WILLIAMS v. MACFOY

Full Court (Purcell, C.J., Sawrey-Cookson, J. and McDonnell, Ag. J.): February 14th, 1922

[1] **Courts — Supreme Court — jurisdiction — summary jurisdiction — no probate jurisdiction when sitting as a summary court:** The Supreme Court has no jurisdiction in probate matters when it is sitting as a summary court (page 38, line 28 — page 39, line 16; page 41, lines 17—20).

[2] **Jurisprudence — reception of English law — legislation — statutes of general application — statute specific to England cannot be statute of general application — Court of Probate Act, 1858 not applicable in Sierra Leone:** A statute which is specific to England, such as the Court of Probate Act, 1858 which confers probate jurisdiction only upon certain named English County Courts, cannot be a statute of general application (page 41, lines 21—27).

[3] **Succession — law applicable — English Court of Probate Act, 1858 not statute of general application applicable in Sierra Leone:** See [2] above.

[4] **Succession — probate and letters of administration — jurisdiction of court — Supreme Court has no probate jurisdiction when sitting as summary court:** See [1] above.

The appellant brought an action against the respondent in the Supreme Court sitting as a summary court, seeking the revocation of letters of administration granted to the respondent.

During the proceedings the respondent objected that the Supreme Court had no jurisdiction in probate matters when it was sitting as a summary court, and in the course of his judgment Purcell, C.J. held:

> "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 ss. 70, 73(1)—(6), and s. 74 of the Supreme Court Ordinance, 1904. Sections 70 to 73(1)—(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 and no others. Section 74 really supplies the practice of the court, and the language of s. 74 must be very carefully looked into, and it is clear that the statutes in force in the County Courts in England on January 1st, 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 January 1st, 1880, but you do have recourse to ss. 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 s. 74, the Summary Court has jurisdiction in probate matters by implication; carefully regarding the language of s. 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."

The appellant's claim was dismissed and she appealed to the Full Court contending *inter alia* that the trial judge erred in holding that the Supreme Court sitting as a summary court had no jurisdiction in probate matters since s. 74 of the Supreme Court Ordinance, 1904, implied that the English Court of Probate Act, 1858 which conferred probate jurisdiction on certain County Courts in England was applicable to the Supreme Court in Sierra Leone.

The appeal was dismissed.

Legislation construed:

Supreme Court Ordinance, 1904 (No. 14 of 1904), s. 70:

"The Supreme Court shall have and exercise a summary jurisdiction at law and in equity in the suits or matters hereinafter mentioned, and in all cases in which by any Ordinance any proceedings were to be or might be instituted in the Court of Summary Jurisdiction, the same may be instituted in the Supreme Court under the provisions of this Ordinance ... Provided always that ... the Supreme Court in its summary jurisdiction shall not have cognizance of any such suit ... in which the validity of any devise, bequest or limitation under any will or settlement may be disputed...."

s.74: "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, so far as the same can be applied and are not inconsistent with any ... Ordinance in force in this Colony ... Provided always, that the said Supreme Court shall not exercise summary jurisdiction in matters

in bankruptcy or insolvency or under the Charitable Trusts Acts, or in respect to absconding debtors."

C.E. Wright for the appellant;
Boston for the respondent.

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 Full Court 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 revocation of letters of administration granted to the 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 the defendant to make her defence. Costs of this appeal to the plaintiff."

The action was accordingly re-opened, and the 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 April 6th, 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 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 s. 74 of the Supreme Court Ordinance, 1904, 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, Ag. J. and SAWREY-COOKSON, J. concurred.

Appeal dismissed.

WILSON v. LEWIS

Full Court (Purcell, C.J., Sawrey-Cookson, J. and McDonnell, Ag. J.): February 14th, 1922

[1] **Civil Procedure — appeals — matters of fact — trial by judge alone — presumption that decision on facts correct — appellate court to disturb findings only if certain that trial judge failed to consider material circumstances or obvious inconsistencies in evidence:** When an appeal is taken from the decision of a judge without a jury, there is a presumption that the trial judge's decision on the facts was correct since only he has the opportunity to judge the relative credibility of witnesses; an appellant who claims that the decision was against the weight of the evidence must therefore displace this presumption and may do so if he can show that the trial judge clearly failed to take account of particular material circumstances or of obvious inconsistencies in the evidence; if the appeal court remains in any doubt it should not disturb the judge's findings of fact (page 44, lines 3—11; page 44, line 27 — page 45, line 9).

[2] **Civil Procedure — appeals — point not taken below — if objection not made when possible in lower court, may not be raised for first time on appeal:** An appeal court will not permit a party to raise an objection, such as one concerning the admissibility of evidence, for the first time on appeal when he failed to take the opportunity in the lower court to obtain judgment on the matter (page 43, lines 25—31).

The respondent brought an action concerning certain property against the appellant in the Supreme Court.

During the proceedings in the Supreme Court the respondent produced in evidence a copy of a deed of indenture relating to the property in dispute. At the time the appellant did not challenge the admissibility of the document although he did object that no notice of it had been given, but then waived the objection. The court (Purcell, C.J.) gave judgment for the respondent, indicating