JEANETTE HARRIS-WORJROH, by her Husband, **THOMAS WORJROH**, Petitioner, v. **WILLIAM HARRIS II** and **JACOB BROWNE**, Executors of the Will of the Late JULIA R. C. HARRIS, Respondents.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued December 15, 16, 1953. Decided January 22, 1954.

1. Joint tenancy cannot be created by descent or by operation of law.

2. Where there is an estate in joint tenancy the survivor is entitled to the whole estate.

3. Tenancy in common may be created by descent or by operation of law.

When the will of Julia R. C. Harris was offered for probate, petitioner, appellant herein, objected thereto on the ground that testatrix had willed property which was not hers. The case was forwarded for trial to the Circuit Court of the Sixth Judicial Circuit, which ruled that the testatrix was not the sole owner of the property in question and ordered the clause devising same deleted from the will. Neither party excepted thereto. Subsequently appellant petitioned the Probate Court for an order to make the judgment effective by delivery of deed. The Commissioner of Probate denied the petition. On appeal to this Court, *judgment affirmed.*

*Doughba Carmo Caranda*for appellant. *S. Raymond Horace* for appellees.

MR. JUSTICE DAVIS delivered the opinion of the Court.

William Harris of Monrovia had three children, namely : Frederick W. Harris, Sarah Jane Harris, and Julia R. C. Harris. During his lifetime William Harris, the father of these three children, acquired a parcel of land located on Carey Street in the Commonwealth of Monrovia, bearing the number 237. He erected a house on this parcel of land where he and his three children lived tip to the time of his demise. Sarah Jane Harris and Julia R. C. Harris, her sister, died without heirs of their body. Nevertheless, before the death of Julia R. C. Harris, she adopted William Harris II. The brother, Frederick W. Harris, died after Sarah Jane and before Julia R. C. Harris.

After Frederick W. Harris, the brother, died, Julia R. C. Harris was the only surviving child of William Harris. Frederick, however, left an heir, Jeanette Worjroh, one of the

parties herein. Upon the death of Julia, she left a will devising to her adopted son, William Harris II, two-thirds of lot number 237 acquired by her late father, William Harris. When this will was offered for probate, Jeanette Worjroh, niece of the testatrix and petitioner in these proceedings, interposed objections to its admission, on the ground that testatrix, Julia R. C. Harris, could not dispose of or will two-thirds of the lot in question because she was entitled to only one-half of the said property, since the other half was petitioner's share of the property which she inherited from her late father, Frederick W. Harris, testatrix's brother. William Harris II, nominated executor under the will, did not answer these objections. Consequently the Circuit Court of the Sixth Judicial Circuit, to which this will had been forwarded, in keeping with our statutes, for trial of the issues of fact involved, made the following ruling:

"Respondents have not answered the objections to the probate and registration of the fourth clause of the will of the late Julia R. C. Harris, but have appeared and requested the court to render judgment on Counts `3' and '4' of the objection which aver that the objector is entitled to half of the property devised by the said testatrix to respondent William Harris II, in the fourth clause of the said will and that the said Jeanette Harris-Worjroh, objector, is, by virtue of her relationship to the said textatrix a beneficiary under the said will. The fact having been admitted by respondents that the said objector is entitled to the said one-half of the premises devised by the testatrix to the respondent, and in view of the Supreme Court's ruling in *Roberts v. Howard,* 2 L.L.R. 226 (1916), in which the syllabus states as follows :

`Where in a case the facts are admitted leaving only issues of law to be determined, it is not error for the court to hear and determine same, without the intervention of a jury.'

it is adjudged that the said testatrix was not the sole owner of the said lot number 237, two-thirds of which was devised to the said respondent as mentioned in the fourth clause of her will, and therefore had no power to devise two-thirds of said property to him. Said fourth clause of the said will, and the devise therein made, is therefore rejected; and the court orders that said clause be deleted from the said will."

Neither of the parties took exception to the foregoing ruling. Later, however, in September, 1952, Counsellor Doughba Carmo Caranda, on behalf of Jeanette Worjroh, who had filed the objections to the will, and who is now party petitioner in these proceedings, filed in the Monthly and Probate Court of Montserrado County the following submission :

"Petitioner in the above entitled cause most respectfully showeth as follows, to wit:

"1. That she is the legitimized daughter of Frederick W. Harris, now deceased, of Monrovia, Liberia, as seen from Exhibit 'A' hereof, being a part of this petition.

"2. That her said late father inherited lot number 237, City of Monrovia, along with his two only sisters Jean Harris and Julia R. C. Harris, who survived him and are now deceased without heirs whatsoever.

"3. That, in the effort of her said late paternal aunt, Julia R. C. Harris, to dispose of her personal property possessed in her own rights, she, in so doing, willed a portion of lot number 237 aforesaid illegally to William Harris, a legatee and one of the executors of her estate; said illegal act having been contested and adjudged in favor of the petitioner as by records of this court, judicial notice of same is most respectfully requested.

"4. That the dwelling home situated on the said lot number 237 built by her said late father, Frederick W. Harris, the land owned by her late grandfather, William Harris, being a completed one, contained furnitures and heirlooms of great traditional value up to and at the death of her aunt Julia R. C. Harris, May 6, 1951, inclusive of her father's family Bible with his birth record now illegally in the possession of executor William Harris.

