

T. W. DUPIGNY LEIGH, Curator of Intestate Estates, Montserrado County, Appellant, v. FLORENCE TAYLOR, Widow of the Late C. H. TAYLOR, Appellee.

APPEAL FROM THE CHAMBERS OF MR. JUSTICE BARCLAY.

Argued October 15, 16, 1947. Decided December 12, 1947.

It is unreasonable to contend that the curator who had no financial or personal interest in the estate should pay out of his pocket personal funds to meet costs incurred in connection with an estate. Any other expenses should be brought before the probate court in order to obtain a ruling on whether or not they will be refunded.

The widow of an intestate spouse successfully requested the probate court to grant her the privilege of asking the curator of intestate estates to waive his commission. After the waiver, the curator was informed that the widow had misrepresented her late husband's financial status, and said curator applied to the probate court for cancelation of the privilege. Upon denial by the probate court, the curator appealed to this Court, but the appeal was dismissed on motion, because of legal defects in its prosecution, with costs against the estate of Taylor. *Leigh v. Taylor*, 9 L.L.R. 329 (1947). The curator submitted a statement of costs and expenses to the probate court and for valid reasons applied to Mr. Justice Barclay in Chambers for an order to the lower court permitting a refund of costs and expenses. On appeal to this Court *en banc* from an order granting the refund of costs and expenses, *petition granted* as to costs and *denied* as to expenses, on the ground that to grant same would be an exercise of original jurisdiction, with recommendation that the curator bring the issue of expenses before the probate court.

Mr. JUSTICE SHANNON delivered the opinion of the Court.

One C. H. Taylor of Monrovia died some years ago leaving Florence Taylor, respondent-appellee, his widow. T. W. Dupigny Leigh was and is Curator of Intestate Estates for Montserrado County and, it appearing that the said C. H. Taylor died intestate, it was legally necessary for this estate to be administered by the curator in the manner provided for by law. The said widow represented to the curator that her said husband left no heirs, hardly owed any debts, and left "a few dollars" in his thrift account with the Bank of Monrovia, Incorporated, Monrovia. Consequently, she asked for the privilege of having the curator waive his legal five percent commission for administration of estates. The probate court granted the privilege and the curator waived his commission.

Subsequently it was reported to the curator that there was a palpable misrepresentation of facts when the said widow claimed that C. H. Taylor, her husband, left only "a few dollars" in his thrift account with the bank and that he died leaving no heirs. The said curator was reliably informed that the said C. H. Taylor left an heir or heirs and that his thrift account showed a favorable balance of \$1,300.00 odd. Consequently, he applied to the probate court for an order canceling the privilege granted Florence Taylor, which was based upon untrue allegations, and, upon the court's denial of his application, he brought the matter on an appeal to this Court of *dernier ressort*. Unfortunately because of some legal defects in the prosecution of said appeal, which were taken advantage of by Florence Taylor on a motion to dismiss, the appeal was dismissed on said motion at the last March term of this Court, with costs against the estate of the late C. H. Taylor. *Leigh v. Taylor*, 9 L.L.R. 329 (1947).

A mandate was sent to the probate court to the effect that this Court had dismissed the appeal, and, in an effort to enforce the said judgment with respect to the payment of the costs allowed, it appears that T. W. Dupigny Leigh, Curator of Intestate Estates, submitted a statement covering both costs and expenses which he claimed he had to undergo. Since the probate court did not appear too clear on the point, and since Florence Taylor, as a representative of the estate, interposed objections, the curator elected to adopt the course of applying to His Honor Mr. Justice Barclay in Chambers for the "granting of an order to the lower court that these amounts be refunded him together with all costs to be paid from the estate." "These amounts," as pleaded by him, were intended to include counsel fees, etc.

The said curator submitted in his said application to His Honor Mr. Justice Barclay that all of his actions in the proceedings in this matter were in good faith, and that to disallow these amounts would be setting a bad precedent for him and for all other curators of intestate estates within this Republic. We quote him:

"[W]hen administering estates, if it becomes obvious that a devastavit of the estate has happened or is imminent, the Curator would not worry himself to arrest the damage by proceedings in Court, because since the end of a lawsuit is always unpredictable, he will not run the risk of losing his money or paying costs, and therefore [will] permit anything to happen to the estate; only concerning himself about securing his 5% commission. That the appellant feels would not be the spirit and interest of the law; but the Curator, in his own interest, to save himself from financial loss would have no alternative."

