

WILLIAM ROSS (The Father), Plaintiff-in-Error, v.  
LEWIS BURKE ROBERTS (Grantee), 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.

[Undated.]

1. Any person who meddles or interferes with the estate of an intestate without authorization of the Monthly and Probate Court thereby becomes liable for the payment of all debts owed by the deceased.
2. It is the duty of an administrator to make known to the court any property found in the estate of the intestate which belongs to other persons.
3. The administrator of an estate cannot purchase for himself property forming part of the estate, as it is he who must execute the deed of administration.
4. The rule allowing a person objecting to probate of a deed ten days to complete his objections was merely intended to fix a time limit and not to be construed as a bar to objectors completing their objections forthwith.
5. It is error for a court to refuse to grant a motion for continuance based on the absence of material witnesses.

Plaintiff objected in the Monthly and Probate Court of Sinoe County to the probate of a deed from his daughter Ellen R. Ross to the defendant. The objections were overruled, and the case has been removed to this Court by writ of error. Counsel for both parties have filed stipulations that the case be remanded to the court below to ascertain the facts. Stipulations of counsel confirmed and *case remanded*.

*E. Emmons Dixon* for plaintiff-in-error. *N. H. Sie Brownell* for defendant-in-error.

MR. JUSTICE GRIGSBY delivered the opinion of the Court.

This case comes from the Monthly and Probate Court, County of Sinoe, to this Judicature by a writ of error in

which William Ross, the father of Ellen R. Ross, plaintiff, claims ownership to Lot No. 405 situated in the City of Greenville, County and Republic of Liberia aforesaid.

It appears from an inspection of the records that the lot under consideration was bought by Isaac Roberts, previous to his demise, from Mrs. Marshall on behalf of his late wife Mrs. W. E. Roberts.

This property the decedent, Isaac Roberts, held during his lifetime and erected a dwelling house thereon in which he lived up to the time of his death, August 27, 1929. The deed for said premises was kept by Mr. Roberts and was not delivered to his wife W. E. Roberts nor her daughter Ellen R. Ross, but remained in his possession up to his death.

William Ross, the father, objected to the probation of the transfer deed for lot number 405 in the City of Greenville and County of Sinoe from Ellen R. Ross to Lewis Burke Roberts for the following legal reasons:

1. Because he says that the deed offered for probation from his daughter Ellen R. Ross to Lewis Burke Roberts is fraudulently and fictitiously gotten in that the said Lewis Burke Roberts told Ellen R. Ross that he intended procuring a room in which to reside in the premises—lot number 405—and that he would write up stipulations to bind both of them, but she had no knowledge that she was signing a warranty deed in favor of Lewis Burke Roberts.
2. He further objects on the grounds that from the granting of the letter of administration to Lewis Burke Roberts up to the signing and offering of the deed for probation it is not twenty days in keeping with the statutory laws of the Republic controlling sale of realty by administrators, and further that the administrator had not complied with other requisites in the handling of the estate; and that this disregard of the statute has a tendency to create corruption in the management of the estate.
3. The objector contends further that the said Lewis

Burke Roberts to whom the deed is being transferred is one of the administrators of the intestate estate of the late Isaac Roberts and as such cannot purchase this property, which is under direct control of the aforesaid Lewis Burke Roberts, who is thus attempting to do what the intestate failed to accomplish during his lifetime.

4. The probation was further objected to because the intestate Isaac Roberts had a collateral warranty claim over lot number 405 so that Lewis Burke Roberts, one of the administrators of the estate, cannot, prior to the rendition of their closing report, take possession of or purchase said premises from Ellen R. Ross.

The objections being overruled by the judge of the Probate Court of Monthly Sessions, plaintiff-in-error applied for a removal of his cause before this Tribunal by a writ of error and strongly contends that:

“(a) His Honour the Judge of the Probate Court, one of the defendants in error, in his ruling, opinion and decision rendered on the 9th day of October, A. D. 1929, erred in that no evidence written or oral was offered by the grantee to overrule the objections set up against the probation of the deed by the plaintiff-in-error.

“(b) His Honour, one of the defendants in error, further denied plaintiff in error's written motion for continuance until the next term of court on account of material witnesses being absent and who could not be had within the two days—i.e. from the 7th October to the 9th day thereof—given Plaintiff-in-error for the hearing of the objections; but forced plaintiff-in-error to take the matter on the 3rd day of the session of the court; and notwithstanding plaintiff-in-error applied for a subpoena and the subpoena was returned with witnesses in part available; and notwithstanding the law offered in support of ob-

jections, the hearing of the evidence was denied and the court ruled against plaintiff-in-error.

- “(c) It is further contended that it was shown to the court below that grantee clandestinely, deceitfully and illegally obtained his purported transfer deed and presented same to the court for probation and registration without procuring written or oral testimony of the grantor to verify or prove the validity of the purported transfer deed showing that the objections were false and that the transfer as well as his acts were valid.”

