LEAH A. WILLIAMS, formerly Leah A. Phelps, Appellant, v. **MANSON WYNN**, Administrator of the Estate of H. R. Phelps, late of Brewerville, Appellee.

ARGUED DECEMBER 15, 1913. DECIDED JANUARY 9, 1914.

Dossen, C. J., and Johnson, J.

1. If a husband buys property in the name of a third party who subsequently conveys it to the purchaser's wife, and if the transaction Were unattended by fraud and were allowed to pass unchallenged through probation and registration, the wife c.,uld have acquired an absolute right and title which could not be assailed by creditors of the husband; and if property so acquired runs uninterruptedly for twenty-one years, a perfect and complete title would vest in the wife by the doctrine of limitations to which the clause of the Constitution relied upon by the lower court would be inapplicable.

2. The bare allegation of title to real property unsupported by a valid deed or other instrument, or by any legal circumstances and condition, as for instance, undisturbed possession for the statutory limit requisite to bar an adverse title by which legal ownership is presumed, is devoid of legal efficacy and weight, and can not by any rule of law be construed into a defensible title.

3. In legal controversies where the *res gestce is title* to real, property founded upon deed or other valid instrument of writing, or an authentic copy thereof where the original has been proven lost is prima *facie* or best evidence to the claim; falling short of the production of which evidence at the trial, proof of title would be fatally insufficient unless where it was clearly established that the original document did really exist but had been lost, and that the public records in which same was recorded had been destroyed; or that the document is in the possession of the adverse party who has been duly subpoenaed to produce same at the trial.

4. A deed admitted to probate, is a valid document; and as such, is evidence

against all parties thereto.

A court of probate should reluctantly permit articles which the husband purchases for the wife, and which he desires her to own in her own right, to be brought into the estate of a deceased husband if the widow can produce satisfactory proof of the fact, that they were bought for her own use or account by her husband.

Mr. Chief Justice Dossen delivered the opinion of the court :

In re a Petition to Strike from the Inventory of the Estate of the said H. R. Phelps Certain Real and Personal Property Claimed by Appellee—Appeal from Judgment. This case originated in the Court of Monthly Sessions and Probate, for Montserrado County at its March term, nineteen hundred and thirteen and was determined at its October term for the same year.

The records show that the said H. R. Phelps, late of the settlement of Brewerville, in the County of Montserrado, was the former husband of appellant and that he died intestate but that at his death he was seized and possessed of certain real and personal property, and that pursuant to statutory provisions the Probate Court appointed appraisers and administrators to discover and appraise his estate and to administer same agreeable with the statutes applying to intestate estates. That accordingly an inventory was returned to the Probate Court wherein was set forth and contained certain real and personal property claimed to be property owned and possessed by the intestate at the time of his death, as far as had come to the knowledge of the appraisers. The said inventory contained, *inter alia,* three pieces of real property situated in the settlement of Brewerville, the abuttals and description of which are set in the appellant's petition of claim and certain personal chattels which are also described in said petition and are hereinafter more specifically referred to, all of which property appellant claimed ownership to in her own right and independent of her right of dower out of the estate ; wherefore, the probation of the inventory containing said properties was objected to by appellant and application made to the court

below to order same to be struck from the inventory as forming part of the assets of the deceased.

The properties comprised in the said application of the appellant are as follows : that is to say : (1) fifteen acres of land in the settlement of Brewerville with one dwelling house; (2) twentyfive acres of land located on the North Avenue in said settlement; (3) ten acres of land in the settlement of Brewerville bought from the estate of Charles Alexander; (4) thirty pieces of timber; (5) one cooking-stove, and utensils; (6) one dining table; (7) one bedstead; (8) four chairs; (9) one toy-stand with toys; (10) one table with waiter and toys; (11) three flower pots; (12) four picture frames; and (13) one folding table.

