KETURAH WILLIAMS - - *Appellant.*

v.

CASSANDRA MACFOY - - *Respondent.*

14*th February*, 1922.

Supreme Court in its summary jurisdiction—No jurisdiction to try Probate matters—Revocation of Probate on ground of fraud.

The facts of this case are sufficiently set out in the judgments.

Appeal from a judgment of Purcell, C.J., in the Supreme Court of the Colony of Sierra Leone.

Wright for the Appellant cites:—

The Supreme Court Ordinance, 1904 (No. 14 of 1904,[1] section 74.

The Administration of Justice Ordinance, 1876, section 11.

Ordinance No. 5 of 1866, section 6.

Halsbury, Laws of England, Vol. 1., p. 32.

Maxwell on Statutes, 3rd Edition, p. 185.

The Alina, 5 Ex. D., p. 227.

Pitt Lewis County Court Practice, Vol. II., p. 855.

Court of Probate Act, 1858.

Fisher *v.* Tulley, L.R., 3 A.C., p. 627.

Halsbury, Vol. 14, p. 213.

The Intestate Estates Ordinance, 1887 (No. 8 of 1887), sections 1 and 11.[2]

Williams *v.* Pott, L.R., 12 Eq., p. 149.

In *re* Ivory Hankin *v.* Turner, L.R., 10 Ch. D., p. 372.

Boston for the Respondent cites:—

Griffith's Married Women's Property Act, 4th Ed., *passim.*

PURCELL, C.J.

This action was originally tried before me and eventually was taken to the Court of Appeal. The judgment of the Court of Appeal delivered on the 23rd January, 1920, was as follows:—

" This is an appeal from the judgment of the Chief " Justice dismissing the plaintiff's action for the revoca- " tion of Letters of Administration granted to the defendant.

[1] Now Cap. 205, sec. 76, Vol. II, p. 1434.
[2] Now Cap. 104, secs. 2 and 11, Vol. I, p. 727.

" After hearing the evidence for the plaintiff, the learned " Judge informed counsel for the defendant that, in his " opinion, he had no case to answer.

" After reading the evidence, I am of opinion that there " was a case for the defendant to answer. I think that the " judgment of the Court below should be set aside and the " case sent back to the Court below for the Defendant to " make her defence. Costs of this appeal to the Plaintiff."

The case has been re-opened, evidence has been called on behalf of the Defendant, voluminous argument has been addressed to me occupying several days, and as a result I could only say again that I see no reason to alter the judgment I gave when this case was previously before me. In the circumstances it is perhaps as well that I should amplify this statement a little. In my opinion it is to be regretted that certain things have been omitted to be done, by the parties to this litigation, which, had they been done, would have considerably simplified the matter and made it easier to try. I refer to the fact that Plaintiff took no steps whatever to get her mother's will admitted to Probate. Had this will been proved by her, in either common form or solemn form, her position to-day would have been a vastly different one. At the same time, had this course been followed, and had the Defendant desired to challenge the Plaintiff's position, proper machinery would be put in motion, and that, too, at a period of time about fifteen years nearer the date of the happenings of these events.

Again, it is to be regretted that, when the Defendant took the necessary steps to obtain Letters of Administration, the Plaintiff did not enter a caveat; had she done this, the proper procedure could have been followed, and, in my opinion, there is no excuse for her not doing so, as apart from the Defendant's visit to her, Mr. Boston's letter was quite sufficient notice of what was almost certain to happen. The question of fact involved here is simply this. Did the Defendant swear a false statement that her father, the late Joseph Lewis, was lawfully possessed or entitled to the property in question, No. 11, Guy Street? I entertain no doubt, in fact I am absolutely clear on the point, that on the evidence given before me it would be impossible to find that, in so swearing, Defendant had sworn falsely. All these things happened a long time ago, and must be surrounded necessarily with a certain amount of doubt, but on the balance of probabilities, and such probabilities are all in favour of Defendant's statement being true.

