SARAH A. ROBERTS, Appellant, vs. JANE ROSE ROBERTS, Appellee.
LRSC 11; 1 LLR 107 (1878)

[January Term, A. D. 1878.]

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

Wills—Written evidence—Rules of Practice of courts.

The right to devise property by will was conferred upon the people of Liberia by the passage of an act in 1824, during colonial government, in the following words: "All persons are permitted to dispose of property by will." Upon the erection of the Republic this ordinance was incorporated into the laws of the Republic by Art. 5, sec. 1, of the Constitution.

The common law by Blackstone and Kent, and the statutes embraced in those commentaries, where not in conflict with Statutes of Liberia, form part of the laws of Liberia. The Statute of Wills embraced therein is one of such statutes and is in force in this country.

Interlineations in deeds will be presumed to have been made contemporaneous with the execution of the instrument unless there are reasons to suspect that fraud has been committed, which is a question for the jury•

This case comes before us on an appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County. This, an action in ejectment, was brought by the plaintiff to recover possession of certain lands, etc., belonging to J. J. Roberts, deceased, the title to which she claimed, as his heir-at-law, had come to her by descent, and alleged that the defendant wrongfully withheld the same from her. The defendant denied the right of the plaintiff to recover, because the said deceased left a will by which he disposed of his real and personal estate, disinheriting said plaintiff from all his real estate, except two lots, and that she, the defendant, was executrix of said will. The plaintiff in reply attacked the validity of the will, as being unlawful, made according to the wishes of the defendant, etc.

During the progress of the trial several exceptions were taken to the ruling of the judge presiding, and upon the termination of the suit in favor of the defendant, the case has been brought up on appeal by the plaintiff. The several issues raised in this case as presented to us by the bill of exceptions have been very carefully considered, and in giving the conclusions of our deliberations with respect to them we have not deemed it necessary in every instance to refer to the points separately, especially when they had no material bearing upon the result of the case.

1 st. The first point of exceptions having been waived by appellant we come to the second, which is thus stated: "And also because upon the motion of the said defendant's counsel the sixth section was ruled out of the plaintiff's reply." By reference to the reply we find this section refers to that portion of the will creating a charity, etc.

Courts of equity have exclusive jurisdiction over the subject of charities, which are a species of trusts deriving their signification from the statute of 43 Eliz. , c. 4, in the preamble of which are enumerated uses that are considered charitable, and among those are gifts, devises, and bequests for the relief of the aged, impotent and poor people, for the maintenance of sick and maimed soldiers and mariners, for schools of learning, free schools, and scholars of universities, etc. (2 Bouv. Inst. sects. 3980, 3981; Adams, Equity, page 66.)

The court was right in ruling out said section, and this we say without reference to the reasoning upon which that ruling was based.

2d. As to the exception taken to the question asked, objected to, and ruled upon, and comprising from the third to the thirteenth points, inclusive, of the bill of exceptions, we have found that the rulings of the court, upon the whole, on those questions which had any material bearing on the issues of the case, were correct.

3d. The fourteenth exception is : "Because when plaintiff objected to the defendant's written evidence, number one, being the will of J. J. Roberts, because the said will cannot be introduced as evidence in a case when the validity of the said will is to be contested, the said objection was overruled and the said will was admitted as evidence in the case."

On the trial of the validity of a will, it should be read to the jury; they must consider the evidence with reference to the paper, and it is highly proper they should see it in the first instance. It should have been admitted by the court, not as evidence, but to enable the jury to see what they were to try. (U. S. Digest, first series, Vol. X IV, page 352, sec. 2382; Redfield on Wills, vol. 1, p. 49 and n. 42.) 4th. The fifteenth exception is 'because the said will was admitted as evidence notwithstanding the other three objections made to the said will," etc.