The trial court entered upon the hearing of the petition at the term to which it was presented, but owing, it would seem to the complexity of the facts surrounding the case and the determination of the trial judge to thoroughly and deliberately inquire into those facts, which in cases of this nature it is confidently expected that a probate judge will carefully do, did not conclude the hearing until nine months later when on October fifth it entered its final judgment in the premises wherein it denied the application in part; that is to say, the court refused to strike from the said inventory any portion of the lands and appurtenances claimed by appellant, but held that certain of the personal chattels which appellant had acquired "otherwise than through her husband" should be struck from said inventory as being the property of the appellant which could not be made liable for the payment of the debts of her deceased husband. See judgment.

Exceptions were taken to this final judgment of the trial court, as well as to several rulings made in the process of the trial and the case appealed to this judicature for review.

During the hearing of the cause before this court the learned counsel for the appellee raised in his arguments several points involving the legality of property acquired by a married woman from her husband during coverture,

and contended that all and any such property could be made liable for the payment of the debts of the husband. No exception to this general principle, which counsel insisted should be followed in the case at bar was made whether the property was real or personal; whether it was, or was not, procured from the independent resources of the wife, the husband only acting as agent ; 'whether the husband was or was not under legal disability at the time be made the conveyance; or whether, if real property, the transfer was void *ab initio* because it was a *direct* transfer from husband to wife ; or whether it was made through the medium of a trustee or third party.

It appears that the court below followed this principle without limitations or exceptions, in arriving at the conclusion that only the property acquired by appellant "otherwise than through her husband" should be eliminated from the inventory of the estate of the deceased husband, which meant in effect that any property which appellant may have acquired through her husband during coverture, whether the conveyance was through the medium of a trustee or third party or not and the title therein had become unassailable by virtue and operation of the statute of limitations; or whether fraud could be legally imputed as the motive for such transfer or not, in any case if the property had been acquired through the husband, the trial court held that it could be made liable for the debts of the deceased husband. Now while the question of the legality or illegality of a conveyance made by husband to wife through the medium of a trustee or third party with all the requisites of the law, is not properly before us, growing out of the fact that the deeds for the property alleged by appellant to have been procured by her late husband in her own right and title and by virtue of which she claims ownership to two parcels of the land in dispute, were not presented in evidence at the trial; nor was there any authentic copy of said deeds presented; nor was there any evidence of legal weight, of which this court could take notice, produced to prove either the loss of said documents or the destruction of the public records in which they had been recorded, still we feel that the principle which the trial court evidently followed in arriving at its conclusions with respect to the personal

chattels, is so general in its application and so far-reaching in its effect upon the status of property belonging to married women, as to justify this court setting forth for future guidance what is the legal status of property acquired by a married woman during coverture through or by her husband, and how far such property may be held responsible for the debts of the husband.

The Constitution declares that, "The property of which a woman may be possessed at the time of her marriage and also that of which she may afterwards become possessed, otherwise than by her husband shall not be held responsible for his debts * * *." (Vide Const. Lib., art. V, sec. 10.) It was contended that the words "otherwise than through her husband" in the above cited section implied that property thus acquired by a married woman may be made liable for the debts of her husband. We are of the opinion that this provision of the Constitution is subject to certain limitations and qualifications. We hesitate to lay down the broad principle that the property of a *feme covert* acquired after coverture through her husband, is subject to the payment of hi's debts under any and every circumstance. Now it is well understood that husband and wife are one in the eye of the law, and therefore a contract made directly between them, in which property is the subject matter would be void *ab initio* for want of legally distinct parties thereto. But this barrier may be legally overcome by a husband buying or otherwise procuring property in the name of a third party, who becomes the medium through which the title may ultimately vest in the wife; and, it would seem that if such a transaction were unattended by fraud or the intent to defraud, and if the husband was at the time under no legal disability to contract; and if the transaction were allowed to pass unchallenged through probation and registration the wife would have acquired an absolute right and title in the subject matter which could not subsequently be assailed by the creditors of the husband. Again, let us suppose that the fee of the wife in property acquired under such conditions had run uninterruptedly for twenty-one years : we hold that a perfect and complete title therein would have vested in her by the doctrine of limitations which would be unassailable and to which that clause of the Constitution

relied upon by the lower court and urged before this court by counsel for appellee, would be inapplicable.

