FANNY B. COLE, Appellant, v. **ELIZA A. WILLIAMS**, Appellee.

BILL IN EQUITY TO QUIET TITLE.

Argued April 11, 1950. Decided June 9, 1950.

1. Under Liberian law a collateral relative is a brother or sister or his or her descendants.

2. The aunt of an intestate cannot, in the absence of lineal descendants or collateral relatives, take intestate property in preference to the parent of an intestate.

On appeal from decree in equity quieting title, *judgment affirmed.*

Momolu S. Cooper for appellant. *William A. Johns* for appellee.

MR. JUSTICE SHANNON delivered the opinion of the Court.

The records certified to us reveal the following facts in this case:

William B. Taylor, Sr., of Monrovia, possessed a portion of lot number *45* in Monrovia on which he erected a building. Initially, he was married to Eliza A. Williams, appellee, and out of this union was born one child, William B. Taylor, Jr. This marriage lasted two years, and then appellee divorced William B. Taylor.

About ten years after this divorce William B. Taylor, Sr., married Angie Scott-Taylor. They lived together until William B. Taylor, Sr., died, leaving a widow and one heir, William B. Taylor, Jr. Both the widow and son have since died, the son predeceasing the widow.

Fanny B. Cole, appellant, was the sister of William B. Taylor, Sr. Appellant questioned and challenged the right of appellee to the property and attempted to oust appellee therefrom after appellee had entered same and taken possession on the death of her son, William B. Taylor, Jr., the only child of William B. Taylor, Sr.

Upon concession of the facts stated above by both parties, we conclude that the only legal issue before us is which of the contending parties is entitled to the property after the death of both father and son, the mother of the latter owner or the sister of the former. This brings us to a study of the statutes controlling descent.

We find the following from the act of the Legislature passed and approved January 27, 1904, entitled "An Act amending the Law on Descent" :

"That after the passage of this Act, any citizen of Liberia dying intestate, and without heirs, direct or collateral; and leaving property, real or personal or both, said property shall go to the parents of the deceased in equal proportion, and from them to the heirs of the parent from whom the owner of the property descended, and in case of the death of the parent before the death of the intestate said property shall vest in the heirs of said parents in his or her stead." L. 1903-04, 23 (2d) §

The text of this act does not seem to be self-explanatory. Perhaps it became a source of confusion and therefore the Legislature revised it as follows :

"The property of every person, who shall die without devising the same, shall descend in manner following:

"1. To lineal descendants in equal parts, and if any such descendant die before the intestate and leave children, the children shall be entitled to the share of the person so dying.

"2. In the event of leaving no lineal descendants, then to collateral relatives in equal parts; and if any collateral relative should die before the intestate leaving heirs, then such heirs shall take in equal shares the part of the collateral relative so dying.

"3. If any person die intestate without leaving heirs direct or collateral, his property shall go to his parents in equal proportion, and from them to the heirs of the parents from whom the owner of the property descended; and if the parents should die before the intestate the property shall be inherited by the heirs of said parents." 2 Rev. Stat. § 1303.

Since this law does not appear to be in conflict with the act of 1903-04, it must be accepted as an explanation and elaboration of said act. For many years these two statutes controlled the law on descent and inheritance in Liberia. Since their terms seem to be the source of confusion between the contending parties it is necessary for, and incumbent upon, the courts to interpret same by reading herein the intention of the Legislature. According to these two statutes the property of every person dying intestate shall go to the lineal descendants and, if any such descendant dies before the intestate and leaves children, the children shall be entitled to the share of such person

dying. In this case, it is necessary to emphasize that William B. Taylor, Jr., is the intestate who acquired the property from his father, William B. Taylor, Sr., as the sole heir. Therefore, he, and not his father, must be the basis of reckoning. He died intestate, leaving neither descendants nor descendants' children. According to the law,

"2. In the event of leaving no lineal descendants then . . . [the property shall go to the intestate's] collateral relatives . . . if any collateral relative . . . die before the intestate leaving heirs, then such heirs shall take in equal shares the part of the collateral relative so dying." 2 Rev. Stat. § 1303 (2).

This brings us to the consideration of who is a collateral relative under the law to whom in such an eventuality the intestate's property shall go. According to Bouvier, collateral is "that which is by the side, and not the direct line. That which is additional to or beyond a thing." Bouvier, Law Dictionary *Collateral* 519 (Rawle's 3rd rev. 1914).

In an effort to distinguish a lineal descendant from a collateral descendant we quote the following:

"A lineal descent is one in the direct line of the intestate as, for example, from father or grandfather to son or grandson, or from son or grandson to father or grandfather. Collateral descent is to collateral relatives, as from brother to brother. . . ." 16 Am. Jur. 805 (1938).

It is obvious from the text of the statute of 1904 as well as § 1303 (2) of the Revised Statutes that the intent of the Legislature in the use of the word collateral was to limit the degrees to brothers and sisters of the intestate or their descendants. To take a different view would render the meaning of these laws confusing since if the word collateral as so used were to include every collateral relative of the intestate it would also include such persons who are heirs of the parents from whom the owner of the property descended, which heirs according to the act of, 1904 can again be heirs in case of the death of the parent before the death of the intestate.

We have no alternative but to accept this restricted interpretation of the word collateral, and our position is supported by the laws quoted above. We conclude that the Legislature, in its enactment of the laws of descent and inheritance, did not intend the definition of collateral in subsection z of section 1303 of the Revised Statutes to include an aunt. Therefore an aunt, even if she were a collateral relative under some definition, is not within the definition of those who take possession of intestate property in preference to a parent of the intestate. The intention of the

Legislature can be still better interpreted and understood when we consider the following subsequent revision of the laws of descent and inheritance in 1946, prior to the death of the intestate in March, 1947.

"Section 1. That from and immediately after the passage of this Act Chapter LXIV, section 1303 of the Revised Statutes of Liberia relating to real and personal property be and the same is hereby amended to read as follows :

"Section 1303. Inheritance of—The property of every person, who shall die without devising the same, shall descend *[sic]* in manner following :

To lineal descendants in equal parts, and should any such descendant die before the intestate and leave children, the children shall share equally of the person dying.

In the event of an intestate dying, leaving no heirs of his body, said property shall ascend to his parents or stirps in fee, in equal proportion; and if the parents die without conveying said property, then it shall descend to the heirs of the parents from whom the owner of the property descended ; and if the parents should die before the intestate the property shall be inherited by the heirs of said parents.

If there should be no surviving parent or direct heirs of said parents, then said property shall descend to the collateral relatives of the intestate." L. 1946-47, ch. IX.

This act was approved for immediate effect some time before the death of the intestate. However, appellant contended that the statute was not published before the death of the intestate, and therefore should not be allowed to take effect against her claim, which would be invalid under the said statute.

In view of what has been stated herein in our effort to interpret the intent of the Legislature, we reaffirm our conclusion that the aunt of an intestate cannot, in the absence of lineal descendants or collateral relatives in the restricted sense used herein, legally come into possession of real property in connection with said intestate in preference to, or prior to, the parents or parent of an intestate. Consequently the decree of the lower court quieting title to said property as prayed is hereby affirmed with costs against appellant; and it is hereby so ordered.

Affirmed.