

DECISIONS AND OPINIONS
OF THE
SUPREME COURT
OF THE
REPUBLIC OF LIBERIA.
NOVEMBER TERM, A. D. 1924.

NELLIE HODGE et al., Petitioners, *v.* HIS HONOR E. W.
WILLIAMS, Judge, Monthly and Probate Court, Mont-
serrado County, Respondent.

HEARD DECEMBER 3, 1924. DECIDED JANUARY 6, 1925.

Johnson, C. J., Witherspoon and Bey-Solow, JJ.

1. In matters of probate where it is necessary to appoint administrators, the court should appoint the next of kin, or the widow, or both at his discretion.
2. This discretion is governed by certain rules of priority. Creditors are only appointed if the widow or next of kin fail to act within a reasonable time; and the appointment is voidable where the court did not give a chance to all parties to come in and claim.
3. A writ of prohibition lies in a proper case to restrain courts from exceeding their powers in the exercise of probate jurisdiction.
4. It acts as a stay of proceedings until it is vacated or set aside, to restrain a judge from enforcing an order adjudging relator guilty of contempt, and will be made perpetual if the respondent judge shows that it is not his intentions to proceed in the matter or if the circumstances are such as to warrant the belief on relator's part that he is in danger of being proceeded against by virtue of such order, the judge having refused to set the order aside.

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

Proceeding growing out of a Writ of Prohibition issued by Chief Justice James J. Dossen, directed to Judge E. W. Williams of the Monthly and Probate Court of Montserrado County, during the April term of the Supreme Court, A. D. 1924. The facts in the

case are substantially as follows: In the month of February, A. D. 1924, one Socklay of Bojay in the County of Montserrado, died leaving a considerable estate in real property, monies and other valuables.

Subsequently one C. H. Christian who claimed that decedent, during his lifetime, was indebted to him in the sum of sixty dollars, (\$60.00), applied to Judge Williams for letters of administration.

Sio, the son, and Kaifa, nephew of decedent, next of kin to the said decedent, informed said judge that they would settle said bill and prayed the court that they be appointed administrators of said estate. Judge Williams, however, appointed the said C. H. Christian and one Johnny B. Hayes administrators and authorized them to proceed to Bojay in order that they might take an inventory of the lands, goods and chattels of the said estate.

A complaint having been made by the said C. H. Christian and Johnny B. Hayes, that they were obstructed in the performance of their duty by the said Sio and one Nellie Hodge, Judge Williams ordered that a writ of arrest be issued and the said parties brought before him for the alleged contempt. The writ was duly issued and served; whereupon said parties made application to Chief Justice James J. Dossen for a writ of prohibition which was granted.

The case was heard at the April term of the Supreme Court, A. D. 1924, and judgment entered as follows:

“JUDGMENT WITHOUT OPINION.

“*Dossen, C. J., Johnson and Witherspoon, JJ.*

“SIO and KAIFA, heirs of the late Chief Socklay of Bojay, Petitioners, *v.* E. W. WILLIAMS, Judge of the Monthly and Probate Court of Montserrado County; and Johnny B. Hayes and C. H. Christian, administrators of the estate of the late Chief Socklay of Bojay, Respondents.

“Petition for a Writ of Prohibition. This is a matter arising from the appointment of the said Johnny B. Hayes and C. H. Christian as administrators of the said estate of the said Chief Socklay, late of the town of Bojay in the County of Montserrado by the said E. W. Williams, judge aforesaid, to which appointment petitioners object upon the grounds *inter alia* that they being the next of kin to the deceased and he having

expressed the desire during his lifetime that they should administer his estate at his death ought to be appointed administrators by said judge. Upon the hearing of said application for the writ of prohibition and the returns made thereto by the parties, this court is of the opinion that the petition should be granted and therefore adjudges:

"1. That the appointment of Johnny B. Hayes and C. H. Christian as administrators of said estate is hereby revoked and the judge of the said Monthly and Probate Court is hereby ordered to cancel the bond which they have executed as such administrators and to discharge them from any further responsibility in the premises.

"2. That the Inventory filed in said estate is also cancelled and the judge aforesaid is hereby further ordered to appoint two responsible citizens and a responsible chief from the said town of Bojay to make and return to the Probate Court a full and complete Inventory of all the property real and personal of which the said Chief Socklay died seized and possessed.

"3. That after the filing of said Inventory and upon application duly made by petitioners asking for their appointment as administrators as the next of kin to the deceased, that said court cause Letters of Administration to be issued to said petitioners, that is to say, to Sio and Kaifa, next of kin aforesaid empowering them to take over said estate and to administer same under the statutes of Liberia, they first filing good and sufficient security to administer said estate faithfully and honestly and in keeping with Law. Cost disallowed.

