

BESSIE E. MARSHALL, Widow of the late I. WINSLOW MARSHALL, and I. W. MARSHALL, JR., J. B. TRINITY for his wife WILLIAMETTA MARSHALL-TRINITY, LULU MARSHALL, GEORGE H. MARSHALL, JOHN C. MARSHALL and BESSIE E. MARSHALL, Heirs of the said late I. W. MARSHALL, Plaintiffs-in-Error, v. His Honor W. H. BLAINE, HENRY C. REEVES, Mayor of the City Corporation of Marshall, ALBERT D. PEABODY, City Solicitor of the City Corporation of Marshall and Territorial Attorney, Territory of Marshall, and J. MONROE MARSHALL, Curator for the Territory of Marshall, Defendants-in-Error.

WRIT OF ERROR TO THE PROVISIONAL MONTHLY AND PROBATE COURT OF
THE TERRITORY OF MARSHALL.

Argued November 25, 1937. Decided December 10, 1937.

Although as a general rule this Court will not grant an extraordinary writ in order to remove a cause from the trial court to this Court for review, yet whenever a party has been denied his day in court and by the illegal action of the trial judge deprived of the right of a regular appeal, this Court, or a Justice thereof, in the exercise of sound discretion may grant the appropriate remedial writ.

The defendant-in-error Peabody petitioned the Provisional Monthly and Probate Court of the Territory of Marshall, the defendant-in-error Judge Blaine presiding, to issue letters of administration for the estate of the decedent I. Winslow Marshall. The petition was granted in an *ex parte* proceeding and letters issued to the defendant-in-error J. Monroe Marshall as Curator. The plaintiffs-in-error, claiming as heirs of the decedent, moved to dismiss the above-mentioned petition. The record does not show the disposition of that motion by the court. The case is now before this Court on writ of

error issued on petition of plaintiffs-in-error. *Judgment reversed.*

S. David Coleman for plaintiffs-in-error. No appearance for defendants-in-error.

MR. JUSTICE RUSSELL delivered the opinion of the Court.

This case is before this Court for hearing upon a writ of error issued out of the chambers of His Honor Samuel J. Grigsby, Associate Justice of this Court.

The records in the case show that on the 13th day of June, 1936, Henry C. Reeves, Mayor for the City Corporation of Marshall, filed a petition in the Provisional Monthly and Probate Court for the Territory of Marshall at its June term of the year aforesaid, which petition, marked exhibit "A," reads as follows:

"REPUBLIC OF LIBERIA,
MARSHALL TERRITORY,
MONTSERRADO COUNTY.

} In the Provisional Monthly and Probate Court Territory of Marshall, sitting in its Probate Division, June term A.D. 1936.

"Before His Honour William H. Blaine, Judge,
"Petition for the administration of the
Intestate Estate of I. Winslow
Marshall, deceased.

"The petition of Henry C. Reeves, Mayor for the City Corporation of Marshall, for and on behalf of said Corporation residing in said City in the Territory, County and Republic aforesaid respectfully shows as follows:

"1. That he is Mayor of the said City Corporation of Marshall, and acting upon authority vested in him by reason of his office aforesaid for and on behalf of the said City Corporation, as a creditor of said I. Winslow Marshall, deceased of said City.

"2. The said I. Winslow Marshall died intestate

as your Petitioner verily believes, on the 4th day of May A. D. 1934.

"3. That your petitioner has made diligent search and inquiry for a will of said deceased and has not found any, or obtained any information that he left or ever made one.

"4. That your petitioner has to the best of his ability estimated and ascertained the value of the personal and real property of which deceased died possessed, and of the probable amount to be recovered by reason of any right of action granted to administrator by special provision of law (the Curator of Intestate Estates for the Territory of Marshall).

"5. That said Intestate died justly indebted to the City Corporation of Marshall aforesaid of which your petitioner is Mayor, in the just sum of forty-eight dollars (\$48.00); which amount being still unpaid forms part of Government revenue, when collected; being due account rent of lease of a portion of the public street within the City Corporation of Marshall, whereon is built a certain dwelling house; that tract or portion of the street known and described as the juncture of Water Street and the street commonly known as Cross Street, north east of the warehouse of Messrs. West and Company, Limited, which lease money is now overdue and is still unpaid for the period of four years.

