A **DISTRICT ADMINISTRATOR, SUVA (Estate of Rahamat Ali)**

v.

MOHAMMED SADIQ

[SUPREME COURT, 1962 (Hammett P.J.), 10th, 13th September,
B 4th October]

Civil Jurisdiction

Executors and administrators—District Administrator—renunciation of administration by next of kin—necessity for writing and delivery to District Administrator—Administration of Estates Ordinance (Cap. 41) ss.2(1), 3(1)(2).

C *Executors and administrators—limitation—administrator plaintiff in action commenced prior to acquisition of title to administer—action incompetent—amendment unavailable if claim barred by limitation—Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance (Cap. 17)—Compensation to Relatives Ordinance (Cap. 20) s.8.*

Practice and procedure—amendment—substitution of parties—no amendment after claim barred by limitation—Rules of the Supreme Court 1883 (Imperial) 0.16 r.2.

D The District Administrator commenced an action in the Supreme Court, as administrator of the estate of Rahamat Ali, whose death was alleged to have been caused by the defendant's negligent driving of a motor vehicle. The claim was for damages under the Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance and for compensation under the Compensation to Relatives Ordin-
E ance. Under section 3(1) of the Administration of Estates Ordinance the authority of the District Administrator to administer an estate arises when the adult next of kin of the deceased renounces in his favour. Before the issue of the writ the father of the deceased verbally expressed to his solicitors his desire that the administration of the estate be taken over by the District Administrator. After the issue of the writ and after the time limited for the bringing of an
F action under the Compensation to Relatives Ordinance, the father of the deceased executed a written renunciation in favour of the District Administrator.

Held: 1. The renunciation required by section 3(1) of the Administration of Estates Ordinance is not effective unless it is in writing and until it has been delivered to or filed with the District
G Administrator.

2. When the District Administrator issued the writ he had no authority to do so.

3. No amendment by substitution of parties could be made in respect of the claim under the Compensation to Relatives Ordinance because the time limited for action thereunder had expired before the
H date of the written renunciation.

Ingall v. Moran [1944] 1 All E.R. 97, applied.

4. The father of the deceased could not be substituted for the District Administrator as plaintiff in relation to the claim under the Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance as the father had, before the application to amend, renounced the administration.

5. The action was imcompetent.

Quaere : Whether "next of kin" in section 3(1) of the Administration of Estates Ordinance refers to statutory next of kin.

Cases referred to: *In the Goods of Morant* (1874) 3 P. & D. 151; 30 L.T. 74: *Long v. Symes* 162 E.R. 1339; (1832) 3 Hagg. Ecc. 771: *Ingall v. Moran* [1944] 1 All E.R. 97; [1944] 1 K.B. 160.

Action in the Supreme Court for damages for causing death by negligent driving.

R. A. Kearsley for the plaintiff.

G. M. G. Johnson for the defendant.

The facts sufficiently appear from the judgment.

HAMMETT P.J. : [4th October, 1962]—

The District Administrator, Suva, began this action by a writ issued on 6th June, 1962, in his capacity as the Administrator of the estate of Rahamat Ali, who died on 2nd July, 1961, as a result of injuries received in a road accident on 1st July, 1961.

The deceased was a youth of 17 years of age and in this action the Plaintiff claims:

(1) Under the Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance, Cap. 17, damages for pain and suffering and loss of expectation of life as a result of the Defendant's negligent driving of a motor vehicle;

(2) Under the Compensation to Relatives Ordinance, Cap. 20, compensation for the mother and father of the deceased who were stated to be dependent upon him; and

(3) Funeral expenses amounting to £40.

The defence is:

Firstly: That the Plaintiff was not the Administrator of the deceased's estate by virtue of Section 3 of the Administration of Estates Ordinance, Cap. 41, at the date the action was begun or at all;

Secondly: The Defendant denies he drove his vehicle negligently and maintains that he is not therefore liable to the Plaintiff under either the Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance, or the Compensation to Relatives Ordinance, and in the alternative relies on the doctrine of *volenti non fit injuria;*

Thirdly: That the deceased's parents were not dependant upon him and they do therefore have no claim under the Compensation to Relatives Ordinance, Cap. 20.

The District Administrator is defined by Section 2(1) of the Administration of Estates Ordinance, Cap. 41, as being:

> "In the case of the death of a person ordinarily resident in the District of Suva—the Registrar General."