The second objection to the admission of the will, as appears from the record, was the probation thereof contrary to a rule of the Probate Court with respect to the probate of wills. "Cursus curiæ est lex curiæ" (the practice of the court is the law of the court) is a legal maxim. Every court is the guardian of its own records and master of its own practice. Should the Probate Court in the admission of the will to probate have done so in violation of some law of the land, it would have been a proper subject for review, but a court of error does not notice the practice of another court. (Broom's Legal Maxims, p. X, 134.)

' 'A court may change its practice without written rules, and when the question is whether it has done so, its own solemn adjudication is the best evidence." (Curtis, Supreme Court Decisions, 1, 137.) The question then being on the practice of the court, and not a law of the land, the court did not err in its ruling.

5th. The third objection to the admission of the will was that "in the absence of a statute of wills the testator, J. J. Roberts, deceased, could not make a legal devise of real estate."

This raises a most vital and important issue—the capability to devise real estate in this Republic. Mr. Redfield opens his work on Wills with this section: "The right of testamentary disposition of property is unquestionably one of the results of cultivated social life, and dependent upon municipal law. But it is nevertheless an instinctive sentiment intimately associated with that love of acquisition, and of dominion, which forms the basis and the stimulus of all social progress: and which, in its normal development, is the sure measure of advancing civilization, and in its morbid excesses equally marks the process of declension and the increase of crime."

We do not propose to enter into an historical review of the subject of wills generally, or of devises particularly, but in giving our opinions thereupon we shall, as we have endeavored to do on other points, use the language of the law as far as practicable, rather than our own.

In the year 1824 the Colonial Government of Liberia passed an act in these words: "All persons are permitted to dispose of property by will." When the statute (which is an act or resolution of the Legislature) allows certain actions without commanding them, it is a permissive one. Here,

then, in the early days of the colony, we have a permissive act of the law-makers for the disposal of property by will, i. e. , by a legal declaration of a man's intention of what he wills to be done with his property after his death; and as property is the lawful right which a man has in lands or chattels, the permission extended equally to the devising of real estate as to the bequeathing of personal property.

This permission thus granted, exercised and enjoyed by the people during the colonial days was renewed on the formation of the Republic, in these words: "All laws now in force in the Commonwealth of Liberia, and not repugnant to the Constitution, shall be in force as the laws of the Republic of Liberia until they shall be repealed by the Legislature." (Constitution, art. S, sec. 1, p. 240.) By virtue of this, the people of this country continued to make wills and to devise real property, the Legislature not repealing the act giving its tacit consent and authority for the continuation of the permission.

In later years we find the Legislature adopting a civil and criminal code for the Republic. And here we would remark that the plaintiff in her reply, as also in her motion now under consideration, advances the proposition that "the statute laws of Liberia enacted by the Legislature, and the general principles of the common law, are the laws by which the people of this nation have consented to be governed." Thus far it is true, but on an examination of the act of the Legislature adopting a civil and criminal code, we will discover whether or not the laws of this Republic do not embrace more than what is comprehended in the idea intended to be conveyed by that proposition. In an act to amend an act entitled "An act defining certain crimes, and relating to the punishment of crimes," we have the provisions for the codes referred to thus set forth at large :—

"It is enacted by the Senate and House of Representatives of the Republic of Liberia in Legislature assembled. Sec. 1. That so much of the seventh section of an act entitled, An act defining certain crimes and relating to the punishment of crimes, as reads 'Such parts of the common law set forth in Blackstone's Commentaries as may be applicable to the situation of the people, except as changed by the laws now in force, and such as may hereafter be enacted, shall be the civil code of laws for the Republic,' be so altered and amended as to read that 'Blackstone's Commentaries, as revised and modified by Chitty or Wendell, and the works referred to as the sources of municipal or common law •in Kent's Commentaries on American Law, volume first, shall be the civil and criminal code of laws for the Republic of Liberia, except such parts as may be changed by the laws now in force, and such as may hereafter be enacted; and all laws and parts of laws conflicting with the provisions of this act be and the same are hereby repealed'." (Lib. Stat. Bk. 2, pages 72—3.)