"6. Your petitioner further shows that the said Intestate was at the time of his death a resident of Marshall City, Territory and County aforesaid, and he left property therein; that your petitioner prays that a decree be made awarding letters of Administration of Estate to the Curator of Intestate Estates for the Territory of Marshall, J. Monroe Marshall, of the City of Marshall.

"7. Petitioner further prays that Your Honour will in view of the foregoing order the said Curator to immediately pay and settle the claims of the said City

Corporation of Marshall. And this your petitioner will in duty bound ever pray.

"Dated at Marshall City this 13th day of June A. D. 1936.

"[Sgd.] HENRY C. REEVES,
*Mayor for the City Corporation of
Marshall,
for and on behalf of said Corporation,
Petitioner.*

"and by:

[Sgd.] ALBERT D. PEABODY,
*Solicitor for said City and Territorial
Attorney."*

"REPUBLIC OF LIBERIA, MARSHALL TERRITORY, MONTSERRADO COUNTY.	}	Office of the Justice of the Peace, Marshall.
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"AFFIDAVIT.

"Personally appears before me in my office, Albert D. Peabody, Solicitor for the City Corporation of Marshall and Territorial Attorney for Marshall Territory, being duly sworn according to law, declares that the facts as set out in the foregoing petition of Henry C. Reeves, Mayor for said City and acting on behalf of said City Corporation petitioning for the administration of the intestate estate of the late I. Winslow Marshall, deceased, are true and correct in substance to the best of his knowledge and belief.

"Sworn and subscribed to before me this 13th day of June A. D. 1936.

"[Sgd.] DANIEL F. WRIGHT,
*Justice of the Peace,
Marshall Territory.*

"[Sgd.] ALBERT D. PEABODY,
*Solicitor for said Corporation
and Territorial Attorney,
Deponent for petitioner."*

On the 15th day of June in the year aforesaid, His Honor W. H. Blaine, Judge of the court aforesaid, convened said court; and without any reference to the heirs of the late I. Winslow Marshall who, by virtue of the aforesaid petition, became respondents in the cause; that is to say, without issuing any legal precept to place said heirs under jurisdiction of his, proceeded to hear the petition *ex parte*, and ordered a writ of summons to be issued against one Emmett Harmon, who was only a tenant in the home of the heirs. Upon the return of the writ and the appearance of Emmett Harmon, the trial judge proceeded to interrogate the said Emmett Harmon, after which he proceeded to give his final ruling or decree in the case; which, marked exhibit "B," reads as follows:

"REPUBLIC OF LIBERIA,
MARSHALL TERRITORY,
MONTERRADO COUNTY.

} In the Provisional Monthly and Probate Court, Territory of Marshall, sitting in its Probate Division, June term A.D. 1936.

"Court's Order in re Application of Henry C. Reeves, Mayor City Corporation of Marshall.

"This court upon summary hearing of a petition and an application filed in this court by Henry C. Reeves, Mayor as aforesaid, as against the estate of the late I. Winslow Marshall in connection with certain public property that was leased to Honourable I. Winslow Marshall, now deceased, during his natural lifetime; and facts adduced by said petitioner and applicant thereby did sustain their said petition and application on the 15th day of June A.D. 1936; this court therefore

ORDER.

orders Emmett L. Harmon who presently occupies said premises and/or the Firestone Plantations Company who may be securing said premises for one F. L. James, their representative in Marshall to succeed the said Emmett L. Harmon as tenant aforesaid, to

pay as from date of this Order any and all monies account rent or lease for the occupancy of said premises described in applicant's said petition over to the Sheriff for the Territory of Marshall to be deposited into the Bureau of Internal Revenue; upon failure of which the said premises into the possession of said city corporation of the Mayor thereof.

"This order is peremptory.

"Given under my hand and official signature this
15th day of June A.D. 1936.