The Defendant concedes that the deceased was ordinarily resident within the "district of Suva" as defined in the same section.

The material part of Section 3(1) of the Administration of Estates Ordinance reads as follows:

> "3(1). Where any person has died intestate . . . and . . . where the . . . adult next of kin of the deceased renounces in favour of the District Administrator, the District Administrator shall forthwith take possession of all real and personal estate of the deceased within the Colony, and shall thereupon proceed to administer the estate as if application for a rule to administer had been made and granted by the Court."

The Defendant concedes that the deceased died intestate leaving only a father, mother, brother and sisters. Under the table of succession upon intestacy the deceased's father was entitled to all his property and his father was also entitled to administer the estate by virtue of the Statute of Distribution 1670. From the several different decisions on the meaning of the term "next of kin" it does not appear to be entirely free from doubt whether in Section 3(1) of the Administration of Estates Ordinance this term means "the person or persons entitled to succeed upon intestacy under the Statutes of Distribution" or what *Stroud's Judicial Dictionary* 3rd Edition at page 1905 describes as "the primary and proper meaning" namely "the nearest in proximity of blood (whether of the whole or half blood and as distinguished from those who would be entitled under the Statute of Distribution 1670), living at the death of the person whose next of kin are spoken of."

The point was not taken or argued before me and I do not, therefore, feel called upon to consider whether the deceased's "adult next of kin" were "his father" or "both his parents and his adult brothers and sisters". The whole case has been argued on the basis that the Defendant has conceded that the deceased's adult next of kin was his father and it is on that agreed basis I shall proceed since this point does not affect the essential merits of the case.

The defence further admits the following allegations of fact made by the Plaintiff in paragraph 1(c), (d) and (e) of the Amended Statement of Claim:

(1) Before the issue of the writ of summons herein the father of the deceased verbally expressed to his solicitors his desire that the administration of the deceased's estate be wholly taken over by the District Administrator;

(2) The writ of summons herein was issued with the prior knowledge and approval of the father of the deceased;

(3) The father of the deceased executed a written renunciation in favour of the District Administrator on the 10th day of

September 1962 in the form of the third form contained in the First Schedule to the Administration of Estates Ordinance.

The first point for determination is whether a renunciation of the right to administer the estate of a deceased person may be made orally or must be in writing. *Williams on Executors*, 14th Edition at p. 46 is explicit on this point in respect of renunciation by an executor where he says at para. 63:

> "An executor cannot refuse by any act or declaration other than a formal renunciation in writing signed by him or his attorney and entered and recorded in the Court."

I have been unable to find any authority which makes any distinction between the method of renunciation by an executor and by a person entitled to administer the estate of an intestate, but I do not think, in view of the specific wording of Section 3(1), that the requirements of the renunciation referred to therein can be materially different from those required of an executor. In the case of *Robert Morant* (1872-5) 3 P. & D. 151, Sir J. Hannen said:

> "A renunciation does not exist as an effective instrument until it has been recorded."

In that case reference was made to the case of *Long v. Symes*, 162 E.R. 1339 where Sir John Nicholl held that a renunciation even by letter was too late in the particular circumstances of that case and insufficient in form. He held that a renunciation was ineffective until it had been recorded in Court. It has also been long established that a renunciation is only effective from the date it is actually filed in Court. I am of the opinion, therefore, that the deceased's father could not and did not effectively renounce orally in favour of the District Administrator.

I would add that I have considered the submission on the part of the Plaintiff that since Section 3(2) of the Administration of Estates Ordinance specifically provides that renunciation under that section must be in writing on one of the forms set out in the First Schedule to the Ordinance whereas no such provision is made or referred to in Section 3(1), it ought to be presumed that a renunciation under Section 3(1) can properly be effected either orally or in writing. I do not accept this view although I do appreciate its apparent logic. I do not accept it for this reason.

Section 3(2) requires a renunciation to be made in one of the forms contained in the First Schedule to the Ordinance. A study of the three forms set out in this schedule with the provisions of Section 3(2) which only covers the case when a deceased has died after making a will, makes it abundantly clear that the third form cannot properly be applied to any of the circumstances that can possibly arise under Section 3(2). Form 3 in this schedule can only possibly be applicable if the deceased died intestate and it is only Section 3(1) that applies in cases of intestacy. It appears to me, therefore, that despite the absence of any specific requirement in Section 3(1) that a renunciation should be in writing, the fact that it does not specifically state that it can be made orally and that a suitable form is

prescribed by the First Schedule makes it clear that the use of the term "renounce" in Section 3(1) refers to what is the otherwise usual and only permitted form of renouncing, namely a renunciation in writing.

