

JOSEPH J. WRIGHT, E. D. WRIGHT, and E. J. E. WRIGHT, Appellants, v. ALICE L. WRIGHT, Widow of the late Z. F. WRIGHT, Appellee.

APPEAL FROM THE PROBATE DIVISION OF THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 29, 30, 1936. Decided May 15, 1936.

1. One of several owners of an estate may not be dispossessed of his share except by his own voluntary deed, or by a judgment of his peers, or the law of the land.
2. Either party to an award may file written objections thereto at any time before judgment.
3. The objections may be based upon corruption in the arbitrators, gross partiality, want of notice of time and place, or error in law.
4. A widow is entitled to one-third of all the real estate of her deceased husband during her natural life.
5. Whenever any such objection is filed, the court is legally compelled to hear and determine same.
6. If the objections be sustained, the court may either set aside the award, send it back to the same or other arbitrators with or without instructions, or order the case tried by a jury; but if the objections be not sustained the award should be confirmed. But the court has no power *sua sponte* to modify an award.
7. Should a widow consent to receive less in fee simple there should be sufficient evidence adduced that she had waived her right to a larger portion of the realty in consideration of the title in fee simple; and that the heirs agreeing thereto had waived their reversionary interest to that part of the estate.

On appeal from a judgment of the Circuit Court modifying an arbitrator's award upon a petition for admeasurement of a widow's dower, *judgment reversed and case remanded* for new trial with instructions.

*S. David Coleman* for appellants. *A. B. Ricks* for appellee.

MR. JUSTICE GRIGSBY delivered the opinion of the Court.

This case originated in the Probate Division of the Circuit Court of the First Judicial Circuit for Montserrado

County, upon a petition from Alice L. Wright, widow of the late Z. F. Wright, for properties accruing to him as one of the heirs of the late Martha A. Wright, his grandmother, and the late James B. Wright, his father.

The petition was taken up by His Honor Nete-Sie Brownell on the 9th day of October, 1934, who appointed Thomas J. R. Faulkner as arbitrator. On the 23rd day of January, 1935, said arbitrator filed an award (*q.v.*) to which appellants, objectors in the court below, filed objections.

It appears that the position taken by objectors, now appellants, was to show that the arbitrator had not acted in keeping with law, neither had he made a careful, thorough and impartial investigation of all the facts in connection therewith.

Into said objections as filed, embodying matters of both law and fact, appellant's counsel requested that, in keeping with law, the court below should make a summary investigation; but the court refused to go into the matter and proceeded to render final judgment upon said award after having modified same.

The Court will now address itself to the salient points embodied in appellants' bill of exceptions. Count 1 complains that:

"The late Z. F. Wright at the time of his death was not entitled to any further portions of the property from the estate of the late Martha A. Wright, their grandmother, and James B. Wright, their late father, as he had disposed of, and enjoyed the best of, what properties there were belonging to those estates; consequently his widow would not be legally entitled to recover dower from the remaining of the property belonging to the said estates."

From a careful perusal of the records of the case at bar it was strongly contended by appellants that during several investigations had of the case in the court below, Z. F. Wright, the late husband of the widow, and elder

brother of appellees, had disposed of certain properties belonging to the estate in question, and had received exclusive benefits therefrom prior to his death; the position taken by appellants seems to be predicated upon information contained in a letter which reads:

“WHITE PLAINS,

MONROVIA,

May 2, 1930.

“Before HIS HONOUR W. O. D. BRIGHT,

*Judge of the Monthly and Probate Court Mo. Co.*

“SIR,

“In keeping with a mandate sent down by your court, to us G. A. Johnson and P. T. Barker of the settlement of White Plains, to go to the residence of the late Z. F. Wright of the said settlement to take an inventory of both personal and real property, we have done so and we can't find anything. We are told that the widow of Z. F. Wright has taken away everything from the house before she left White Plains, therefore we have not found anything to place on the inventory, and we are sure that Z. F. Wright did not have any real property, because his father James B. Wright gave him his portion before his demise, as the place, or land, Mr. J. O. Cassell is now on was sold to him by the late Z. F. Wright, therefore we have not found anything to place on the inventory.

“We have the honour to be,

Your Honour's Obedient Servants,

[Sgd.] P. T. BARKER & GEO. A. JOHNSON,

*Officers of the Estate of the late Z. F. Wright.”*

The aforesaid letter addressed to His Honour the Judge of the court in its Probate Division, assumes to make statements of fact which lie peculiarly within their knowledge unsupported by a scintilla of proof, which facts if true should have been proven in addition to making the mere allegations. Persons to whom an estate descend jointly, or who may acquire it by honest pur-

chase, cannot be deprived or dispossessed thereof unless by judgment of his peers or the laws of the land.

Nowhere in the records is it shown by appellants that the husband of appellee relinquished his rights and interests in the said property under litigation, which was an indispensable duty to establish the truthfulness of appellants' position.

In count 2 of appellants' bill of exceptions it is contended that on the 23rd day of January, 1935, the arbitrator appointed to arbitrate in said matter made an award in favor of the widow now appellee which was duly objected to by the respondents in this case, now appellants, which objections were not sustained.

Appellants submit that the objection filed embodying important issues of law and facts could not legally be disposed of as was done by the judge of the court below without a hearing of the issues involved.

As to the said count above referred to, the minutes of September 16, 1935, disclose the fact that prior to the rendition of final judgment, respondents' counsel gave notice to the court that they had filed objections to the court's sustaining said award. His Honor the Judge after inspection of the objections, and without hearing the points of law and fact raised, proceeded to give final judgment, before passing upon the objections.

Our statute reads:

"Either party to an award, may file his objection in writing, at any time before a judgment is rendered thereon.

