

IN THE ESTATE OF PRATT (J.T.) (DECEASED) and IN THE MATTER
OF THE INTESTATE ESTATES ORDINANCE (CAP. 104)

Supreme Court (Tew, C.J.): July 24th, 1931

- 5 [1] Limitation of Actions — succession — Curator of Intestate Estates —
time runs against Curator from death of intestate, not from date notified
of intestacy: The Curator of Intestate Estates is in the same position as
an administrator in whom real estate is vested by statute immediately
upon the death of an intestate; and therefore time begins to run against
him from the death of the intestate and not from the date on which he
10 receives notice of the intestacy; and where the Curator fails to take
possession of the estate within the limitation period from the death of
the intestate his rights over it are therefore barred (page 252, line 39—
page 253, line 16).
- 15 [2] Limitation of Actions — succession — executors and administrators —
time runs against administrator from date of grant of administration:
Time runs against an administrator in respect of a cause of action relating
to the estate he is administering only from the date of the grant of
administration, though his title to the estate relates back to the death
of the intestate (page 253, lines 4—9).
- 20 [3] Succession — Curator of Intestate Estates — limitation of actions — time
runs against Curator from death of intestate, not from date notified of
intestacy: See [1] above.
- [4] Succession — executors and administrators — title of administrator —
title relates back to death of intestate though statute runs from date of
grant of administration: See [2] above.

25 The petitioner, the Curator of Intestate Estates, petitioned for
an order empowering him to sell a house and land that had
formerly belonged to the deceased and was now in the possession
of the respondents.

30 The deceased, one Josiah Thomas Pratt, had died intestate over
40 years earlier, leaving a widow, son and daughter. His widow
remained in possession of the land until two years before she
died, when she conveyed it to her daughter by deed of gift. The
daughter, before she died, devised the land in a will of which the
35 respondents were the executors. Subsequently the petitioner
issued a citation calling upon the next of kin, if any, of J.T. Pratt
to show cause why an order should not be made for him to
administer and sell the estate of J.T. Pratt. The respondents filed
affidavits opposing the citation on the ground that it was irregular,
40 but the Supreme Court overruled this objection and ordered the
petitioner to administer the estate. This order was set aside by the
West African Court of Appeal which ordered all the costs to be

paid out of the estate. The petitioner filed an affidavit showing that there were no assets in the estate for defraying these costs other than the house and land, and thereupon brought the present petition.

The respondents contended (a) that, as the petitioner had not taken possession of the house and land in 38 years, the rights which vested in him by reason of the Intestate Estates Ordinance (*cap.* 104), s. 11 had long since been barred; and (b) that, even if the petitioner had not been divested of his interest by lapse of time, it would be his duty, by reason of s. 13 of the same Ordinance, to convey the land to the persons beneficially entitled to it. The petitioner contended that time should run against him only from the date on which he received notice of the intestacy, which in this case was well within the limitation period.

The court dismissed the petition.

Case referred to:

- (1) *Davies v. Brown* (1922), Supreme Court, unreported; on appeal, (1912—24) L.R.S.L. 139, observations of Purcell, C.J. disapproved.

Legislation construed:

Intestate Estates Ordinance (Laws of Sierra Leone, 1925, *cap.* 104), s. 24:
 “No land passing under this Ordinance shall be sold by the Curator or any administrator without the consent of all persons beneficially interested, or the order of the Supreme Court or Judge thereof for that purpose first obtained.”

Boston for the petitioner;
C.E. Wright for the respondents.

TEW, C.J.:

This is a petition by the Curator of Intestate Estates for an order empowering him to sell a house and land at Campbell Street in Freetown formerly the property of Josiah Pratt. The relevant facts are not fully set out in the affidavits filed in support of or in opposition to the petition; but any facts to which reference is made in this judgment have been agreed upon. Josiah Thomas Pratt died on February 7th, 1890 intestate, leaving a widow, Judith Pratt, and two legitimate children, Miriam and Josiah Pratt, and possibly a third, Sarah Rebecca Vincent. The respondents, however, deny that Sarah Rebecca was legitimate.

Judith Pratt died on July 27th, 1911, having on April 30th, 1909 executed a deed of gift of the land in question to Miriam Pratt.

Josiah Pratt left this Colony 23 years ago and has never returned, nor has he at any time entered into possession of the land. Miriam Pratt died on September 19th, 1927, having devised the said land by her will, and the respondents to this petition are the executors of that will. On January 14th, 1928, the petitioner issued a citation calling upon the next of kin, if any, of Josiah Thomas Pratt to show cause why an order should not be made for him, the petitioner, to administer and sell the estate of the said Josiah Thomas Pratt.

The respondents filed affidavits in opposition to the citation and argued that the citation was irregular. The Chief Justice overruled this objection and ordered that the estate should be administered by the Curator. The West African Court of Appeal set aside this order on the ground that the citation was irregular and ordered all the costs to be paid out of the estate. The Curator has filed an affidavit showing that his costs alone have been taxed at £41.16s.0d. and that there are no assets available for defraying them, the estate consisting only of the house and land at Campbell Street. The respondents by the affidavit of their solicitor have shown, *inter alia*, that no notice of such taxation has ever been served upon them and that no demand for payment of costs had ever been made upon them. They maintain that this petition is merely a hole-and-corner method of bringing an ejectment action.

