

HEINRICH ROTTGER, Agent for MESSRS. WEST & COMPANY, LTD., Plaintiff-in-Error, v. SOLOMON T. WILLIAMS, and His Honor EDWARD J. SUMMERVILLE, Circuit Judge, Second Judicial Circuit, Defendants-in-Error.

WRIT OF ERROR TO THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
GRAND BASSA COUNTY.

Decided January 22, 1937.

1. A bill of exceptions need not necessarily be approved within ten days after final judgment, provided it can be satisfactorily established that it was tendered within ten days after said final judgment.
2. Should the trial judge neglect or refuse to endorse upon a bill of exceptions the date it was tendered to him for approval, the appellant may apply to the Justice presiding in chambers for a mandamus to compel him to supply the omission; and
3. Should he thereafter neglect or refuse, the Justice presiding in chambers may cite such judge to appear before the full Bench of this Court to be punished if necessary.

On writ of error to the Circuit Court of the Second Judicial Circuit in a proceeding to open an estate and distribute assets, *judgment reversed and cause remanded* for retrial.

C. B. Reeves and *W. E. Dennis*, for appellants. No appearance for appellee.

MR. JUSTICE GRIGSBY delivered the opinion of the Court.

This case was appealed from the Circuit Court of the Second Judicial Circuit, Grand Bassa County, sitting in its Probate Division, at its November term, 1934.

The history of this case reveals that one J. N. Pratt, a trader at Little Kola on the Bassa Coast, as a contractor for Messrs. West & Company, Ltd., died February 13, 1931, leaving no heirs. In the month of March of the same

year, Counsellor C. B. Reeves, attorney-at-law for Messrs. West & Company, Ltd., petitioned the court to open the estate of the said Pratt, alleging that the deceased died indebted to West & Company, in the sum of two hundred pounds sterling. The petition contains other representations which will be hereinafter referred to.

The court ordered the estate of Pratt opened, and appointed Messrs. C. Q. Papafia and George Pepples administrators.

Counsellor Reeves for West & Company then complained against S. T. Williams for interfering with the intestate estate. Judge Mitchell, of the Monthly and Probate Court, heard several witnesses in support of this charge, and then gave a conditional judgment which was in essence:

That the said S. T. Williams, and other persons whose names are not relevant to the present proceedings, should give bond to the creditors for any liabilities adjudged against them for having meddled with said estate.

Immediately after giving the said ruling, Attorney Manley for S. T. Williams arose and informed the court, that Williams demanded his constitutional right to produce witnesses to break down what the witnesses for West & Company had said. It appears from this announcement, that Judge Mitchell made the foregoing ruling conditioned that unless Williams would prove his innocence he would be held responsible for all the debts and legacies of said estate. Although such conditional judgment is not enforceable, it appears that Williams was imprisoned and subsequently released under bond. It further appears that he attended court from time to time with the hope that his side of the case would be heard, but from the records, nothing more is shown to have happened until July 4, 1932, when Judge Worrell reaffirmed the judgment of Judge Mitchell rendered during the

month of June, 1931, and ordered Williams held in custody until he gave bond in the amount of two thousand dollars. The record is silent as to what happened to Williams afterwards; but Williams avers that he upon a subsequent investigation had by Judge Worrell was released and his bill ordered paid. In this connection Williams called the attention of the court to the fact that there was a considerable amount of money in the hands of West & Company, Ltd., due the estate, account of commission on produce paid to said firm. The administrators said they knew nothing of this amount, and that the only assets of the estate were those mentioned on the inventory. An extraordinary feature of these proceedings is that the inventory given the administrators does not appear to have been signed by the appraisers, whereupon the clerk was asked for the original and he replied that no original was ever turned over to him. It further appears that a subpoena was issued for the appraisers and the ex-clerk of court. On oath both of the appraisers said respectively, that the inventory they took showed a total sum of two hundred and fifty pounds sterling while the copy showed that said amount had been reduced to one hundred and fifty-eight pounds sterling; that when they returned from Little Kola they reported to Judge Mitchell, who ordered that they deliver the inventory to the agent of West & Company, which they did; and that since that day they had never seen the inventory; that the inventory taken by them was in handwriting and signed by them, whereas the copy in court was typewritten and did not show that it was signed by them. The court became convinced that there was something wrong about the whole matter; however, it arrived at the conclusion, that if West & Company's claim against the estate of J. N. Pratt had been proven, then Williams' claim had also been proven, so it has the considered opinion of the lower court that all of the assets consisting of the commission due Pratt, on the private account of West,

the amount for produce turned over to West after Pratt's death—the goods in his shop at Little Kola as well as the amount of the deduction made by Messrs. West on the produce turned over to him by the administrators—be pooled, and the creditors be paid therefrom *pro rata*. Plaintiffs-in-error being dissatisfied with the said judgment, excepted to the said ruling and announced a regular appeal to the Honorable the Supreme Court of Liberia within the ten days allowed by statute.

Counsel for plaintiff-in-error prepared his bill of exceptions for the approval of the judge, but it appears that in consequence of the judge's being inaccessible, the counsel for plaintiffs-in-error could not secure the approval of the said bill of exceptions within ten days.

When said counsel finally met the judge, he informed him of his several fruitless attempts, within ten days, to meet him for the approval of his bill of exceptions and of his failure to so do.

The Court here desires to correct what seems to be a growing error in some quarters that the bill of exceptions in a case must be approved within ten days after final judgment when, according to law, it should be *tendered* within ten days. Act of 1893-94, 10 (2nd), § 1.

It appears to us that if it can be proven by a registered letter receipt or otherwise that the bill of exceptions was indeed *tendered* to the judge of the trial court within ten days, then the date of the judge's approval does not matter. Provided, however, that should the judge neglect or refuse to endorse thereon the date upon which it was tendered, appellant has a right to apply to the Justice presiding in chambers for a mandamus to compel the trial judge to so do, and if the refusal or neglect can be shown to have been wilful, the full Bench, upon the recommendation of the said Justice, may further inquire into the trial judge's neglect or refusal and punish him therefor.

However, counsel for appellant did not pursue the

course above indicated, but came up here by writ of error.

Neither from the assignment of errors nor from the pleadings filed in the court below can we ascertain with sufficient certainty the real issues which the parties desire to submit for the consideration of the Court. We have decided therefore, that in order that substantial justice may be meted out to the parties the judgment of the court below should be reversed, and the parties ordered to replead, costs to abide final judgment following the filing of the new pleadings; and it is hereby so ordered.

Reversed.