In the case *Bingham v. Oliver,* determined by this court in 1870, this court enunciated principles analogous with the foregoing premises with respect to the liability of the property of married women (I Lib. L. R. 47).

While we can not uphold the judgment of the trial court upon the legal premises assumed by it, nor can we support the contention that the language of the Constitution "otherwise than through her husband" taken inversely implies that property acquired by the wife through the husband may be held responsible for his debts no matter under what circumstances it may have been acquired and how long the title may have existed and so forth, still the case at bar, so far as the right of appellant in and to the twenty-five and fifteen acres of land and appurtenances in the settlement of Brewerville and claimed by appellant is concerned, must collapse and fall because appellant at the trial failed to support her claim by sufficient legal evidence. It is a legal maxim that "he who fails in his proof has failed utterly," so far as relates to the facts of a cause. We would here remark that the bare allegation of title to property, and particularly *real* property, unsupported by a valid deed or other instrument, or, by any of those legal circumstances and conditions—as for instance undisturbed possession for the statutory limit requisite to bar an adverse title —and by which legal ownership is presumed, is devoid of legal efficacy and weight and can not by any rule of the law be construed into a defensible title.

In legal controversies where *res gestce* is title to real property founded upon deed or other valid instrument of writing, the law will regard such deed or other instrument of writing or an authentic copy thereof where the original is proven lost as *prima facie* or best evidence of the claim; falling short of the production of which evidence at the trial, proof of title would be fatally insufficient and non-conclusive, unless where it was clearly established that the original document did really exist but had been lost and that the public records in which same was recorded had been destroyed; or, perhaps, that

the document in the possession of the adverse party who has been duly subpoenaed to produce same at the trial.

The appellant failed to support her claim by proof of this quality ; it is true she did put in evidence two purported copies of the alleged original instruments, but neither of these was valid or authentic, because not having passed under the forms of the statute in such cases made and provided and it was manifest error in the trial judge in admitting them as evidence.

Having considered at some length the appellant's claim to the first and second pieces of the property in dispute ; namely, the *twenty-five* and *fifteen* acre blocks, we come now to consider her claim to the ten-acre plot situated in Brewerville, and bought from F. T. Clark in the capacity of administrator of the estate of Charles Alexander late of that settlement.

We find that a deed for the said *ten* acres was duly executed by the said F. T. Clark, who at the time of said act held letters testamentary over the estate and was further invested with an order of sale issued by the Court of Probate empowering him to sell. The power therefore in Clark to sell the said tract of land was legal and from the terms of the deed executed by him it doth appear that Clark sold the land in question to Leah A. Phelps alias Williams the appellant in this suit for a ,valid consideration. It further appears from the records that the deed so executed was admitted to probate without any objections being raised thereto and that the same was probated in accordance with the statute of Liberia passed 1862. This having been done the instrument became a valid document and as such is evidence against all parties thereto (vide Rev. Stat. Lib., p. 56, sec. 25). At the trial appellee sought to prove by Clark that the conveyance was made by him to appellant under a misapprehension of her relation to the estate of her late husband, but this statement is not borne out by the terms of the deed which specifically reads that the conveyance is made to Leah A. Phelps alias Williams and to her heirs and assigns. Now the law is unequivocal with respect to the extent to which oral testimony may be received to prove that the terms of an instrument is