Here is an adoption not only of the common law as set forth in Blackstone's Commentaries as in the previous act amended by this, but of the whole of those Commentaries as revised and modified by the writers named in the act. The statutes embraced in those Commentaries, where they remain unchanged by laws now in force, have thus been adopted as laws of this Republic, and among these are the Statute of Wills and the Statute of Uses, which Blackstone says made a

great alteration as to property, the former by allowing the devise of real estate by will, etc. (Chitty's Blackstone, Vol. 12, p. 430.)

Kent in his Commentaries, Vol. 1, in giving an account of the sources of the common law to the American people, makes this statement: "It is also the established doctrine that English statutes passed before the emigration of our ancestors, and applicable to our situation, and in amendment of the law, constitute a part of the common law of this country." (See page 473.)

These statutes, being one of the sources of the common law referred to by him, have been incorporated by that act of the Legislature within our laws. As to the wisdom, policy or expediency of adopting these statutes as a whole, or of the works referred to in Kent, as sources both of the municipal and common law, and incorporating them as laws of the Republic, the court has nothing to do; these are matters of legislative deliberation and cognizance. The legal right to devise real estate, therefore, by the laws of the Republic, has been granted and secured to the people, and the court very properly refused to sustain the objection,

6th. The fourth objection to the admission of the will was, "because the attesting witnesses had not been examined by the Probate Court," etc.

Nothing appearing to the contrary, it is to be presumed that the court followed its usual practice in the admission of the will to probate; and in this connection our views as to practice stated under head fourth will apply. The ruling was therefore not an error.

7th. The sixteenth exception was taken because of plaintiffs objection to defendant's written evidence, number two,—1st, on the ground of irrelevancy; 2nd, because the document was interlined.

The deed was relevant because it tended to prove one of the issues raised in the pleadings, that the plaintiff had taken possession of certain lots devised to her in the will. The rules with respect to interlineations as laid down by the several authorities are diverse. This court, however, adopts the view that an inter lineation, without anything appearing against it to create a suspicion, will be presumed to have been made at least contemporaneous with the execution of the instrument; and even in the case of suspicion, the question is one for the jury to settle as to the time when the interlining was made, before, or after execution. The interlineations in this deed are not such as to create a suspicion in the eye of the court, as one seemed to have been for want of space between printed words, and the other of a word that had been omitted but did not affect the title of the rightful owner in any respect whatever. The deed, too, was over forty years old and for these reasons should have been admitted.

8th. The seventeenth exception was to the overruling of the plaintiffs objection to the defendant's written evidence, number three, "because it had no seal. "

At the time of the execution of this deed, October 14, 1837, there was no law in the Colony requiring a seal to be attached to deeds; such parts of the common law as set forth in Blackstone's Commentaries as were applicable to the people having been adopted by the Constitution of the Commonwealth, January 5th, 1839. There was therefore no error in the admission of the deed.

9th. The next two points are objections to certain written evidence of defendant's, numbers four to seven, these being extracts from the records of the Probate Court. As these related to the practice of the court, we regard them as irrelevant for the reasons given under our fourth head.

10th. The twentieth and twenty-first exceptions are, "because the verdict of the jury was contrary to the law and evidence, that the court rendered final judgment against the plaintiff, and for all the rulings of the court during the progress of the trial, to which exceptions were taken at the time by the plaintiff."

Having already passed upon the several rulings of the court as they have presented themselves to us, it only remains for us to consider the verdict of the jury and the judgment of the court.

The right of the testator to devise real estate being sustained by law, his execution of a will, and his capability at the time to do so, as to his state of mind, having been established by evidence, no undue influence having been proven, and upon a consideration of all the issues raised, and evidences as brought before this court by records, it cannot be seen wherein the verdict of the jury was against the law and evidence, and it was the duty of the court to render final judgment thereupon.

Having thus reviewed the case, this court adjudges that the judgment of the court below is affirmed, and the appellant is ruled to pay costs.