WILLIAM J. MARR EX PARTE. (a)

Where application is made by an administrator to the Probate Court for an order to sell real estate of his intestate, any person interested in the subject matter may, on proper showing to the Probate Court, make himself a party to the proceedings, put upon record, by bill of exceptions, the evidence and facts upon which the order of sale is made, and appeal therefrom to the Circuit Court. *Digest, page* 142, *ch.* 4, *sec.* 176, and *Pamph. Acts* 1849, *p.* 59.

Such order of sale is a proceeding *in rem*, by a superior court having jurisdiction of the subject matter. (*Adamson et al. vs. Cummins ad.*, 5 *Eng.* 549,) and cannot be regarded as a nullity. (*Borden et al. vs. State, use, &c.*, 6 *Eng.*) and consequently all reasonable presumptions of law are in favor of the regularity of the proceedings.

This court, in the case of *Carnall vs. Crawford Co.*, (6 *Eng.*,) expressed its views as to the true nature and character of the powers of superintendency and control entrusted to it by the constitution over all inferior tribunals; and to the circuit courts over county courts, probate courts and justices of the peace; overruling so much of *Ex parte Anthony* (5 *Ark.* 363-4) and *Levy vs. Lychinski* (3 *Eng.* 113,) as conflicted with these views; and approving so much of the doctrine of the dissenting opinion in *Amour Hunt Ex parte* (5 *Eng.* 288) as sustained them; and now this Court adopt the residue of the doctrines of that opinion, and especially those relating to the contingency on which this court will exercise those powers.

In doing so, the court overrule the doctrine of *Webb & Estell vs. Hanger & Winston*, (1 *Ark.* 122,) and of the cases based upon it, where it is held, in substance, that a party aggrieved by the decision of a County, Probate, or Justice's Court, may apply directly to this court without having first made application to a Circuit Court, or showing any reason for not having done so.

NOTE(*a*)—This case was decided at the Jan'y term, 1851, continuing until May.

A party has no right to apply to this court to supersede a judgment of the Probate Court, until he has first sought a remedy at the hands of the Circuit Court, or can show that that court is incompetent to act in the premises, either in consequence of some inherent defect in the tribunal, or of incompetency of its incumbent.

On Application for Supersedeas.

This was a petition filed on the 3d of May, 1851, in this court, praying for a certiorari to the Probate Court of Randolph county, to send up to this court, for adjudication, certain proceedings and orders, made in that court, at the January term, 1851; and for a supersedeas to stay proceedings under the orders of that court.

The petition set forth certain proceedings in the Probate Court had at the January term, 1851, by the administrators of Thomas O. Marr, for the purpose of selling the real estate of the intestate; and avers various irregularities in the proceedings and in the order of the court directing the sale. It was claimed that the parties had not pursued the law in that respect, and that no sufficient showing had been made before the Probate Court to warrant the order for sale; and that, consequently, the Court of Probate was without jurisdiction, or, at least, the proceedings were so irregular as to call for the interposition of this Court to stay the proceedings and quash the order.

The petition was verified by affidavit, and accompanied by a transcript of the proceedings of the Probate Court.

BEVENS, for the Petitioner.

Mr. Justice SCOTT delivered the opinion of the Court.

This petition presents no proper ground for the action of this court in the premises. If the petitioner had desired to submit his alleged grounds for revision by appellate power, as regulated by law, he should have shown his interest in the subject matter to the Probate Court, and upon that foundation made himself a party to the proceedings therein, wherein by bill of exceptions he might have placed upon the record all the evidence and facts

upon which the judgment and decree of the court was based; and from these proceedings he might have taken an appeal to the Circuit Court, (*Digest, page* 142, *ch.* 4, *sec.* 176, and *Pamphlet Acts* 1849, *page* 59,) and from thence the case might have been brought here. But he failed to take any such steps, and now asks to be relieved here by our powers of superintendency and control from the effects of a judgment of a superior court in a proceeding *in rem* on a subject matter clearly within its jurisdiction, (see the case of *Adamson et al. vs. Cummins ad., at p.* 549, that case in 5 *Eng.,*) which cannot be a nullity, as we have held in *Borden et al. vs. The State, use, &c.,* (6 *Eng. R.,*) and when in consequence all reasonable presumptions of law are in favor of the regularity of the proceedings.

Having, during the present term, in the case of *John Carnall vs. The County of Crawford,* (6 *Eng.,*) expressed our views as to the true nature and character of the powers of superintendency and control entrusted by the framers of the constitution to this court over all inferior tribunals; and to the Circuit Court over County Courts and Justices of the Peace (in the former of which two latter the Probate Courts are clearly included); and having overruled so much of the cases of *Ex parte Anthony* (5 *Ark., at p.* 363 *to* 364) and *Levy vs. Lychinski,* (3 *Eng.* 113,) as conflict with these views; and approved so much of the doctrine of the dissenting opinion in *Amour Hunt Ex parte,* (5 *Eng.* 288) as sustains them, we have now occasion to adopt the residue of the doctrines of that opinion, and especially those relating to the contingency, on the happening of which this court will exercise those powers, sustained as these doctrines are by the Alabama decisions cited by us in the case of *Carnall vs. Crawford County.* And, in doing so, we must overrule the doctrine of *Webb & Estell vs. Hanger & Winston,* (1 *Ark.* 122,) and of the cases based upon it, where the doctrine is laid down in substance that a party aggrieved by the decision of a County, Probate, or Justice's Court may apply directly to this court without having first made application to a Circuit Court or showing any reason for not having done so.

And as the case before us presents a case for the application

of the doctrine that we have above adopted as the true constitutional doctrine, as to when our power of superintendency and control shall be exercised, we shall put our refusal of action in this case upon the ground that the petitioner has no right to such a remedy as he applies for here, until he has first sought it at the hands of the Circuit Court, or can show us that that court is incompetent to act in the premises, either in consequence of some inherent defect in the tribunal or of some incompetency of its incumbent.

Let the application be refused.