different from what is therein stated. There was no evidence supporting the testimony of Clark to the effect that he believed he was making the property over to the estate of H. R. Phelps, deceased, when he unqualifiedly transferred the land in question to appellant and her heirs and assigns forever. There was no evidence to prove that up to this time appellant had been appointed administratrix, or, that she had done any act in the premises of her late husband's estate, that could have influenced Clark to believe that the property was being sold to appellant for the benefit of the estate of her late husband. With regard to the receipt given by Clark to the husband of the appellant during his lifetime as part payment of the purchase money for the land in question, we find that applying the evidence of appellant to this fact, where she states that the amount paid by her late husband during his lifetime towards the purchase of the land came froth coffee taken from her father's estate and was therefore her own money paid by him in the capacity of her agent, which assertion is nowhere in the evidence controverted, we deliberately conclude that the hypothesis of fraud alleged to have been employed by appellant in the procurement of the deed in question seems to our minds not sufficiently established to warrant the judgment of the court below on this point.

But supposing the converse of the facts to have appeared at the trial even then the question which those facts would have naturally raised and the legal issue thereby involved, would have been one triable by a *jury* and not by a probate judge.

We find therefore the trial judge in error with respect to his ruling relating to the ten-acre plot bought by appellant from Clark and the same is hereby reversed.

We come now to consider the court's ruling with respect to the personal chattels on the said inventory and claimed by appellant. The Constitution of Liberia settles upon the wife *one-third* of her husband's personal estate which he possessed at the time of his death, which she becomes the absolute

owner of no matter whether the estate be solvent or insolvent. The principle upon which this provision seems to be founded, is, that the wife from the share of responsibility she bears in the family and home as helpmate is equitably entitled to one-third of the personal chattels of her husband and that this shall go to her for her maintenance after his death. Apart from this constitutional provision, it seems to us highly justifiable for the husband to purchase for the wife articles, which he desires her to own in her own right, whether those articles be articles for her personal adornment or otherwise, and a Court of Probate should reluctantly permit such articles to be brought into the estate, if the widow can produce satisfactory proof of the fact that they were bought for her own use and account by her husband. But we do not mean by this remark to give countenance to the practice which we fear is too often followed, where a widow appropriates the *whole* of the personal chattels of her deceased husband to her *own* use to the injury of creditors and heirs. These are matters we think which must be carefully considered by the probate judge and an equitable conclusion arrived at to suit the peculiar circumstances of each individual case.

From the facts and circumstances surrounding the case at bar, we are of the opinion that the court below was correct in refusing to grant the application to strike from the inventory of the estate chattels to which appellant had failed to establish her right, and which from their character a reasonable presumption in favor of appellant's claim thereto could hardly, under ordinary circumstances, be inferred. It seems to us more probable that the chattels in question formed a part of the personal property procured and owned by the deceased for the common use of the household and therefore is justly a part of the assets of the estate. While we are anxious to guard the rights of married women and will always when justified throw around them the strong arm of the law to protect their just and lawful interest against all persons whomsoever; and while we would hesitate "to lay down in this case any principle with respect to the property of a married woman that would not be in consonance with the meaning and spirit of the Constitution as commonly

understood by the people of this Republic and uniformly held by this court for more than half a century; still we also feel it a stern duty not to uphold as law the practice which is becoming more and more pronounced in this country whereby on the death of a man, the widow comes forward and lays claim to the whole or most valuable part of the personal chattels of the family, including cash and other available assets, to the great detriment of creditors and heirs, and the ridicule and ignoring of the good *name, honor and honest reputation.* of the deceased husband.

The judgment of the trial court is hereby reversed so far as it relates to the ten-acre plot of land bought from Clark as administrator of the estate of Charles Alexander, late of the settlement of Brewerville, and for which a deed (the invalidity of which has not legally been established), was duly granted the appellant.

The judge of the lower court is hereby commanded to cause to be eliminated from the inventory of said estate the said tract of land and to cause the appellant to be reimbursed out of the estate in such sum as may have accrued unto the estate out of the said ten acres during the time the said land may have been under the control of its administrators.

In all other respects the said judgment is hereby affirmed. A mandate to this effect is hereby authorized to issue to the court below.

Costs disallowed both parties.

P. 0. Gray, for appellant. *Arthur Barclay,* for appellee.