the Judge undertook to change the claim from a petition against an administrator to an action of debt between client and attorney, and decided the issue by ruling that Mr. Dukuly, respondent, as a lawyer should retain £7:0:0 of the £10:0:0, and pay over to Mr. Beysolow the sum of £3:0:0 as in full settlement of his case against the estate of Mrs. Mary L. B. Ferguson.

This Court regrets its inability to find upon what principle of law His Honor Judge Brownell based his decision in the case now under review.

In the first instant he did not have the authority to change the title of a suit before him against an administrator for fraud against a claimant of an estate to a transaction for a debt, which was not proven. This step alone on part of the Judge was beyond his jurisdiction especially when it was done without the concurrence of the parties concerned. It is to this opinion the petition has excepted and prayed a review by this Court.

It is also our opinion that whenever an attorney claims the right to retain moneys in his hands belonging to a third party on the ground of having rendered legal services to him, it is first incumbent upon him to conclusively establish that the relation of attorney and client did in fact exist; and that there was a definite sum agreed upon to be paid him for his legal services.

Should he, however, be able to establish the relationship, but not the amount agreed to be paid, he may recover



upon a *quantum meruit* only after having presented a bill of particulars, and by any of the means shown by our opinion in the case *Morris v. Rumanapf*, 4 L.L.R. 263, 2 Lib. New Ann. Ser. 99.

In said case the bill of particulars had become an account stated, which had not been done in this case.

In consequence of the facts adduced in the lower court, and sent forward to this Court, we fail to follow the principle of law upon which Judge Brownell from his imagination could rule that respondent Dukuly should pay over to petitioner Beysolow the sum of £3:0:0 and he retain £7:0:0 for his claims and ruled Beysolow to pay cost of the lower court, when there does not appear evidence in the opinion of this Court to justify such a ruling; therefore we have to reverse the decree of Judge Brownell and rule that Mr. Dukuly, respondent and appellee, pay over to T. E. Beysolow, petitioner and appellant, the amount of £10:0:0, same being the balance due him by the estate of Mrs. Mary Ferguson, and all costs.

The Clerk of this Court is hereby ordered to send a mandate to the court below as to the effect of this opinion; and it is so ordered.

*Reversed.*