

WILLIAM ROSS and ELLEN R. ROSS, Plaintiffs-in-Error, v. LEWIS BURKE ROBERTS and JOSEPH W. BROWN, Judge of the Monthly and Probate Court, Sinoe County, Defendants-in-Error.

WRIT OF ERROR TO THE MONTHLY AND PROBATE COURT OF
SINOE COUNTY.

Decided February 17, 1932.

1. Where it becomes necessary for administrators of an estate to apply to court for an order of sale of real property to meet claims, although the right of purchase is a right to which all citizens are entitled, yet the administrators can only purchase from third parties and not from themselves.
2. The unconditional withdrawal of a deed offered for probate by the grantee is equivalent to an abandonment of all legal right to the property in question.

A decree of the Monthly and Probate Court of Sinoe County admitted to probate a deed from Ellen R. Ross to Lewis Burke Roberts, now defendant-in-error. On appeal to this Court, the case was remanded to the Circuit Court to receive evidence as to the genuineness of the probation of such deed. The Circuit Court reversed the decree of the Monthly and Probate Court. On writ of error, this Court *affirmed*.

MR. JUSTICE GRIGSBY delivered the opinion of the Court.

This case comes up from the Monthly and Probate Court, Sinoe County, sitting October 9, 1929, by writ of error, to the April session of the Supreme Court, 1930.

At the call of the case for hearing during said session, the same appeared to have been so badly conducted by the trial judge in his glaring efforts to arbitrarily refuse to admit all the facts in connection with the probation of said deed, that the counsel for both the defendant- and plaintiff-in-error agreed to have the matter remanded to better enable this Judicature to arrive at substantial jus-

tice. Accordingly a mandate was issued and served on the resident Circuit Judge of the Circuit Court of the Third Judicial Circuit commanding that he assign a day for the admission of evidence as to the genuineness of the probation of the said deed under consideration, as its purported legality appears to be highly seasoned with the essence of fraud. On the day assigned for the reopening of the matter, the defendant-in-error being aroused to a sense of responsibility for his wicked, diabolical acts endeavored to seek refuge under a withdrawal of the purported transfer deed and abandon the prosecution. Yet the trial judge proceeded to hear and record evidence of the plaintiff-in-error, and enter judgment reversing the decree of the Judge of the Monthly and Probate Court which admitted to probation a deed from Ellen R. Ross to Lewis Burke Roberts, defendant-in-error, for lot No. 405 and as such transmitted the entire records to the present session of this Tribunal. According to the docket, this case being first in order of adjudication, when called for hearing, counsel for William Ross, plaintiff-in-error, motioned this Court for judgment by default:

1st. Because when the case was called on the 22nd day of June, 1931, by the Judge of the Circuit Court, Third Judicial Circuit, Sinoe County, in compliance with the mandate from this Court, at its April term, 1931, ordering the hearing of evidence *pro et con* in the above entitled course, Lewis Burke Roberts, defendant-in-error appearing in person, announced his abandonment of the cause thereby withdrawing his right to the probation of said deed from Ellen R. Ross to himself. Minutes of second day's session, Circuit Court, Third Judicial Circuit, in chambers, Equity Division, June 23rd. Court's Decree by Stephen Dickerson, Judge, Third Judicial Circuit, Sinoe County.

2nd. Because since the silencing of Counsellor N. H. Sie Brownell, who is the counsel for defendant-in-error, by this Court on the 25th of November last,

he has failed to file a motion for continuance or retain the service of another counsellor to appear for him at the calling of the case, said case having been bulletined since the 23rd of November, 1931. Revised Rules of Supreme Court XI, par. 2.

In view of the deprivation of the legal and inherent rights and privileges which plaintiff-in-error possesses in lot No. 405 by glaring efforts of dishonest, fraudulent and corrupt practice, injected into the Probate Court by defendant-in-error, this has awakened a considerable degree of alarm for the safety of public interest. The object of the establishment of the said court is to avoid a waste of the estate of decedents; to admit to probation all genuine wills, deeds and other documents legally entitled to probations and registration; to protect the rights of widows and orphan children, as well as to grant a more or less extensive control of the estates of minors and other persons who are under the special protection of the law; and to grant letters testamentary to any citizen of good moral standing to administer intestate estate. Yet how often these sacred responsibilities are soon forgotten and pass into the hands of those who seek to enrich themselves with the personal property and effects of the decedents, their widows and orphans.

