

**ADMINISTRATORS OF THE ESTATE OF A.
WASHINGTON, Appellants, vs. MARIA A.
LLOYD, Appellee.**

LRSC 10; 1 LLR 104 (1878)

[January Term, A. D. 1878.]

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

Ejectment.

A person who has been absent from the country for more than seven years, of whom nothing has been heard, is presumed in law to be dead.

Where in an estate of joint-tenancy one of the tenants has been absent from the country beyond a period of seven years and respecting whom nothing has been heard, the surviving tenant "becomes the sole tenant by the doctrine of survivorship and may maintain an action in his sole right.

At the January term of this court in the year A. D. 1875, a mandate was directed by this court to the Court of Quarter Sessions, Montserrado County, ordering said Court of Quarter Sessions to try the said case over again; because on the appeal from the said court it did not appear on the record in said case, on account of the mixture of questions of law and fact, for which party judgment ought to have been given.

In obedience to the said mandate the said court below admitted the said case to its jurisdiction and submitted the

same to a second trial by a jury empanelled for that purpose, upon which a verdict was returned for the appellee and judgment rendered thereon. An appeal, however, having been prayed for by the appellants, it was granted them, upon which this case is again before this court. Therefore the court proceeds to notice the points in the bill of exceptions, to which its attention has been carefully given, and will dispose of them as they stand, in their order.

The first point, then, to be considered and disposed of, is set forth thus: "The motion made by the defendants at the last September session of the court, to set aside the verdict and grant a new trial on the ground that said verdict is contrary to the law and the evidence of said case, Your Honor at this December session decided that said verdict is not contrary to the law and the evidence; and therefore a new trial shall not be granted."

The evidence in the case marked "number one" is proof conclusive that the title to said property vests in the appellee, notwithstanding it shows that Meta Ann Lloyd was a joint tenant with the appellee; because the fact having been fully established by the said evidence that all the right, title and interest whatever that the said John D. Johnson, Joseph H. Turpin and Charles B. Dunbar had to and in the said property hath been lawfully transferred by them to the appellee and

one Meta Ann Lloyd ; but the said Meta Ann Lloyd having been absent from this Republic beyond a period of seven years, she is presumed in law to be dead, and therefore Maria Ann Lloyd, being a joint tenant with the said Meta Ann Lloyd, takes the whole of the property by operation of law.

Therefore this court says that the judge of the court below was right in deciding that the said verdict is not contrary to the law and the evidence, and therefore a new trial shall not be granted.

The second point to which exception is taken is comprehended in the following statement: ' 'Because the court decided that the verdict of the jury rendered at the last term of the court is hereby ordered to be recorded, thereby giving Maria Ann Lloyd exclusive right to the property; and the defendants are ruled to pay all costs."

The second point involves the same questions which have been disposed of under the first head of appellants' bill of exceptions, therefore the court says the court below was right in ordering to be recorded the verdict of the jury.

And here it ought to be remembered that fraud is not to be presumed as the object of the contract from the mere act of the husband's interposition in effecting the contract for the purchase of property for his wife, unless such contract was made in violation of some statutory regulation. Nor does

it appear from evidence on record in this case that at the time of the purchase of said property Leo L. Lloyd was largely in debt; because the purchase of said property was effected over three years before any suit was brought against him. But suppose he was in debt at the time, it was his duty to interpose and do whatever his wife desired, which was not in violation of law or tending to fraud; for in the eye of the law the husband is the proper custodian of the wife's property, and as such the law requires him to join with her in all actions, of whatever kind they may be, to recover her rights or to redress any injury she may have sustained.

In this action, however, the defendants, having failed to file their answer within the time prescribed by the statute, have waived their right to object to the nonjoinder of the appellee's husband and her joint tenant, and were therefore compelled by the statute to rely upon the denial of the truth of the facts stated in the plaintiff's complaint, and to rest on that defence only.

Therefore the court, in confirmation of the judgment of the court below, adjudges that the appellee, Maria A. Lloyd, recover against the appellants, C. A. H. Washington, administratrix, S. J. Cambell and R. H. Jackson, administrators of the estate of A. Washington, appellants, the land mentioned in the complaint of the appellee (plaintiff in

the court below), and the sum of sixty dollars for her costs in this action.