

H. A. WILLIAMS, Executor of the Estate of Mary A. Aenny, Appellant,
vs. **CORNELIUS** and **MARTHA YOUNG**, Appellees.

LRSC 6; 1 LLR 293

[January Term, A. D. 1896.]

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

Contested Will.

1. A will devising an estate to the wife and her children, with power to sell any portion thereof for their benefit, creates an estate in joint tenancy as between the wife and children. Joint-tenancy is where parties have a unity of interest, derived by one and the same conveyance, commencing at one and the same time, and held by one and the same individual possession; it differs from tenants in common, in which case there is a unity of possession only.
2. An estate in joint-tenancy may be in fee simple for life, for years, or at will. The subtle principle of law applicable to this species of property is the "doctrine of survivorship," whereby upon the death of all the other tenants the surviving tenant takes the whole estate without any regard to the heirs or other representatives of the deceased co-tenants. Where in an estate devised to the wife and her children, the children die leaving the estate so devised, the wife will take the whole, upon the doctrine of survivorship, and may dispose of it by sale, will or otherwise.
3. Under the Constitution of Liberia a woman does not lose her title to property which she may have acquired, either before or after marriage, on account of her coverture with an alien.

This case is before the court by an appeal from the judgment of the Court of Quarter Sessions and Common Pleas, Montserrado County, determined at its December term, 1895, founded upon the verdict of a jury unto whom was referred and submitted the will

of the late Mary A. Aenmy, the same being contested by the appellees when presented before the Monthly and Probate Court, Montserrado County, for probaton.

The record and proceedings in this case furnish this court with sufficient light to enable it to render such judgment as will satisfy the ends of justice, to which ends appeal courts are established. In the transcript of record filed in this case it is seen that Mary A. Aenmy, testatrix, in her last will made the following gift and bequest, to wit: "I give and bequeath unto the Methodist Episcopal Church in the city of Monrovia, my dwelling house with three-quarters of lot No. 110, for a parsonage, with the proviso that my dear husband, Moorenus A. Aenmy, shall occupy the premises during his natural life, or as long as he would desire. After his vacation either by death or otherwise, then the said property is to be turned over to the trustees of the Methodist Episcopal Church aforesaid, by my executor hereinafter named, free of charge." The testatrix named as her executor H. A. Williams. The will above referred to, on being presented to the Probate Court for probaton and registry, was sought to be impeached and contested by the appellees and was consequently sent up to the Court of Quarter Sessions and Common Pleas, Montserrado County, to be tried by a jury as the law directs. Before said court the objectors submitted, first, that the testatrix Mary A. Aenmy had no legal right vested in her for lot No. no in the city of Monrovia, and consequently could not will it to the legatee named in the will. The appellant opposed this objection, by claiming ownership and property in lot No. 110, alleged to have been derived from the will and testament of the late A. F. Johns, the prior owner of said lot and improvements. At the trial below the appellees obtained a verdict and judgment setting aside said will, from which judgment the appeal is taken.

Referring to the will and testament of the late A. F. Johns, an authentic copy of which, duly probated and registered, being filed in the court, we find the following language in the fourth paragraph : "I give and bequeath to my wife Mary Ann Johns and her two children, my dwelling house, furniture and lot in the city of Monrovia, together with all the rest,

residue, and remainder of my property of whatever kind and nature, of real, personal or mixed, of which I shall die seized and possessed, or to which I shall be entitled at the time of my death ; and it is my will and desire that my said wife shall remain the sole guardian of our two children during their non-age." The fifth paragraph reads: "I do hereby nominate and appoint my said wife Mary Ann Johns my sole executrix of this my last will and testament, without the intervention of any court, 1. e., it is my wish and desire that no bond be required of her for the execution of this trust; and she shall have power, should it in her judgment be necessary for her to do so for the support of herself and children, to sell at private or public sale any property personal or real belonging to my said estate not devised to my brother Philip or to my mother-in-law Susan Brown."