Now there is no doubt that under the provisions of s. 11 of the Intestate Estates Ordinance, 1887 (now *cap.* 104), on the death of Josiah Thomas Pratt, intestate, his land vested in the Curator of Intestate Estates. Further, under the provisions of s. 13 of the same Ordinance, the land became divisible and distributable as personalty. It was argued for the respondents that, as the petitioner had performed no act of ownership in relation to the land from the death of Josiah Thomas Pratt in 1890 up to 1928, his rights over the land had long since been barred and he had no right to come to court at all in this matter. Mr. Wright pointed out that, if the Curator's right did not become barred by lapse of time, the question as to the ownership of land of an intestate might remain in abeyance for, say, a hundred years and then a vigilant Curator might obtain an order to sell the land and cause grievous hardship to innocent purchasers.

Mr. Boston argued that time should only run against the Curator, if at all, from the time that he received notice of the intestacy and pointed to the possibility that otherwise anyone in

possession of the land might remain on it without giving notice for 12 years and thus deprive the Curator of his interest in the land. I can find no authority for this proposition whereas there seems to be good authority for the contrary argument. Where letters of administration are granted, it is a well established rule of law that the statute only runs as from the date of the grant, though the title of the administrator relates back to the death of the intestate: see Lightwood, *The Time Limit on Actions*, at 205—206 (1909). Under the Intestate Estates Ordinance, 1887 (now *cap.* 104) the Curator is placed in the same position as an administrator in whom real estate is vested by virtue of s. 1 of the Land Transfer Act, 1897, to whom the same rule would apparently apply: see 14 *Halsbury's Laws of England*, 1st ed., at 230. How then can it be said that the Curator's rights have not been barred in this case? In my opinion he has no interest that can enable him to bring this petition.

Mr. Boston called my attention to the case of *Davies v. Brown* (1) decided by Purcell, C.J. in which he said that it had been held that the statute did not run against the Curator. I have read that judgment and it does seem that the defence of the Statute of Limitations was there characterised as a "fantastic theory" and brushed aside. If that is so, I can only say that, with all respect to the learned Chief Justice, I entirely disagree with him.

Mr. Wright further argued that, even assuming that the Curator had not been divested of his interest by lapse of time, it would be his duty to convey the land to the persons beneficially entitled, who in this case are said to be devisees under the will of Miriam Pratt. That argument is correct seeing that the land only became vested in the Curator for the purpose of distribution. Possibly the Curator might even then obtain an order for sale under the provisions of s. 24 of the Intestate Estates Ordinance (*cap.* 104), though it seems highly improbable that the court would make such an order if it were opposed by the beneficiaries.

As to the respondents' complaint that the petitioner's costs were taxed without any notice to them, an allegation which has not been denied, I can only express my extreme surprise and disapproval. The petition is dismissed.

The costs of both parties will be taxed and paid out of the fees and commission in the hands of the Curator, as provided in s. 9 of the Intestate Estates Ordinance (*cap.* 104). If this amount is not sufficient to defray all the costs the respondents' costs are to be

paid first. If there is then any balance remaining, that will go to defray the petitioner's costs *pro tanto*.

Petition dismissed.

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A.E. LYNCH v. J.H.E. LYNCH and COKER

Supreme Court (McRoberts, Deputy J.): August 7th, 1931

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[1] Family Law — divorce — conduct conducing — husband not guilty of wilful neglect conducing to adultery when refuses to support wife who unjustifiably choses not to cohabit: A husband who ceases to support his wife when she unjustifiably refuses to cohabit with him despite his reasonable attempts to induce her to return, is not guilty of such wilful neglect or misconduct as might conduce to his wife's adultery so as to be a discretionary bar to the granting of a decree to him (page 262, line 39—page 263, line 21).

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[2] Family Law — divorce — costs — court may order co-respondent to pay costs of divorce, if was aware at time of adultery that respondent married woman: Since the Rules of the Supreme Court, O.LVI, r. 1 gives the court discretion in awarding costs of all proceedings, it is open to the court to order a co-respondent to pay the costs of divorce proceedings based upon the wife's adultery if, at the time that adultery was first committed, he knew that she was a married woman (page 263, line 29—page 264, line 18).

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[3] Family Law — divorce — desertion — consists of separation and intent to end cohabitation without reasonable cause or consent of spouse: Desertion is the separation of one spouse from the other, with an intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse; if, therefore, the deserted spouse's conduct indicates an unwillingness to resume cohabitation, desertion by the other is negatived (page 260, line 28—page 262, line 14).

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The petitioner petitioned for a decree of divorce from the respondent, his wife, on the ground of adultery, and claimed damages and costs from the co-respondent.

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The petitioner and respondent married and lived together in Freetown for some years. The petitioner was employed in the Government service and was required to spend much of each year in the Protectorate away from his wife. During one of his long absences he agreed that she should go for a three month holiday to Conakry. However, without consulting her husband she went instead to Lagos and later travelled on to Accra staying away a total of 10 months. Meanwhile the petitioner returned from the Protectorate and ceased to pay his wife her allowance.