Old Mrs. Grace Lewis never lived in the house at No. 11, Guy Street, but resided at Ascension Town, and, I believe, ultimately died there. Joseph Lewis was a cooper, a poor man in a small way, who, I think, very probably supported his mother, or in a way contributed to her support, out of his meagre income; that he became the owner of this house by operation of law is a matter which even Mr. Sawyerr cannot dispute, and he has been so hard pressed in the course of the argument that he actually at last had to take refuge in putting forward the proposition that Joseph Lewis acted as his mother's agent in collecting the rents from the tenants of 11, Guy Street, and thereby caused the statute to run in her favour, by which his mother ultimately obtained prescriptive title to this property. I have not the smallest objection to Mr. Sawyerr indulging in these fantastic flights of fancy, but I am sure he will pardon me when I say quite frankly that my natural bump of caution forbids me to follow him thither. I can only say once again that I am not prepared to find that the Defendant's sworn statement in this matter was false, and in point of fact I think it is more than probable that it is true. That of itself would dispose of this case. But there is one other matter that I think it my duty to deal with in this judgment. When this case first came before the Court, Mr. Boston took a preliminary objection, and argued that the Summary Court had no jurisdiction in Probate matters. Although at the time I overruled the objection, I stated that, in my opinion, the point was not free from doubt. It is only right to say that the point was not fully argued then, and I was informed, as indeed was the fact, that in two previous cases, viz., Walter Havest *v.* Matthew During, C. A. Innis *v.* J. W. Stewart and another, my learned predecessor, Sir Philip Smyly, ruled that the Summary Court had jurisdiction in Probate matters. With profound respect for any judgment of his from which I should always regret to differ, having considered this matter very fully from every standpoint, I cannot agree with that decision, as I have come clearly to the opinion that the Summary Court has no jurisdiction in Probate matters. This whole question really turns on the construction to be placed on sections 70, 73, sub-sections 1 to 6, and section 74 of the Supreme Court Ordinance, No. 14 of 1904[1]. Sections 70 to 73, sub-sections 1 to 6, tell us exactly what the jurisdiction of the Summary Court is, and this cannot be insisted on too strongly. To ascertain what the jurisdiction of the Summary Court is, you must rely on these two sections and various sub-sections

[1] Now Cap. 205, secs. 72, 75 & 76, Vol. II, pp. 1433 and 1434.

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and no others. Section 74 really supplies the practice of the Court, and the language of section 74 must be very carefully looked into, and it is clear that the Statutes in force in the County Courts in England on the first day of January, 1880, shall be applied in all suits, matters and proceedings in which the Supreme Court shall exercise a Summary Jurisdiction. Now, in what suits, matters and proceedings does the Supreme Court in this Colony exercise a Summary Jurisdiction? To ascertain that fact, you do not have recourse to the County Court Statutes in force in England on the first day of January, 1880, but you do have recourse to sections 70 and 75, which give you that information in the plainest and clearest terms. It has been argued by Mr. Sawyerr that, looking at the proviso of section 74, the Summary Court has jurisdiction in Probate matters by implication; carefully regarding the language of section 74, and bearing in mind what I have just stated, I can dispose of that argument in four words, " The proviso is redundant," and that is really the conclusion of the whole matter. It is not the first redundant proviso I have seen in a Colonial Ordinance, nor have I any reason to suppose it will be the last; but that it is absolutely redundant, I am well assured. It only remains for me to say that on either of these grounds, namely:—

1. That I am not satisfied that the defendant swore falsely regarding her father's ownership of the property.

2. That the Summary Court has no jurisdiction in Probate.

I dismiss this action with costs.

Addendum:

It appears I was in error in stating in this judgment that the decisions in Havest *v.* During and Innis *v.* Stewart and another were both given by Sir P. C. Smyly—it seems that one of these decisions (I am unaware which it was, but it *was* one of them) was given by the late Mr. Stallard, when Chief Justice.

(Sgd.) G. K. T. PURCELL.
22/4/21.

PURCELL, C.J.

This is an appeal from the judgment of the Chief Justice, dated April 6th, 1921.