(Seal) "[Sgd.] W. H. BLAINE,
*Judge Provisional Monthly and Probate
Court, Territory of Marshall.*"

By virtue of this illegal decree or order of the court, the Curator of Marshall Territory, Mr. Monroe Marshall, addressed a letter to the heirs and heiresses of the late I. Winslow Marshall, whose interest was pending before the court; which said letter of the Curator aforesaid, marked by Court Exhibit "C," is hereunder set forth verbatim:

"No. 136/12/36 CURATOR'S OFFICE
MARSHALL TERRITORY,
July 2nd, 1936.

"THE HEIRS OF THE LATE
I. WINSLOW MARSHALL,
MARSHALL CITY.

"This is to inform you, that Estate of the late deceased I. Winslow Marshall of this city has been opened and turned over to me as Curator of Intestate Estates, upon a petition from the Mayor of the City Corporation of Marshall, for administration. You are therefore requested upon the receipt of this communication to furnish me with a true and correct list of the *real* and personal, Inventory of said Estate.

"I am,

Yours obediently,

[Sgd.] J. MONROE MARSHALL
Curator, Marshall Territory."

A careful scrutiny of the records in this case will not fail to show, quite surprisingly, that the foregoing letter of Mr. Monroe Marshall, the Curator, written after final "adjudication" of the case, serves as the ONLY notice to the heirs and heiresses of the late I. Winslow Marshall, of the institution of proceedings which so vitally affected their interest. Consequently, even though the matter had been "determined," the said heirs and heiresses felt that the statute requiring service of notice on opposite parties in a cause had not been complied with either by the petitioner or by the trial court. They therefore filed a motion on the 20th day of July, 1936, "to dismiss the action for want of jurisdiction," that is to say, after receipt of the letter aforesaid from the Curator purporting to serve as notice to them; which motion, marked exhibit "D," reads as follows:

"REPUBLIC OF LIBERIA,
MARSHALL TERRITORY,
MONTERRADO COUNTY.

In the Provisional Monthly
and Probate Court, Mar-
shall Territory, sitting in
its Probate Division, July
term A. D. 1936.

*"Before His Honour William H. Blaine, Judge pre-
siding.*

"Henry C. Reeves, Mayor for the
City Corporation of Marshall, Pe-
titioner

versus

I. W. Marshall, Jr., J. B. Trinity
for his wife Williametta Marshall
Trinity, Lulu Marshall, George
Marshall, John C. Marshall, Bes-
sie E. Marshall (heirs and heir-
esses) of the late I. W. Marshall
and Bessie E. Marshall (widow),
respondents.

Petition for the
Administration
of the Intestate of
I. W. Marshall
deceased

"Motion to dismiss action for want of jurisdiction.

"Respondents in the above entitled cause respectfully

motion this Honourable Court to dismiss the petition as filed by petitioners and discharge them with costs against said petitioners for the following legal reasons to wit:

"1. Because respondents say that this court has not acquired jurisdiction over the said respondents, in that they have not been regularly summoned to appear in order to defend their interest before this Honourable Court, in keeping with law. And this the respondents are ready to prove.

"2. And also because respondents say that they have not been furnished with a copy of the said petition and other documents filed in connection with this action, in keeping with the expressed provision of law thereby giving them notice of the facts petitioners intended to prove and affording them the opportunity of answering same. And this the respondents are ready to prove.

"3. And also because respondents say that it is a fundamentally established fact in legal jurisdiction that causes of action *ex contractu* survive while *ex delictu* die with the testator; the subject matter of petitioner's petition being alleged to be based on a contract, it is illegal to seek remedy therefore by a petition in the probate division of the court the only remedy opened to the said petitioners, if at all, would be by an action on the contract before a law court. Respondents therefore pray that this Honourable Court dismiss the entire proceedings for want of jurisdiction over the said cause of action, not within the scope of the form of action chosen as well as the proper division of court to adjudicate same. And this the respondents are ready to prove.

"4. And also because respondents say that the probate division of this Honourable Court has no jurisdiction over actions growing out of contracts neither could such an action be instituted by means of petition

such as has been filed in this case. And this the respondents are ready to prove.

"Wherefore respondents pray that in view of the foregoing this Honourable Court dismiss this action with costs against petitioners. And this the respondents are ready to prove.