"5. That the said William Harris, executor, has continuously occupied and controlled the said lot and premises with the buildings from the time of the death of the said Julia R. C. Harris to the present.

"6. Wherefore, in view of the foregoing premises, your petitioner most humbly prays this court to cause her said inherited home and premises, being lot number 237, City of Monrovia, as aforesaid, to be delivered to her by the executors, the above respondents, along with the deed and such other property appertaining thereto, and to grant such other and further relief as this petition may, in law and justice, properly require."

Following the filing of the submission of petitioner, Jeanette Harris-Worjroh, the executors of the last will and testament of Julia R. D. Harris, namely, William Harris II, and Jacob Browne, through their attorneys, S. Raymond Horace and Lawrence Morgan, promptly filed the following answer denying petitioner's right to recover :

"Respondents in the above entitled cause of action deny the right of the petitioner to recover against them for the following reasons :

"1. Because respondents say that this court is without authority to hear, try and determine the petition as filed by petitioner, in that said petition raises a question of title to realty, which, under the statutes of this Republic, must be decided by a jury under the direction of the court. This court therefore being without jurisdiction over the subject matter, respondents pray that the petition be denied.

"2. And also because Count '2' of the petition is false, misleading and untrue, in that Julia R. C. Harris, sister of Frederick W. Harris, and Jean Harris, did leave an heir to her estate who is legally entitled to her property, real and personal.

"3. And also because William Harris II, one of the respondents in this cause, is the adopted son of Julia R. C. Harris, and was adopted for the purposes of inheritance and all other legal consequences, as appears from copy of decree hereto annexed and marked Exhibit 'A,' and is the only surviving heir.

"4. And also because respondents say that there is no order or judgment conferring on petitioner title to lot number 237; neither does petitioner have any other title to said property.

"5. And also because Julia R. C. Harris, late of this city, nowhere in her last will and testament bequeathed, willed or in any other manner set over or conveyed to petitioner title to lot number 237 in the City of Monrovia; under which condition the executors in execution of her last will and testament might be requested and required to deliver same to her."

The pleadings ended with the rejoinder of the respondents. The Commissioner of Probate made a ruling denying petitioner's request, to which she took exceptions and has brought the case hither for review.

Were it not that there is an important issue involved in these proceedings, injected by petitioner's counsel in the court below, and that we do not favor the manner in which the Commissioner of Probate disposed of same, we would simply affirm his ruling denying the petition. We refer particularly to the proposition, accepted by the court below that the estate created by the late William Harris was held in joint tenancy by the two sisters, Sarah Jane Harris and Julia R. C. Harris, and their brother Frederick Harris. But this estate could never rightly be regarded as held in joint tenancy; for

according to Blackstone, the creation of an estate in joint tenancy depends on the wording of the deed or devise by which the tenants claim title, and such an estate can only arise by grant, purchase or acquisition, that is, by act of the parties, and never by operation of law. The nature of a joint estate depends upon its unity; it must be created by one and the same conveyance. The conditions and requirements recited, *supra,* are indispensable to the creation and existence of a joint tenancy. See : Blackstone, Commentaries, Bk. II, ch. XII ; 14 Am. Jur. 79-87, *Cotenancy,* §§ 6-14.

Evidently the petitioner herein misunderstood the difference between an estate in joint tenancy and an estate in common ; for the former can arise only by purchase or grant, and not by descent or operation of law *per se;* whereas the latter may arise solely by descent or operation of law. Since the Harris estate, the subject of these proceedings, was created by descent, it is definitely not an estate in joint tenancy as argued at this bar with forensic eloquence by petitioner's counsel. Rather, it is an estate in common.

When we first opened the record and read the briefs in this case, we could not perceive the propriety of petitioner requesting the Monthly and Probate Court of Montserrado County to deliver to her the deed for the said property, and to turn the entire estate over to her as sole owner of same, when so recently she had placed herself on record as entitled to only one-half of the property in question. However, as the arguments at this bar progressed, we discovered that petitioner was laboring under another misconception with respect to the distribution and enjoyment of estates held in joint tenancy. Petitioner demanded possession of the entire estate as sole owner because she regarded the estate as one in joint tenancy controlled by the principle of survivorship. According to this principle, upon the deaths of joint tenants, the whole estate rests in the survivor with reference to the heirs of the deceased tenants. Thus, petitioner reasoned, since she was the only surviving heir of the "original" stock, the whole estate should vest in her.

This is a fallacy because, even if the estate in question were held in joint tenancy, the original joint tenants would have been Frederick W. Harris, Sarah Jane Harris, and Julia R. D. Harris. Thus, at the time Frederick and Sarah Jane died, leaving Julia R. C. Harris as the only surviving tenant, the entire estate, according to the doctrine of survivorship, would have vested in her without reference to petitioner, who was the heir of Frederick W. Harris. In that case petitioner would have been entirely out of the estate. But, in fact, since the estate was created by descent, and not by purchase or grant, it is an estate in common. Therefore petitioner, R. C. Harris, is entitled to one-half of the property and William Harris II is entitled to enjoy the other half. The

ruling of the Probate Commissioner is hereby affirmed in all respects other than on the question of joint tenancy. Costs of these proceedings are to be paid by petitioner; and it is hereby so ordered.

Affirmed.