

DECISIONS AND OPINIONS
OF THE
SUPREME COURT
OF THE
REPUBLIC OF LIBERIA.
APRIL TERM, A. D. 1916.

N. W. WILLIAMS, Appellant, v. C. E. WILLIAMS, Appellee.

ARGUED MAY 2, 1916. DECIDED MAY 6, 1916.

Dossen, C. J., and Johnson, J.

1. The wife can not institute a suit against her husband or give evidence against him except in cases of particular necessity, as where the wife would otherwise be exposed to personal injury, etc.
2. The appointment of a guardian may be revoked, whenever through misconduct, or other cause, he becomes incapable to act, or when the interest of his ward requires his removal.
3. A guardian who is accused of malfeasance in office, should be allowed the privilege of explaining the matter and be given an opportunity to defend his reputation before the court appointing him.
4. In matters of probate, notice to interested parties that a petition has been filed against them, and that their presence is required in court, is a sufficient summons.
5. Although a matter may be within the discretion of the court the arbitrary exercise of such discretion may be reviewed by a higher jurisdiction.

Mr. Justice Johnson delivered the opinion of the court:

In re Report of the Guardians of the heirs of the late Prince R. Flowers—Appeal from Judgment. This is an appeal from the judgment of the Monthly and Probate Court of Montserrado County, rendered at its February term, A. D. 1916, dismissing the said N. W. Williams and C. E. Williams guardians of the infant children of the late P. R. Flowers of Brewerville, and appointing

others in their stead; and is brought up to this court for review by the said N. W. Williams one of the guardians as aforesaid.

The facts necessary to be stated are as follows: Sometime in the year 1915, the appellant and his wife C. E. Williams, appellees in this case, were appointed guardians of the infant children of the late P. R. Flowers of the settlement of Brewerville, in the County of Montserrado, by the Monthly and Probate Court of Montserrado County, their bonds being duly filed in said court.

At the February term of said court, A. D. 1916, the said C. E. Williams reported in a letter to the judge of said court that the wards were being illtreated, and were not being sent to school; and that a portion of the coffee picked from the lands belonging to said wards had been converted by the said N. W. Williams to his own use; and lastly that a bill sent in against the estate was spurious; and for these reasons suggested a change of guardians. Whereupon the court called upon said N. W. Williams to answer the charge, and after hearing the statement of the said C. E. Williams which does not appear to have been made upon oath, dismissed the said guardians and appointed others in their stead; notwithstanding the fact that appellant denied the truthfulness of the charge alleged against him, and objected to the court's receiving the statement of the said C. E. Williams on the ground that a wife cannot give evidence against her husband.

The appellant, in his bill of exceptions, submits for the consideration of the court the following legal points, viz.:

1. That the court below erred in entertaining a complaint filed against him by complainant who is his wife.
2. That no legal notice was given him that such complaint was filed against him.
3. That the court having heard the complaint dismissed him as guardian, and appointed others in his stead illegally.

Without entering extensively into the subject of husband and wife, and the laws relating to their rights, duties, liabilities and disabilities, we will remark that it seems to be a settled rule of law, that a wife cannot institute a suit against her husband or give evidence against him except in certain cases.

In the case *Sedgwick v. Walkins* (1 Ves. 49) Lord Thurlow said that for security of the peace, *ex necessitate*, the wife might file

an affidavit against her husband, but that he did not know one other case, either in law or chancery, where the wife was allowed to be a witness against her husband.

In *Bently v. Cooke* (3 Doug. 422) Lord Mansfield said: "There has never been an instance either in a civil or criminal case where the husband or wife had been permitted to be a witness for or against the other except in case of necessity, * * * as where the wife would otherwise be exposed without remedy to personal injury."

The policy of the rule is founded partly on the necessity of preserving the peace and happiness of families and partly to protect the confidence between man and wife which is essential to the harmony of the marriage relation. Although the rule has been somewhat modified in England and in some of the American states, it has been steadily adhered to in Liberia, with a few exceptions under which this case does not fall.

We are of the opinion, therefore, that the court below erred in admitting the statement of the said C. E. Williams made against appellant.

Referring to the point raised by appellant with respect to his removal or dismissal from the guardianship, the rule seems to be that the appointment of a guardian may be revoked whenever through misconduct or other cause he becomes incapable to act; or when the interest of his ward requires his removal. The practice is to cite the accused to show cause why he should not be dismissed. In the case *White v. Harmon* (Lib. Ann. Series, No. 1, p. 20) it was held, that in matters of probate, notice to interested parties that a petition had been filed against them, and that their presence was needed in court, is a sufficient summons, without the necessity of issuing formally a regular writ of summons.

Where the party is accused of malfeasance in office, he should be allowed the privilege of explaining the matter, and be given an opportunity to defend his reputation before the court appointing him. (American Probate Law, p. 497.)

While the court should carefully and zealously guard the rights of infants, they should, on the other hand, avoid doing an injury to persons appointed as their guardians by hasty and irregular proceedings, especially in cases where grave charges of malfeasance are made against the latter.

It was held by counsel for appellant that the removal was within the discretion of the court, and, consequently not appealable. This, while true in practice, is subject to the rule laid down in the case *Wright v. Bacon, Debt* (1 Lib. L. R. 477): "That although a matter may be within the discretion of the court that arbitrary exercise of such discretion may be reviewed by a higher jurisdiction."

In the American Probate Law, it is held also that the removal is discretionary, but it also states that satisfactory cause should be shown. (American Probate Law, p. 478.)

On a careful inspection of the record, we have arrived at the conclusion that the action of the court was hasty and irregular, as the dismissal was based solely upon a statement made by the wife of appellant, which the court should not have received as evidence against her husband.

As however this court is desirous that the interests of the wards should be scrupulously guarded, the judgment of the court below is reversed and the case remanded to said court with directions that a *prochein ami* be appointed by the court for the purpose of filing a petition in their behalf and that such testimony as may be offered be heard, and such further proceedings taken as are not inconsistent with this opinion; costs to abide the results of the trial *de novo*.

E. W. Williams, for appellant.

Arthur Barclay, for appellee.

JOSEPH N. BERRIAN, Appellant, *v.* REPUBLIC OF
LIBERIA, Appellee.

ARGUED MAY 3, 1916. DECIDED MAY 6, 1916.

Dossen, C. J., and Johnson, J.

Res gestæ—*Corpus delicti*—Circumstantial evidence—Doubt.

1. Any circumstance or fact surrounding the main or principal fact, and in any degree tending to support or establish that fact, may be admissible under the *res gestæ* rule.
2. Representations of a sick person of the nature and effects of a malady under which he is laboring are receivable as original evidence whether they be made to the medical attendant or to any other person.
3. Declarations or acts accompanying the facts in controversy, as conversations contemporaneous with the facts or the complaint of the injured party both as to bodily suffering and the circumstance of the occurrence form a part of the *res gestæ*, and are admissible in evidence.