The statutory laws of this country regulating the Monthly and Probate Court plainly declare that no person or persons shall meddle or interfere with the estate of any person dying intestate (except to take a true and correct inventory of all the real and personal estate) unless authorized so to do by the said court for the county wherein such intestate resided, and any person so doing shall thereby become liable for the payment of all the debts due by the deceased and for the respective shares of all the natural or legal heirs to such estate. After the demise of an intestate it is the duty of the Probate Court to appoint an administrator or administrators who shall give bond and security in double the estimated value of said intestate estate for the faithful performance of all the duties connected therewith as follows:

“He shall make a correct statement of all and singular the property and effects of the deceased; whatever there is that is perishable he may sell at auction after giving notice by advertisement in three of the public places in the county for the space of twenty days; such sale may at the discretion of said administrator or administrators be made at a credit not to exceed six months on bond and sufficient securities for the payment thereof. He shall make returns to the next term of the court of his and all other matters and doings

connected with said estate. And should it be found that the said deceased was so indebted as to make it necessary that further sale of property should be had, then he shall be ordered by the court to sell any or all of said estate for the payment of such claims."

Therefore these duties are solemn and specific and embodied in the letter of administration issued under the seal and signature of the clerk of said court by orders of the judge thereof; and nothing therein can be so construed as to authorize the disturbance or interference with estates settled or unsettled in the hands of the administrator as a trustee without the intervention of the Probate Court; to do otherwise would be exceeding the administrator's authority and he should be discouraged by the said court whenever its attention is called thereto.

It appears from the records that the deed for the lot in question being in the possession of the late Isaac Roberts up to his death, the same being the property of his late wife W. E. Roberts, it was incumbent upon the administrator or administrators in their inventory to make this fact known to the court for the benefit of the daughter of plaintiff-in-error, she being the sole heir to the property of her late mother and the immediate surviving heir by descent. Also to declare property belonging to other parties concerned.

The court should have viewed the acts of defendant-in-error with strong disfavor: being one of the administrators of the estate, he became the legal representative of the real and personal effects of the said intestate estate which the decedent acquired during his lifetime. If, however, the personal effects prove inadequate to meet the liabilities causing 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. An administrator can only purchase from a third party as it is he who must execute the deed of administration. It should be the duty of every judge

of the court to preserve the purity and impartiality of the court and to retain the respect and confidence of litigants appearing at the bar of justice with their matters for adjudication. Under the Constitution it is the right of every citizen to acquire and possess property and to defend and protect it when his safety and happiness require it and no man has the right to dispossess him thereof without due course of law.

This Court therefore is of opinion that it was manifest error on the part of the judge of the court below to have overruled the objections raised by plaintiff-in-error in the court below when they partook of matters of fact which could only be overruled for want of sufficient written or oral testimony.

This Court is also of the opinion that whenever a deed is offered for probate, the object of the sheriff's publicly announcing it at the door is to enable those having objections to its probate to come into court and make it known; in which case the objector is allowed ten days to complete said objections and an additional ten days for respondent to make his defense. In the event the objections are not completed within the ten days granted, the same is tantamount to a waiver and the deed is ordered probated. This is merely intended to fix a time limit to parties having objections and not to be construed as a bar to objectors completing their objections forthwith if the requirements of the law make it possible.

It was error for the judge to have refused plaintiff-in-error's motion for continuance because the law has cogently laid out the grounds for which a cause may be continued, viz.:

1. Inability to obtain the evidence of a witness,
2. Filing amendments to pleadings which introduce new matter of substance,
3. Illness of counsel or surprise from unexpected testimony.

It appears also that notwithstanding the original docu-

ments for the said parcel of land were deposited with the decedent for safekeeping for and on behalf of Ellen R. Ross, yet it seems that the said document was clandestinely removed by the defendant-in-error from the batch of other documents.

It appears also that notwithstanding the court's attention was called to the act of the administrators, yet the records prove that the trial judge failed to employ the use of the machinery of the court to have matters rightly placed before it for adjudication to the best interest of those concerned.

While it is an admitted fact that it is the power of the court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for decision, yet its decision must be based on some principle of law or fact.

And a finding without evidence, as in this case, is arbitrary and useless and an exercise of arbitrary power and places the parties to this litigation at great disadvantage. In consequence of which, at the call of the case, R. Emmons Dixon, Esq., counsel for plaintiff-in-error, and N. H. Sie Brownell, Esq., for defendant-in-error, respectfully submitted that in view of the fact that fraud is alleged to have attended the execution of the deed, the basis of this suit, said counsels have filed stipulations that said case be remanded to the court below in order that the evidence touching said allegation of fraud attending the execution of the deed in question may be sifted and said evidence be sent to this honorable Court to enable said Court to more intelligently and legally adjudicate the same. Stipulations of counsel are hereby confirmed and case remanded. Cost to follow final decision. And it is hereby so ordered.

*Remanded.*