The history of this litigation may here appropriately be summarised:—

The original Writ of Summons in this action was issued as long ago as January, 1918, over four years ago. The action was

heard before me during February and March, 1918, and on March 18th, 1918, without calling upon the Defendant, I dismissed the Plaintiff's action with costs.

The Plaintiff appealed, such appeal coming before the Court of Appeal which sat at Freetown in January, 1920, when, by a majority (I dissenting), the following judgment was delivered:—

"This is an appeal from the judgment of the Chief "Justice, dismissing the Plaintiff's action for the revoca- "tion of Letters of Administration granted to Defendant. "After hearing the evidence for the Plaintiff, the learned "Judge informed Counsel for the Defendant that, in his "opinion, he had no case to answer. After reading the "evidence, I am of opinion that there was a case for the "Defendant to answer. I think that the judgment of the "Court below should be set aside and the case sent back "to the Court below for Defendant to make her defence. "Costs of this Appeal to the Plaintiff."

The action was accordingly re-opened, and Defendant made her defence, and I subsequently delivered judgment on April 6th, 1921, again dismissing the Plaintiff's action with costs, and from that judgment the Plaintiff appeals to this Court.

It seems to me, after all that has happened, unnecessary to deal at any length with the facts of this case, which are fully set out in the judgment of April 6th, 1921—I will here only refer to them as briefly as may be.

There appear to me to be two matters raised in this Appeal, viz.:—

(1) Was the judgment delivered in the Court below against the weight of the evidence?

(2) Has the Supreme Court, sitting in its Summary Jurisdiction, jurisdiction in Probate matters?

As regards point (1). As I myself was the trial Judge, I can hardly be expected to say that the judgment was against the weight of the evidence. And, inasmuch as I have set out very clearly and very fully in my judgment which was delivered on 6th April, 1921, the reasons which induced me to come to the conclusion I did—I do not consider it necessary to again refer to them. It has been said that most men have learned that articulate speech, as a means of communicating ideas, is at best an imperfect makeshift. It is a degree better than the language of signs, and we believe it, on very slender grounds, to be several degrees superior to the thought transmission of insects or of birds. But it is quite inadequate to express anything so elusive and so impalpable as truth. The formula has yet to be invented

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by which one human being can convey to another the certain knowledge that he is not lying. The ear has yet to be created which can detect the dissonance of falsehood.

With regard to point (2). That question has also been very fully discussed in my judgment of April 6th, 1921. No argument that has been addressed to me in this Court has in any way shaken my opinion.

It was submitted that under the provisions of section 74 of Ordinance No. 14 of 1904[1], an Imperial Act of Parliament had conferred Probate Jurisdiction on the County Courts of England. The Act in question does so, but only to certain specified County Courts contained in the Schedule, and obviously such an Act cannot, and does not, confer Probate Jurisdiction on the Court sitting in its Summary Jurisdiction in Sierra Leone.

In conclusion I have only to express my regret with regard to two facts: the first is, that under the law as it stands at present in this Colony, I should be compelled to preside in this Court when a case such as this for the second time comes before it—when I have been the trial Judge on each occasion.

Res ipsa loquitur. Verb. sap.

The second is the severe illness of Mr. Sawyerr (Counsel for the Appellant), which has caused his absence; we all hope that he will soon be completely restored to health. At the same time the Appellant has not suffered, as she has had the advantage of Mr. Wright's very able advocacy.

I also regret that several of the witnesses who gave evidence before me in this case have passed to " where beyond these voices there is peace," at least so we are often told.

I might almost exclaim:—

" All, all are gone, the old familiar faces.
" I feel like one who treads alone
" Some banquet hall deserted,
" Whose guests are fled, whose garlands dead,
" And all but he departed."

In my judgment, this appeal must be dismissed with costs here and below.

McDONNELL, Acting J.

I concur.

SAWREY-COOKSON, J.

I concur.

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[1] Now Cap. 205, sec. 76, Vol. II, p. 1434.