It is the opinion of this court that the fourth paragraph of this will surely creates a joint tenancy in the person of Mary A. Johns and her two children. Subsequent provisions of said will must yield to parts admitting or containing but one hypothesis, and the fifth paragraph only refers to her official relation as sole executrix. It may be well just here to say, that in law joint tenancy and tenancy in common are quite different and are consequently subject to different rules. The property in joint tenancy is derived from its unity, which is fourfold,—first, the unity of interest; second, the unity of title; third, the unity of time ; and fourth, the unity of possession. In other words, joint tenants have one and the same interest accorded by one and the same conveyance, commencing at one and the same time and held by one and the same individual possession. A tenancy in common happens when there is a unity of possession only, but perhaps an entire disunion of interest, of title and of time. For example, if there be two tenants in common of lands, one may hold his part in fee simple and the other for life only; here there is no union of interest. One may hold by descent, the other under lease. In one may be found a vested fee estate of fifty years' standing, while in the other one of but yesterday. Between joint tenants there is a thorough union, in many respects not unlike co-partnership in business when the acts

of one of the partners in violation of the partnership business binds them all, in contemplation of law, they being as one person.

Referring again to the will and testament of the late A. F. Johns under which Mary Ann Johns claimed ownership to lot No. 110 and improvements in the city of Monrovia, we cannot give other construction to the fourth paragraph of said will than that the said testator, A. F. Johns, gave to his wife Mary A. Johns, in lieu of dower, this estate jointly with his two children by her, and this is the more clear since the will in no part assigns her any dower whatever. And under the recital of this will it would be extremely absurd for anyone to deny the absolute ownership of the two children to this property, lot No. 110 and improvements, had they survived their mother, Mary A. Johns; and this absurdity can be applied with no less legal force to Mary A. Johns, she surviving them.

It is clear that in considering this case the court and jury below wrongly acted upon the law applicable to tenants in common instead of that applicable to joint tenants. The right of joint tenants is thus defined by the learned Judge Bouvier (Bouv. Law Dict. Vol. 2, p. 113) : "Joint tenants are two or more persons to whom lands or tenancies have been granted, to hold in fee simple for life, for years, or at will. In order to constitute an estate in joint tenancy, the tenants thereof must have one and the same interest, arising by the same conveyance, commencing at the same time, and held by one and the same undivided possession." This view of the law is ably supported by Sir William Blackstone. (Blackstone Commentaries, Vol. 2, p. 180.) "The principal incident to this relation," continues Judge Bouvier, "is the right of survivorship, by which upon the death of one joint tenant the entire tenancy remains to the surviving co-tenant, and not to the heirs or other representatives of the deceased; the last survivor taking the whole estate." Chancellor Kent in his comment on the American Law clearly sustains this rule, which, however, is changed in many states by statutory laws.

In this case the property in dispute is, by the will of A. F. Johns, a devise, gift and bequest to Mary A. Johns and her two children. The testimony discloses the fact that both of the children, devisees with M. A. Johns, died, and left her, the surviving co-tenant, in possession. She therefore took the whole estate by right of survivorship; consequently, she had legal right to sell or will to any person capable of holding lands in this Republic. Hence the verdict and judgment rendered in this case are without legal foundation.

The next point to which this court's attention is called is as follows: That M. A. Johns, the testatrix, marrying an alien, a citizen of Holland, lost her citizenship of Liberia, under the law that the wife takes the nationality of her husband. To this the court says, this foreign law conflicts with the organic law of the Republic. The Constitution, which throws its powerful and protecting arm to uphold her, speaks in the following language: "The property, of which a woman may be in possession before or after marriage otherwise than through her husband, shall not be taken for the payment of his debts whether contracted before or after marriage. Nor shall the property thus intended to be secured to the woman be alienated otherwise than by her free and voluntary consent, and such alienation may be made by her either by sale, devise or otherwise." We need not add that when foreign laws conflict with the provisions of the Constitution the latter must prevail.

Viewing this case from every legal standpoint, justice requires the following conclusion: This court adjudges that the verdict and judgment of the court below is without legal foundation and that the same is hereby reversed and vacated and rendered void; that the will of Mary A. Aenmy shall have legal effect as such and that the said appellant recover from the appellees all lawful costs. The clerk of this court will issue a mandate to the court from which the appeal was taken, to the effect of this judgment.

Key Description: Aliens, Immigration, and Citizenship (Constitutional restriction of rights as to real property)