The next point to be considered is the date from which a renunciation under Section 3(1) of the Administration of Estates Ordinance becomes effective since the District Administrator can and is empowered by the Ordinance to act without any grant having been made by the Court. It is clear that the renunciation does not have to be filed in Court. I think it is also clear that unless and until it has been filed with the District Administrator it can be cancelled or revoked by the person renouncing. Under these circumstances I am led to the conclusion that the renunciation is not effective unless and until it has been delivered to or filed with the District Administrator. Unless and until this has been done the District Administrator has no power or authority to act.

In this case the deceased's father executed a renunciation in writing on 10th September, 1962, i.e. long after the writ was issued in this action and on the very day the actual trial of the action began in Court. The renunciation was produced before me and has been admitted by the defence, but whether it has ever in fact been delivered to or filed with the District Administrator as is necessary before he has any authority to act as never been disclosed.

In *Ingall v. Moran* [1944] 1 All. E.R. 97 it was held that an administrator as such has no cause of action vested in him before he has obtained a grant of letters of administration. It was further held that the doctrine of realtion back of an administrator's title to the intestate's property to the date of the intestate's death, when the grant has been obtained, has no application to an action commenced by the administrator as such before the grant is made.

In these circumstances it is clear that in this case the Plaintiff had no right or authority to issue the writ in this case as he did on 6th June, 1962, or at any time before 10th September, 1962.

Counsel for the Plaintiff submitted that in the event of it being held that the Plaintiff had no right to issue the writ in this case on 6th June, 1962, then he did have the right to do so on 10th September, 1962, and relied on the provisions of Order 16, Rule 2 of the Rules of the Supreme Court which reads:

> "Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the court or a judge may, if satisfied that it has been so commenced through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as may be just."

There is no doubt that this action was commenced in the name of the wrong person as plaintiff through, what I am satisfied was, a *bona fide* mistake.

The claim under the Compensation to Relatives Ordinance, Cap. 20, should have been brought by and in the names of the deceased's parents in the absence of the appointment of any administrator and the claim under the Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance, Cap. 17, should have been brought by and in the name of the deceased's father. As I understand it, the Court is being asked to substitute now those names for the name of the present Plaintiff. One of the difficulties about this course is that the Plaintiff claims that the deceased's father has in fact now properly renounced in favour of the District Administrator and the deceased's parents are not now entitled to bring an action in their own names.

A

B

It is, however, conceded that no amendment could be granted in respect of the claim under the Compensation to Relatives Ordinance, Cap. 20, in view of the provisions of Section 8 of that Ordinance because the time limit thereby set for the commencement of the action has already expired and to do so would be to offend the principle laid down so clearly in *Ingall v. Moran* [1944] 1 All E.R. 97.

C

It is further submitted in the alternative that since the District Administrator is now properly authorised to bring this action, the Court could allow it to stand and to proceed in respect of the claim under the Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance, Cap. 17. But these are not the circumstances that the provisions of Order 16, Rule 2 cover, because in this event the Court would not in the terms of that rule be ordering "any other person to be substituted or added as plaintiff". Further this would again ignore the decision of the Court of Appeal in *Ingall v. Moran* where in almost identical circumstances Goddard L.J. said:

D

> "The result is that this action was and always remained incompetent and judgment ought to have been entered for the Defendant."

E

In the action before me it seems clear that by the District Administrator bringing this action, the deceased's father gained the benefit of not being put to the expense of taking out Letters of Administration himself and avoiding all liability for costs should his action fail. Because he did this and failed properly to authorise the District Administrator to act for the estate the action is incompetent. This is undoubtedly most unfortunate since, on the evidence before me, I would have had no hesitation in holding that the Defendant was negligent and that the Plaintiff was entitled to succeed in his claim to damages for negligence. I do not, however, see how I can, in the face of the authorities on the point, properly at this stage regularise or rectify the incompetence of this action.

F

G

There will, therefore, be judgment for the Defendant with costs.

Judgment for the defendant.