

SAVINIA E. BROWN, Appellant, vs. FRANCIS PAYNE, Appellee.

LRSC 5; 1 LLR 9 (1861) (1 January 1861)

[January Term, A.D. 1861.]

Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.

Ejectment— Husband and wife—Courtesy.

1. The husband cannot inherit the property of his wife at her death; nor does he acquire a title therein by virtue of coverture; nor can he dispose of it without her express authority under the Constitution of Liberia.

2. Where during coverture an heir capable of inheriting has been born, the husband, on the death of the wife, may hold her estate as a tenant by the courtesy, but he cannot sell or otherwise dispose of said estate by virtue of the coverture.

The general view to be taken of the law governing titles and claims, and also possession, should be in all its parts alike, especially whenever the right of property is questioned.

The case reviewed before this court on a plea of ejectment brought up on appeal from the decision and judgment of the court below is interesting as may it appear to be complex, as it does most assuredly in value the rights of parties purchasing from those supposed to have had the right to sell. Its antiquity and the circumstances connected thereto would at first view, aside from reflection and the law governing the case, cause apprehension that the innocent would be compelled to suffer pursuant to the acts of the wrongdoers.

Ejectment is an ancient remedy coming down to us, greatly modified and arranged suitably to the circumstances of the present age. It lies to recover the possession of lands, with damages and cost, for the wrongful withholding of them, being the principal method now in use for trying titles to lands. The particularities of this action are fully explained in the words of Blackstone on Real Property.

The commencement of this action presupposes the real title to the land from which the parties are to be ejected. The appellant denies the right of the plaintiff to recover the property consequent upon the purchase being made by the appellant from the son of the legal possessor of said property. The appellee equally claims special right to said lands, as being purchased from the husband of the woman who held possession in her own right after the death of her husband, Seiper, and her heir or son, who after the death of his mother held no claim to the land held in fee simple by his mother. Hence the pivot of the question appears to be resting upon the right of possession by inheritance.

Our constitutional law has established a permanent basis respecting the property of a woman, as to how it shall be disposed of and by whom; but as this is a question of some moment requiring deliberate action, involving, as it does, considerable interest, it would be well to treat a little upon the right of the husband in the property of his wife, which she was possessed of at the time of her marriage, as well as also to speak of the law governing descent in such actions, when occurring under the circumstances. There is a way by which the husband can come in possession of the property of his wife of which she was in possession at the time of her marriage. But that possession is only temporary in some cases by the principle of courtesy, a term used to explain this particular mode of proceeding. It is thus defined: "An estate to which a man is by law entitled on the death of his wife" —the lands of which she was possessed during

marriage in fee simple, provided he had issue by her during marriage, and capable of inheriting her estate. (1st Stept. 246) . It is a species of freehold estate, not of inheritance, equally known to English, Scotch and American law (4th Kent's Comm. 27—28) ,—courtesy as understood in its ordinary sense of favor.

The estate being enjoyed rather by favor of law, *e gratia legis*, than as a matter of right, this special favor accrues from the existence of the fact of his having issue by her, and holding his right and possession for the legal title to be given at the proper time, and the next heir of kin to the wife can claim a right, which would be the same if she had two or more relatives. It is given as authority that the husband acquires a right to the use of all the lands or real estate of the wife during her life, but not to sell, and also during his own life, if he has a child by her as a tenant of the courtesy. (1st Swift, Dig. 26.) Hence it is clear that the husband cannot dispose of real estate of which his wife was in possession at the time of marriage, and all land disposed of under such title is "null and void."

If Byrd obtained his title from Mrs. Seiper, and upon that right possessed by marriage, and affixes his seal as valid, it is clear, then, without a shadow of doubt, that Mrs. Seiper's right must be unquestionable, and if we supposed Mr. Payne to have had a perfect right devised from Mr. Byrd, this, also, is another reason which influences the court to preponderate in favor of the right, the bona fide right of Mrs. Seiper before marriage. As far as regulations of the Colonization Society are concerned, the whole arrangement appears to be clear and consistent to the court, and that a woman may draw lands on her arrival here for herself and children, and this being true it follows that at her death her children heir the property.

With respect to the doubts expressed in reference to Parsons being the son of Mrs. Seiper, alias Mrs. Byrd, the law will presume him to be her lawful heir until the contrary is shown. This point should have been contested and established in the court below. The evidence in the case is not material, especially that in parole, as it is held that a proposition made by a party to effect a settlement is not admissible in evidence against him. (Mitchell vs. Preston, 5 Day, 100.) This is both reasonable and just in every respect. In proving confession, the whole must be taken together. (I Root, 434.) Parsons was the rightful inheritor after the death of his mother, Mrs. Seiper, to a clear and definite title by descent. (Refer to Dutton Comm. Digest, page 77.)

Therefore, with the foregoing conclusions it is the opinion and judgment of this court that the title of Joseph S. Brown and James E. Brown is valid, and that Parsons, as the only remaining heir of Mrs. Seiper, was the sole owner at her death, and have the right to sell said lands. It is decreed by the court that the judgment of the Court of Sinoe County in this case of ejectment be reversed, and that said property remain in the possession of James and Joseph S. Brown's estate undisturbed, with costs of court, and that a mandate be issued directing and commanding the same.