"Given under our hands and official signatures this 17th day of April, A. D. 1924.

(Sgd.) James J. Dossen, Chief Justice.

(Sgd.) F. E. R. Johnson, Associate Justice.

(Sgd.) Amos Witherspoon, Associate Justice."

After the adjournment of the Supreme Court, Judge Williams again arrested the said persons and ordered them brought before him for the alleged contempt, and also arrested Counsellor J. W. Cooper of counsel for said parties, for an alleged contempt said to have been committed by him at the hearing of the objection to the appointment of the said C. H. Christian and Johnny B. Hayes as administrators.

The arrested parties made application to Justice F. E. R. Johnson for a second writ of prohibition which was issued on Judge Williams. The latter in open court exhibited the writ of prohibition and declared that he would not obey said writ as the Supreme Court had no right to interfere with his court.

In a petition made to Justice Johnson, Judge Williams was at-

tached for contempt and the matter was sent forward to the Supreme Court, to be heard by the court *in banco*.

Before proceeding to discuss the question of the contempt committed by Judge Williams, we will make some observations on administrators and the order of priority in which they should be appointed.

By the statute of 31 Edward III, chapter II, § 1, the Ordinary was required to appoint "the next of kin and most lawful friends of the dead person intestate." Under the statute 21 Henry VIII, he could appoint the widow or next of kin, or both, at his discretion. This discretion is however governed by certain rules of priority. Creditors are only appointed when the widow or next of kin does not act within a reasonable time. The appointment is voidable when the court did not give a chance to all parties to come in and claim it.

It results therefore, from this view of the law, that Judge Williams, in the appointment of administrators of said estate, did not act in a just, legal and proper manner.

We will now consider the nature and office of a writ of prohibition.

A writ of prohibition is a writ addressed by a superior tribunal possessing superior or appellate jurisdiction in an inferior or subordinate court. It lies in a proper case to restrain courts from exceeding their powers in the exercise of probate jurisdiction. It is held that a writ of prohibition to restrain a judge from enforcing an order adjudging relator guilty of contempt will be made perpetual if the respondent judge returns that it is not his intention to proceed in the matter, if the circumstances are such as to warrant the belief on relator's part that he is in danger of being proceeded against by virtue of such an order the judge having refused to set the order aside.

Justices of the Supreme Court have a right both by common law and by the statute laws of Liberia to issue writs of prohibition and other remedial writs, and such writs act as a stay of proceedings until they are vacated or set aside.

For instance, it has been held that a writ of prohibition to a court which, in excess of its jurisdiction or contrary to some legal right, has appointed a receiver, will not only stay further proceedings under the receivership, but will return the property to its

owner; even though the receiver has gained complete possession. But what makes the actions of Judge Williams more reprehensible is the fact that the matter of the alleged contempt had been reviewed by the Supreme Court, and judgment rendered as aforesaid.

If there were any doubts in the mind of Judge Williams on this point, yet he was bound to stay proceedings in the matter of the alleged contempt, when the writ of prohibition issued by order of Justice Johnson was served on him; and his action under the circumstances was contemptuous and insubordinate.

Judge Williams is therefore adjudged to be guilty of contempt and fined in the sum of twenty-five dollars (\$25.00). He is to remain the custody of the marshal until the fine is paid. And it is so ordered.

J. W. Cooper, for petitioners.

E. W. Williams, for respondent.

PERNELLA NORTH, Appellant, *v.* R. J. CLARKE, Appellee.

ARGUED DECEMBER 2, 1924. DECIDED JANUARY 6, 1925.

Johnson, C. J., Witherspoon and Bey-Solow, JJ.

It is the notice of appeal duly issued and served upon appellee which confers jurisdiction upon the appellate court over the appellee.

Mr. Justice Witherspoon delivered the opinion of the court:

Objection to the Probation of a Will—Appellee's Motion to Dismiss Appeal. At the call of this case the appellee submitted a motion for the consideration of the court asking that the court dismiss the appeal for the reason that there had not been issued and served upon the appellee the notice of appeal as is required by law; and citing in his argument the Act of 1894 regulating how appeals are to be taken.

Appellant contended that the duty of giving notice to appellee in appeals is settled upon the clerk of the court, and his failure to do so should not prejudice the rights of appellant.

This contention at first sight might in sympathy carry great force; it is quite differently regarded in a court of justice. The paramount object of a court is to impart justice according to the law of the land, within the bounds of which it is confined.

This court is of the opinion that the notice of appeal occupies a