

S. RAYMOND HORACE, Appellant, v. SARAH V.
HARRIS, Appellee.

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

Argued April 8, 1942. Decided May 8, 1942.

1. In a probate proceeding complaining of interference with and maladministration of an estate by its executor, it is improper to overrule the legal issues raised in the answer on the ground that said proceeding is in the nature of a summary proceeding, in the absence of legislative authority for a summary proceeding.
2. There being no statute permitting a *feme covert* to sue independent of her husband, the common law general rule controls. Therefore a suit instituted by a married woman in her own name will be dismissed.

Appellee instituted a suit in her own name. On appeal from judgment in her favor, *judgment reversed*.

William E. Dennis for appellant. *A. B. Ricks* for appellee.

MR. JUSTICE BARCLAY delivered the opinion of the Court.

Although the bill of exceptions upon which this case was brought before us on appeal contains fourteen counts appellant has presented in his brief and argument only the following issues as those that are the most salient. These issues were raised in the answer and read as follows:

"1. Because defendant says that plaintiff being a *feme covert* cannot institute an action against him, defendant, Independent of her husband, as has been done in this case; wherefore defendant prays that said complaint be dismissed with costs against plaintiff, and this the defendant is ready to prove."

Count three reads:

“3. And also because defendant says that complaint is bad and defective in that the several counts do not end with the required statutory words ‘All of which the plaintiff is ready to prove’ neither does the said complaint anywhere end with said statutory words. Wherefore for this legal blunder defendant prays the dismissal of said complaint with costs [against] plaintiff. And this the defendant is ready to prove.”

No reply was filed by plaintiff.

His Honor the Trial Judge of the Circuit Court for the First Judicial Circuit, Montserrado County, in its probate division (at that time the circuit court had probate jurisdiction) ruled out the entire answer of defendant, taking the position that the proceedings partook of the nature of a summary investigation and, said he, under the law governing estates any person who is interested in any estate has a right to the knowledge of the court of any improper or unwarranted interference of any executor. Thus said judge ignored the issues of law raised in the said answer.

But first, a summary proceeding is defined by Mr. Bouvier as:

“A form of trial in which the ancient established course of legal proceedings is disregarded, especially in the matter of trial by jury, and, in the case of the heavier crimes, presentment by a grand jury.

“In no case can the party be tried summarily unless when such proceedings are authorized by legislative authority, except perhaps in cases of contempt. . . .”

3 Bouvier, *Law Dictionary Summary Proceeding* 3182 (Rawle’s 3d rev. 1914).

On referring to our statute on the subject we find this law:

“Any person, who shall interfere with the estate of any deceased person, unless authorized to do so by the Probate Court, shall become liable for all the debts of

the decedent, and for the respective shares and legacies of all the heirs and legatees of said estate." 1 Rev. Stat. § 1056.

But in this case it is obvious that said provision of law did not apply to appellant, and the judge in the court below seems to have shared this view for in his final ruling he did not apply the above statute and he ruled *inter alia*: "That the court therefore requires the Executor and Executrix to qualify themselves without any further delay, and that they be required to give Mrs. Sarah V. Harris one of the heirs her legacy under the Will and if no cash available to pay the amount of \$36.00 that is willed to her, sufficient property to be sold to pay said amount," and defendant pay all costs of these proceedings.

The only other provision which we have been able to discover in the statutes provides:

"If any executor or administrator shall perform his duties in such manner as to cause loss or damage to any party interested in the estate, such party shall have the right to begin an action against the bond of such executor or administrator, and such action shall be carried on and be disposed of as an ordinary action in debt. . . ." 1 Rev. Stat. § 1059.

We have not been able to find any legislative authorization for a summary proceeding or investigation under our statute laws upon which the trial judge based his opinion and ruling that this case partook of the nature of a summary investigation, and which would justify his ignoring or overruling the important issues raised by defendant in his answer.

Appellant having in count one of his answer stated that plaintiff, now appellee, was a *feme covert* and could not sue independently of her husband and said allegation not having been denied or controverted by appellee in any way, shape, or form since she neglected to file a reply to said answer, appellee must be taken to have admitted

the allegation. Although modern statutes in some states have modified the common law rule, thereby enlarging the property rights of a married woman and permitting her to sue as a *feme covert* yet we have no such statute in this country. Because of the common law general rule that a married woman has no capacity to sue independent of her husband, the judge in the court below erroneously overruled such salient attacks on the complaint as were contained in the answer dealt with herein; therefore we do not consider it necessary at this time to pass upon the questions of the interference of an executor with an estate of which he is executor and his maladministration thereof which are questions of fact and should not be touched until all legal issues raised in the pleading have been disposed of.

From the foregoing, we do not see that we can go into the questions of fact which are contained in the complaint, although anxious so to do, and, as the case at present stands, we cannot do otherwise but reverse the judgment of the court below with costs against appellee, and it is hereby so ordered.

Reversed.