

ROBERT T. SHERMAN, Appellant, vs. **JOSHUA PHILIPS, A. B.**
STUBBLEFIELD and **R. H. HILL**, Trustees of Providence Baptist Church,
Monrovia, Appellees.

[January Term, A. D. 1900.]

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

Ejectment.

This suit was brought by appellees as trustees of the Baptist Church to recover possession of property devised by Robert R. Johnson to said Church. The first paragraph of the will relating to the property, devised the estate to said Church subject to the provision that should the wife of the testator, who was made sole executrix, have need to dispose of the estate during her lifetime for her support, etc., she was at liberty to do so.

Another paragraph in the will gave the wife the right to sell without mentioning the happening of the contingency mentioned in the previous paragraph, and also to lease or give the property to any person or persons around her that she might deem fit.

Held, that the first paragraph devised a contingent legacy to the wife liable to the enjoyment of a fee title, should her need, the contingency, happen; that in case the contingency did not arise during the lifetime of the wife, the fee vested in the said Baptist Church to whom was devised in said will a contingent remainder in said estate.

It was also held that where the language of a will is ambiguous and its provisions conflicting, the real intention of the testator is to be ascertained and the will construed so as to admit of what was really meant by the testator.

This court has so often enunciated the principles of law governing actions of ejectment, which is but an action to try and determine the ownership of real property that it would only be repeating itself to indulge in anything like amplification.

The claims of the adverse claimants to lot No. 65 in the city of Monrovia, being found in the wills and testaments of the late Robert R. Johnson and that of Mrs. I. B. Johnson, the widow of the said R. R. Johnson, both of whom executed their wills and testaments handed in as evidence, have had the special attention of this court. The

will of the late Robert R. Johnson contains several legacies and to several legatees. But that which concerns us at present is the devise of the testator to the Providence Baptist Church, Monrovia, and that part of said will which refers to the late I. B. Johnson, sole executrix of the will of her husband and trustee of his real estate.

The following is the language employed by the testator: "I give and bequeath to my beloved wife, I. B. Johnson, all my real and personal estate that I have after my demise, except such part as I may dispose of in my lifetime; and after the death of my wife, I. B. Johnson, I bequeath my dwelling house in the city of Monrovia (providing that she doesn't have need to sell it in her lifetime) ; it is to go to the Providence Baptist Church; it is not to be sold after her death, but to be leased or rented out by the church for the benefit of the said church, and one third of the proceeds of the rent is to be kept for repairs of said house, and the other two thirds is to go for the benefit of the said Baptist Church."

The above is the paragraph in said will referring to the Providence Baptist Church, Monrovia, the appellee before this court. We now quote that part of the will referring to the rights of Mrs. I. B. Johnson, legatee and sole executrix of the testator R. R. Johdson. The language here employed is as follows: "I appoint my wife I. B. Johnson's advisers, R. T. Sherman and M. T. Worrell. Notwithstanding the above decree, my wife I. B. Johnson is at liberty to sell, lease, or rent any part or parcel of the whole of my estate for her own use, to give to any person or persons around her that she may see fit."

To harmonize these two provisions of the will we have had no little trouble in finding out the intention of the divisor, and to accomplish this we have been compelled to set aside the ambiguous and superfluous words.

This court says, a will being considered as an instrument made at a time when the testator, perhaps, could not secure the assistance of persons skilled in the law, courts have always held that it should not be construed strictly like a deed, but that the intention of the testator, though not expressed in proper, clear, legal, and formal words, should, notwithstanding, be ascertained and carried into effect. In construing a will, therefore, three questions arise; first, what the testator's intention is as it is to be collected from the words of the will; second, whether he has used words which in legal construction can carry such intent into effect; third, what effect must be given to every word in the will tending to point out the intent of the testator. To this end expressions admitting of two interpretations should receive that force which will best harmonize with other parts of the will; and this right is recognized in the Statute Laws

of Liberia (Book I, p. 39, sec. 27), which says: "It shall be the right of the court to expound all written evidence."

From the will we gather the following facts : First, that the testator Robert R. Johnson, intended a vested fee interest in lot No. 65, in the city of Monrovia, to be employed by said Church after the death of his wife, I. B. Johnson, in case her need did not compel her to sell it during her lifetime. This grant or devise constituted a contingent legacy, liable to the enjoyment of a fee title, should the contingency (her need) happen. Second, that there is no evidence that such a contingency happened during the lifetime of the wife, I. B. Johnson. This court further says, nothing in the will in question supports the idea that it was the intention of the testator R. R. Johnson that said property should be devised and passed to others after the death of his wife, I. B. Johnson. Therefore the Providence Baptist Church is entitled to a vested fee interest in lot No. 65, in the city of Monrovia.

This court adjudges that the judgment and rulings of the court below are in accordance with the law and evidence in the case, and therefore affirms said judgment; appellant to pay all lawful costs. The clerk of this court is hereby ordered to issue a mandate to the court below, informing it of this judgment.