It is to be observed that the statement attached to the application amounted to two hundred and thirty-eight dollars and included both costs and expenses, two of

which items for expenses were sums totalling approximately one hundred and fifty dollars claimed to have been paid lawyers.

Florence Taylor, having been requested by the Justice in Chambers to show cause, if any, why the petition should not be granted, filed her returns wherein she contended, among other issues raised, that the actions of the curator in the matter evinced a want of good faith and also a want of authority. She contended, in fine, that the curator's actions showed that he was acting prejudicially and that there was an attempt to defraud and also devour an estate which he pretended to be serving and that therefore the petition of the curator should of necessity be denied.

His Honor Mr. Justice Barclay heard the matter in Chambers and, in deciding the cause, said:

"On the other hand, every court is bound to take judicial notice of its own records, and the records of this Court show the hostile attitude of the former Commissioner of Probate toward the Curator, and hence it is regrettable that the appeal had to be dismissed. The dismissal at the instance of the appellee to my mind precluded appellee from showing to the Court the alleged evil mind or prejudicial actions of appellant or that he had aims to devour the estate or defraud the widow and heirs and creditors . . . of their just dues. Upon the dismissal of the appeal at the instance of the appellee, this court in banco ruled that all costs should be paid by the estate. It is unreasonable to contend that the Curator, who had no financial or personal interest in the estate, should pay out of his pocket or out of his personal funds, expenses incurred in connection with the estate, especially so when he sets up that he acted in good faith and the fact has not been controverted, nor has any particular item of the bill of costs filed with the petition been attacked or shown to be false or illegal in

order that said item could be ordered stricken by the Court.

"This Court in banco having ordered all costs of these proceedings to be paid out of the estate, it is not within my power to change or reverse said ruling. Under the circumstances, I feel myself only authorized to confirm same and to order the court below to see that all costs and expenses in connection with the estate, the subject of these proceedings and in accordance with petitioner's petition be paid out of the estate, costs of these proceedings to be paid out of the estate, AND IT IS HEREBY SO ORDERED."

To this ruling, Florence Taylor through her counsel excepted and prayed an appeal to the Court *en banc*.

After a careful and painstaking hearing of the matter by this Court, we confirm the following rulings of our colleague in Chambers:

- (1) That "there is no proof of want of good faith on the part of the Curator in his activities in the matter; but rather his efforts tend to show an attempt to protect an estate from devastavit as also to protect and conserve the rights and interests of heirs and creditors—it having appeared that he had already waived his usual 5% commission."
- (2) That this Court, during its last March term sittings, having decided that the costs in these proceedings were to be paid out of the estate, our colleague was without right to reverse same, and his act in refusing to do so is justified.
- (3) That "it is unreasonable to contend that the Curator . . . [under the circumstances shown herein] who had no financial or personal interest in the estate, should pay out of his pocket or out of his personal funds, expenses incurred in connection with the estate, especially so when he sets up that he acted in good faith and the fact has not been controverted. . . ."

However, we have found ourselves compelled to disagree with that part of the ruling which also ordered the payment of additional amounts for expenses which had not been contemplated by or covered by this Court's ruling at the March term last past. Reference to this ruling will reveal that this Court only ordered the payment of costs, so that in our considered opinion if the curator seeks to make demands for refund of expenses incurred in the prosecution of the matter, such as the payment of counsel fees, he should have brought it first to the notice of the probate court before which the estate is for a ruling. Anyone adversely affected would, after such ruling, have the right to appeal from said ruling, which he or she considered unfair, unjust, and illegal. Consideration by this Court of the matter of expenses incurred would be an exercise of original jurisdiction to which we are not entitled under law and under the circumstances.

The ruling of our colleague, therefore, as to the matter of costs is here confirmed, and it is recommended to the curator that he press the issue of the refund of his expenses incurred in this matter before the probate court in the first instance; costs of these proceedings are ruled against the said estate; and it is hereby so ordered.

*Petition granted in part, denied in part.*