"The objection may be, either corruption in the arbitrators, gross partiality, want of notice of the time and place of proceeding, or error in law, apparent on the face of the award. In all cases except in the last, the objection must be verified by affidavit.

"The court shall appoint an early day for hearing such objections, giving reasonable notice to the parties; they shall be heard in a summary way, without a

jury, and decided by the court upon the evidence adduced. The court may either confirm the award, or set it aside, as they may deem just; and, if they set it aside, may send it back to the same or other arbitrators, with or without instructions; or may cause the case to be tried by a jury." Liberian Statutes (Old Blue Book), ch. XV, p. 65, §§ 9, 10, 11.

This Court is of opinion that the judge of the trial court erred in failing to pass upon the objections duly submitted by counsel for appellants as the Statute controlling the issue does not leave it discretionary with the Judge to hear such objections, but makes it mandatory.

"Appellants say that as to count 3 of their Bill of Exceptions which excepts to the final judgment as rendered on said award, the Judge of the court below was evidently misled when he stated in count 1 of his final judgment that proposal was made by the heirs, now appellants to Alice L. Wright and James B. Wright, now appellee offering her ten acres of farm land and one town lot in fee, in the settlement of all of her interests in the Real estate descending to her late husband as one of the heirs of the late Martha A. Wright and James B. Wright, since nothing of the kind appears in the record of said case in support of any such proposal or offer; and it is a gross error on part of said Judge to order in his said final judgment the heirs, appellants aforesaid to execute deeds in fee simple to appellee contrary to the principles of ad-measuring dower.

"Referring to the said final judgment, appellants further submit that the said Judge could not legally modify the aforesaid award and his act in so doing vitiated and rendered void said award; his judgment based thereon was in consequence thereof also illegal and void.

"In further resisting the said final judgment appellants further contend that a widow's dower in the late

husband's being only to the extent of a life interest, it is irregular and illegal for the judge to order the execution of deeds in fee simple to her as heir of an estate in satisfaction of dower as has been done in this case."

Reverting to count 3 as mentioned above, this Court says that from a careful study of the records in the case, there is a lack of sufficient proof to support the allegations contained therein, and if by preponderance of evidence it was conclusively proven that proposals were made by appellants to Alice L. Wright, now appellee, offering her ten acres of farm land and one town lot in "fee simple," in settlement of all her interests in the real estate descending to her late husband, this would be in derogation of the Constitution which provides that even in cases of an insolvent estate a widow shall be entitled to one-third of the real estate during her natural life, and satisfactory evidence that the heirs had waived their reversionary rights vested in them by the Constitution after the death of the widow should have been placed before the court to warrant such a decision.

This Court says that to enjoy these Constitutional privileges marriage must not only be presumed, but proof should be put in evidence to entitle her thereto, which is wanting in these proceedings, and to lend aid to such a procedure, would pave the way to a miscarriage of justice; and it was gross error in the said judge to order, in his said judgment, the heirs, appellants aforesaid, to execute deeds in "fee simple" to appellee. Lib. Const., Art. 5, sec. 11; 1 B.L.D. 932, "Dower"; 2 B.L.D. 1199, "Fee-simple"; 2 Rev. Stat. § 1386, Admeasurement of dower; *Birch v. Quinn*, 1 L.L.R. 309, 311, 312 (1897).

Dealing with the last two counts of appellants' bill of exceptions, this Court says that it fails to see the evidence upon which the said arbitrator predicated his award, because from the records, one J. J. Edward Wright and Mrs. Alice Wright were requested to meet the said arbi-

trator, and it appears that the said J. J. Edward Wright was the only one to depose before the said arbitrator, and in connection with the said deposition was a voluntary statement of one Mrs. Mattie Barker consisting of what she heard in connection with the matter in dispute, and her said statement recorded from which the said arbitrator made his award dated 23rd January, 1935 to which objections were filed by appellants to the court sustaining said award which objections were ignored by His Honor the Judge, and he proceeded to render judgment thereon.

It is the opinion of the Court that the moment the said award was contested the statute made it imperative on the judge to appoint a day for the hearing of such objections in a summary way without a jury, to be decided by the court upon the evidence adduced, the judge's failure to pass upon said objections was erroneous. Liberian Statutes (Old Blue Book), ch. XV, p. 65, § 11.

This Court further says that it is within the competency of the trial court to confirm an award or set it aside, if the evidence is insufficient to support it; but under no circumstances is it clothed with legal authority to modify the same, as the said award is in the nature of a verdict, and will have to be remanded to the same or another arbitrator, or to a jury for modification, and the acts of His Honor the Judge of the trial court to modify the said award to the extent of ordering the execution of deeds in "fee simple" to appellee by the heirs of the said estate in satisfaction of dower, vitiated and rendered void said award as well as the judgment based thereon as the court has no power to alter or amend an award. Liberian Statutes (Old Blue Book), ch. XV, p. 65, §§ 3-11. *Birch v. Quinn*, 1 L.L.R. 309 (1897).

In view of the aforementioned irregularities existing during the course of the trial, this Court is of the opinion that the judgment of the court below should be reversed; and the cause remanded to the trial court with instructions (1) To ascertain the date of the alleged marriage

of Z. F. Wright and Alice Wright; (2) Which, if any, of the lands of the inheritance the said Z. F. Wright is alleged to have sold, were sold before the coverture, and which were sold during the coverture; (3) Whether or not the widow expressly relinquished her dower in and to the lands of the estate, if any, sold during her marriage, and, if so, what tracts of lands and their approximate value; (4) Whether or not those having the right to the reversion had consented to compromise with the widow by giving her two tracts of land in fee-simple and had evidenced said intent by deed. And upon ascertaining said facts to have the widow's dower properly assigned according to law; and it is so ordered.

*Reversed.*