The case in point reveals the following facts attending the trial in the court below. (a) David A. Mitchell said that he knows nothing of plaintiff-in-error transferring lot No. 405 to her uncle Lewis Burke Roberts. He only knew of being asked to sign as a witness to an agreement by L. B. Roberts, that no advantage be taken of Ellen Ross (his niece) and that he had been greatly deceived to be informed subsequently that the said agreement for probation was proven to be a transfer deed. (b) L. E. Mitchell said that he knows nothing of the transfer deed; he was asked by Mr. Lewis Burke Roberts to witness a lease for a room in the house of Miss Ellen Ross built on Lot No. 405 and did not read the lease as it was explained

to him by the grantee; having confidence in him, he signed as a witness. And that he was surprised at finding the purported lease agreement to be a transfer deed. (c) D. E. W. Thomas, who was put on the stand, said that he was asked by Mr. Lewis Burke Roberts to witness a paper which was lying on the bench, which was explained to be a deed which Ellen R. Ross had signed; he asked if she agreed to the transfer; she said yes, but he did not remember her saying it was a transfer for Lot No. 405. (d) William Ross in his testimony said that he is the father of Ellen R. Ross and at the time the fraudulent deed was offered for probate he was not in Greenville, but when he returned his daughter told him that her uncle asked her to allow him to lease two rooms in her house and instead of a lease, he is endeavoring to pass through court a transfer deed for Lot No. 405 and she has no intention to sell it to him. (e) L. B. Roberts, the purported grantee, said that after the death of the late Isaac Roberts, the Judge of the Monthly and Probate Court appointed the following persons administrators of his estate: D. E. W. Thomas, John T. Mitchell and himself. Shortly thereafter he secured the services of an attorney at law, to write a transfer deed for Lot No. 405 from Ellen R. Ross to himself with the understanding that after she signed and the deed was passed through the court he would pay her the amount of one thousand dollars for said right or transfer. (f) Ellen R. Ross, who was put on the stand, said that she signed an agreement in favor of her uncle L. B. Roberts for the use of two rooms in her house on Lot No. 405 and that she has never transferred the said lot to her uncle and that her mother's original deed for the said lot was kept by her cousin, the late Isaac Roberts; as such it must be in the possession of L. B. Roberts, he being one of the administrators of the said estate. And because she revealed his fraudulent acts to the public, he threatens to do her bodily harm.

This Court agrees that it is quite natural for Lewis

Burke Roberts, the grantee, to have induced the grantor, in his endeavors by deceitful and fraudulent means to assume such a wicked and diabolical attitude towards his niece, thereby making her his prey because she could never believe such unscrupulous dealings would be undertaken by her maternal uncle against her interest.

What is strange to this Court is that the witnesses to the deed of transfer should set up a plea of ignorance to its genuineness, confiding in the integrity of the grantee's explanations that it was a lease agreement for two rooms without perusing it for their safety. This carries an abiding conviction of connivance or at least gross negligence. It appears that although the court's attention was called to the spuriousness of the deed by the objector, yet the Probate Court ordered its probate.

The records prove that the grantee and D. E. W. Thomas were administrators of the estate of the late Isaac Roberts and that the said decedent had a collateral warranty claim in lot No. 405. These facts being clear to the mind of the judge of the said Probate Court from the testamentary letters granted and inventory of the real property and personal effects taken, he should have preserved the purity of the court by reviewing the acts of the defendant-in-error with strong disfavor. Being administrators, they became the legal representatives of the real property and personal effects of the said estate which decedent acquired during his natural life. If, however, the personal effects proved inadequate to meet the liabilities so as to cause the administrators to apply to the court for an order to dispose of real property, the right of purchase is a privilege offered to all citizens, the administrators excepted; they can only purchase from a third party as they must execute the deed and in the event it can be proven that the transaction was fraudulent, then their acts become null and void.

The withdrawal of the deed by grantee in the Circuit Court when it was duly convened to hear evidence *pro et*

con in this case is equivalent to abandonment of all the legal rights on the part of defendant-in-error.

- (a) This Court therefore acknowledges the title of the grantor.
- (b) And that there has been no intention on her part to transfer her right of lot No. 405 to any person.
- (c) That the transaction has been proven to be fraudulent by irresistible evidence.

Therefore this Court adjudges that the decree of the court below is affirmed and the grantee ruled to pay all legal costs in this action, and it is so ordered.

Affirmed.