

WORRELL S. DIGGS, formerly Worrell S. Worrell, Augusta B. Padmore by and through her husband Jerome R. D. Padmore, and Matilda A. Howard, three of the heirs of the late A. L. Worrell-Stewart, Appellants, v. **MARY L. FERGUSON** by and through her husband L. Manoah Ferguson, John L. Crusoe, T. Lafayette Crusoe, and M. de la Crusoe, heirs of the late Ella E. Maurice, formerly Ella E. Worrell, Appellees.

ARGUED DECEMBER 13, 1921. DECIDED FEBRUARY 1, 1922.

Dosses, C. J., Johnson and Witherspoon, JJ.

1. An unsigned will is not admissible in evidence to prove any substantive fact.
2. When an official act has been done which can only be lawful and valid by the doing of certain preliminary acts it will be presumed that said preliminary acts have been done.
3. When a householder homesteads an estate for himself and his heirs whose names are inserted in the notice of exemption so long as any of such heirs are alive said estate should not be devised without their consent.
4. In Liberia property should be divided between heirs per *stirpes* and not per *capita*.

Mr. Justice Johnson delivered the opinion of the court:

Bill in Equity for a Partition. This was a bill in equity brought in the Circuit Court of the first judicial circuit Montserrado County by appellants, plaintiffs in the court below, for the partition of lot number three hundred and thirteen (313) in the City of Monrovia, County of Montserrado and Republic of Liberia, formerly owned by A. L. Worrell-Stewart, mother of the said Worrell S. Diggs, Augusta B. Padmore and Etmonia L. Roberts deceased, mother of Matilda A. Howard.

In their answer appellees, defendants in the court below, set up title to said property through their mother, alleging that the said A. L. Worrell-Stewart, on the 4th day of June, A. D. 1902, sold said property to the said Ella E. Maurice, and claiming that the title has passed to them by descent.

The plaintiffs replying, denied the legality of the deed from A. L. Worrell-Stewart because, as they alleged, on the 21st day of January, A. D. 1896 said premises had been homesteaded under the Homestead Exemption Act by the said A. L.

Worrell-Stewart, Ella E. Crusoe, mother of defendants, E. Louise Roberts mother of Matilda A. Howard, one of the plaintiffs and Worrell S. Worrell now Worrell S. Diggs, another of the plaintiffs, and that by the provisions of the law no sale of said lot could legally take place without the joinder of all the parties who joined in the said Homestead Exemption notice, which plaintiffs did not do.

Several other pleadings were raised in the bill, but as they are not embodied in the bill of exceptions, we deem it unnecessary to mention or discuss them.

The case was tried and determined at the June term of the Circuit Court, Montserrado County, A. D. 1920, and the court decreed *inter alia*: "That the deed transferring lot No. 313 in Monrovia to E. E. Maurice by A. L. Worrell-Stewart is illegal and of no legal efficacy, that the said lot be held in co-parcenary between the heirs of A. L. Worrell-Stewart, in equal shares, and, that said property be put on let and the proceeds accruing therefrom be equally divided amongst said heirs *per capita* and not *per stirpes*, and the heirs, plaintiffs as well as defendants, pay all costs of the suit."

To this decree plaintiffs took exceptions and have brought the case up to this court for review.

The first point in the bill of exceptions is taken to the court below not allowing plaintiffs to give secondary evidence of an unsigned will of Ella E. Maurice. We must here observe that generally all private writings produced in evidence must be proved to be genuine.

In disputes relative to property, what degree of weight could be given to an unsigned will? The decedent might have changed her mind before her death or it might have been prepared without her knowledge of its contents. The court below, therefore, did not err in its ruling on this point.

As to the second point taken to the court below in overruling plaintiffs' objection to the admission of a registered copy of the deed from A. L. Worrell-Stewart to Ella E. Maurice on the ground that there was nothing on its face to show that said deed had been probated, Mr. Greenleaf in his work on Evidence, in speaking of the presumption in favor of the due execution of solemn instruments says: "When an official act has been done which can only be lawful and valid by the doing of certain preliminary acts, it will be presumed that these preliminary acts have also been done."

(See I Greenleaf on Evidence, p. 47, note 5; see also *Rex v. Whiston*, 4 A. & E. 607; see also *Grosset v. Howard*, 10 Q. B. 411; see also *Holder v. Teob*, Lib. Ann. Series.)

The court, therefore, did not err in admitting said copy as evidence, as the fact of its registration raised a presumption that it had been duly probated.

With regard to the deed from A. L. Worrell-Stewart to Ella E. Maurice, we are of the opinion that the judge of the court below did not err in decreeing that the said deed is illegal. In the case *Wiles v. Wiles* (I Lib. L. R. 423) this court held: "That property set aside by the head of a family as a homestead for himself and family creates an estate in which all parties connected with and forming a part of said family, within the meaning and purview of said act, acquire an interest and a share therein."

The court further held that : "A homestead set apart under and by virtue of the Household and Homestead Exemption Act answers to an estate in co-parcenary. The estate constituting such homestead cannot be devised while there are living heirs of the original householder."

Now it is quite apparent, that the said A. L. Worrell-Stewart having homesteaded the said property lot no. 313, for the benefit of herself and the members of her family whose names were included in the Exemption Notice, could not afterwards, without their consent, sell or otherwise transfer said property to any person whomsoever. All of the persons for whose benefit the exemption was made not having joined in the sale the transfer was illegal and invalid.

The court below erred in decreeing that the proceeds from the rents be divided amongst the heirs *per capita* and not *per stirpes*.

In the distribution of property amongst heirs, the courts of Liberia follow the custom, generally in vogue in the American courts of distributing *per stirpes*. that is by the right of representation and not *per capita*, or individually. That is to say, the children of a deceased child, brother or sister of the original owner of an estate are entitled to inherit in equal parts, the share which such deceased child, brother or sister, would have inherited if living. Thus if A has two children, B & C, and at the time of A's death there are living B and the children of C, B shall have one half of the estate, and C's children the remaining half.

The decree of the court below is therefore so modified as to read "the proceeds from the rents be divided amongst the heirs *per stirpes*," and in all other respects, the said

decree is hereby affirmed, each party paying his own costs ; and it is hereby so ordered.

L. A. Grimes, for appellant.

Arthur Barclay, for appellee.