"Dated this 20th day of July A.D. 1936.

"Respectfully submitted,

[Sgd.] I. W. MARSHALL, JR., J. B. TRINITY for his wife Williametta M. Trinity, Lulu Marshall and B. E. Marshall, Heirs and Heiresses and widow of the late I. W. Marshall, *respondents*.

[Sgd.] J. S. TOOMEY,
Attorney for respondents."

"REPUBLIC OF LIBERIA,
MARSHALL TERRITORY,
MONTSERRADO COUNTY.

Office of the Justice of the
Peace, Marshall City.

Henry C. Reeves, Mayor for the
City Corporation of Marshall, pe-
titioner

versus

I. W. Marshall, Jr., J. B. Trinity
for his wife Williametta Marshall
Trinity, Lulu Marshall, George
H. Marshall, John C. Marshall,
Bessie E. Marshall (Heirs &
heiresses) of the late I. W. Mar-
shall and Bessie E. Marshall
(widow) respondents

Petition for the
administration of
the Intestate Es-
tate of I. W. Mar-
shall, deceased.

"AFFIDAVIT.

"Personally appeared before me the undersigned Justice of the Peace for Marshall Territory, J. S. Toomey, Attorney at law of counsel for respondents in the above entitled cause and made oath according to law, that the allegations set forth and contained in in the foregoing Motion for the dismissal of the above

mentioned petition, are true in substance and in fact to the best of his knowledge and belief.

“Sworn to and subscribed before me in the City of Marshall, County and Republic aforesaid, this 20th day of July A.D. 1936.

“[Sgd.] D. F. WRIGHT,

*Justice of the Peace, Marshall Territory,
Montserrado County, Republic of Liberia.*

“[Sgd.] J. S. TOOMEY,

Deponent,

Counsel for respondents.”

There is nothing whatever in the entire record to indicate in what manner the trial judge disposed of this very important motion of heirs and heiresses of the late I. Winslow Marshall who were, by operation of law, respondents before him by virtue of the petition of Mr. Henry C. Reeves, Mayor of the City Corporation of Marshall. It was naturally in consequence of this illegal conduct of the judge of the court below that the plaintiffs-in-error, seeking the remedy prescribed by our laws, petitioned His Honor Samuel J. Grigsby, the Justice then presiding in chambers, for a writ of error, which was ordered to be issued and upon which this case is before this Court for hearing.

In view of the disfavor with which this Court has hitherto looked upon the granting of writs of error as such, as is evidenced by our opinions in the case *Wodawodey v. Kartiehn*, 4 L.L.R. 102, New Ann. Ser. 105-12 (1934), and the case *Markwei v. Mohammed Amine*, 4 L.L.R. 199, 2 New Ann. Ser. 28-33 (1934), in which latter case the principles set up in the former were upheld and confirmed, we have decided to observe for the benefit of those who will misunderstand the position taken by us in this case, that whilst in the case mentioned above the parties applying for the writs of error were afforded adequate opportunity to avail themselves of the procedure prescribed by our statute, that is to say, to move by regular

appeal, which they failed or neglected to do, the contrary is the case in the present situation, where, as has been shown, the heirs and heiresses of the late I. Winslow Marshall were not, directly or indirectly, notified or summoned to appear and defend their interest; in other words, they *did not* have their day in court. Evidently, there was no other remedial procedure under our statute, in the circumstances, to which said heirs could have resorted, save that of applying for a writ of error. See also cases *Maurice v. Diggs*, 2 L.L.R. 3, 1 Ann. Ser. 8-10 (1908); *Murdoch v. Tubman*, 4 L.L.R. 179, 2 New Ann. Ser. 5-16 (1934).

Under the aforementioned circumstances this Court feels that it was a gross and reversible error on the part of the trial judge to have taken up, *ex parte*, the petition of petitioner Reeves, Mayor of the City Corporation of Marshall, without notice duly served on plaintiffs-in-error, respondents in the court below, whose interests were seriously involved, and thereby to have deprived them of their constitutional right. We are therefore of opinion that the ruling of the court below should be reversed with costs against the defendants-in-error; and it is hereby so ordered.

Reversed.