

MAIER & JURGENSMEYER, a Mercantile Firm transacting business in the County of Grand Bassa, Appellant, v. LOUISE HORACE, one of the legal Heirs of the late JEFFREY B. HORACE, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
GRAND BASSA COUNTY.

Argued April 14, 1938. Decided April 22, 1938.

1. It is within the province and power of the Legislature to amend, supplement or repeal any act previously passed by them.
2. The original Homestead and Household Exemption Act is not a constitutional provision that cannot be amended, supplemented, or repealed by subsequent legislative enactment.

Appellee petitioned the Circuit Court of Grand Bassa County to perpetuate the homestead exemption executed by a deceased ancestor of whom she was an heir, and appellant, mortgagee of the property, opposed the petition. Appellant appealed from a judgment for petitioner, and this Court *reversed*.

E. A. Morgan for appellant. No appearance for appellee.

MR. JUSTICE TUBMAN delivered the opinion of the Court.

Maier & Jurgensmeyer, a mercantile firm transacting business in the County of Grand Bassa, appellant, has brought this cause on appeal from the judgment of the Circuit Court for the Second Judicial Circuit, Grand Bassa County, in a matter of petition to perpetuate a homestead exemption executed by the late Jeffrey B. Horace, during his lifetime, filed by appellee Louise Horace, one of the legal heirs of the said late Jeffrey B. Horace.

The cause, according to the record, is grounded on a petition filed by Louise Horace in the Probate Division of the aforementioned court in which she shows:

“That she is the legal heir of Jeffrey B. Horace as aforesaid, and that Jeffrey Horace during his natural lifetime, had set apart from the rest of his estate as a Homestead for himself and his family, agreeable with the Homestead Act of 1889, Lot No. 10 situated in the upper ward of the Municipal District of Buchanan, Grand Bassa County, and Republic of Liberia, with certain personal property in keeping with law.”

And prays therefore as follows:

“Your Petitioner most respectfully petitions Your Honour asking that Your Honour will have stricken from the Inventory list of the estate of the late Jeffrey B. Horace Lot No. 10 situated in the District and County aforesaid, containing one dwelling house, and certain personal property, and that same will not form a part of the estate to be disposed of by the Curator, because said property was Homestead and exempted from the rest of Jeffrey B. Horace’s estate during his natural lifetime, for himself and his family under the Homestead Exemption Act of Liberia. This your petitioner will in duty bound ever pray.”

To this petition appellant filed the following objections:

“And now comes into this Honorable Court Henrich Brachkerbushe, Agent for Maier & Jurgensmeyer, Principal creditor of the estate of the late Jeffrey B. Horace, and most respectfully objects to the court entertaining the petition of Louise Horace, legal heir of the said Jeffrey B. Horace, requesting the court to strike from the Inventory of the said estate, Lot No. 10, situated in Upper Buchanan, Grand Bassa County, because the same is said to have been set apart as a Homestead estate for the said Jeffrey B. Horace and family, for the following legal reasons to wit:—

- "1. Because the said Jeffrey B. Horace subsequent to his creating the said Homestead, exercised his right given him by law to revoke same, thereby dissolving the homestead which he is said to have created. A copy of the Revocation duly probated and registered according to law is herewith filed. And this the said creditor is ready to prove.
- "2. And also because the said creditor is holding a mortgage on said lot No. 10, to secure the payment of the sum of \$484.85 (Four hundred and eighty four dollars and eighty five cents) which amount the said creditor advanced the late Jeffrey B. Horace during his lifetime. And this the said creditor is ready to prove.

"Wherefore the said creditor most respectfully prays that this Honourable Court will, for the foregoing reasons, not lend its aid to the petitioner in evading the payment of a debt contracted by the late Jeffrey B. Horace in good faith, but allow the said property to remain on the inventory of the estate, to be administered by the Curator in accordance with the law controlling mortgages in Intestate Estates."

The appellant also filed as exhibit, a certified copy of the Revocation notice executed by the said J. B. Horace, which reads as follows:

"REPUBLIC OF LIBERIA,
GRAND BASSA COUNTY.

"REVOCATION OF NOTICE SETTING ASIDE LOT NO. 10 SITUATED IN UPPER BUCHANAN, GRAND BASSA COUNTY, AS HOMESTEAD. KNOW ALL MEN BY THESE PRESENTS: That I Jeffrey B. Horace of the City of Upper Buchanan, Grand Bassa County Republic of Liberia, do hereby and by these presents do waive, release and relinquish all rights and benefits under my notice setting aside under the Homestead Exemption

Act. Lot No. 10, my residence situated on Atlantic Street in the City of Upper Buchanan, County and Republic aforesaid, and I do hereby *revoke* and *dissolve* such exemption under the right given me by the Act of the Legislature of Liberia approved January 21st A.D. 1907, entitled:

“An Act Amendatory to the Homestead Exemption Act.

“Witness by my hand and seal this 16th day of November A.D. 1923.

[Sgd.] J. B. HORACE.

“Signed in the presence of

[Sgd.] C. WOCKMANY.

“LET THIS BE REGISTERED.

“[Sgd.] H. B. WILLIAMS

Judge of the Monthly and Probate Court, Grand Bassa County

“Probated this 14th day of February A.D. 1924.

“[Sgd.] H. R. W. DIGGS

L.S. Clerk of said Court.

“Registered according to law in Vol. 14, page 240, this 18th day of February A.D. 1924.

“[Sgd.] BENJ. E. JOHNSON

Reg. Grand Bassa County.”

Consequently to the objections of appellant, appellee did not file an answer or reply, and the cause came on for trial before His Honor Edward J. Summerville, Judge of the Circuit Court, for the Second Judicial Circuit, Probate Division, who after hearing said matter ruled and adjudged that:

“The Court therefore rules that the Homestead made by Jeffrey B. Horace be and the same is ordered to exist as long as any of the heirs of said family shall live and they are entitled to benefit and enjoy same

as against the claims of any creditor or other person, which may claim said premises by mortgage or otherwise, AND IT IS SO ORDERED.

“Given officially in Court this 9th day of September A.D. 1937.

“[Sgd.] EDWARD J. SUMMERVILLE
Circuit Judge R.L. Presiding over the Circuit Court, Second Judicial Circuit, Grand Bassa County.”

Appellant excepted to said ruling and appealed by bill of exceptions to this Court.

In appellant's bill of exceptions he urged as the first objection to the trial had in the court below, that his honor the trial judge ignored and disregarded the Act of Legislature passed and approved at its 1907 annual session (L. 1906-07, 7 (2nd)), and overruled their answer and sustained the petition of petitioner.

This count of the bill of exceptions virtually involves the entire issue constituting the controversy; and now it becomes our duty to see if the position and ruling of his honor the trial judge is upheld by law.

Counsel for appellee contended, according to the written opinion of the trial judge, that although there is a provision in the Act of the Legislature of 1907 which allows a party who has set apart a portion of his property under the Homestead and Household Exemption Act (L. 1888-89, 10 (2nd)) to revoke same, such provision is in conflict with the spirit and intent of the original Act of 1889, and that once a party so sets aside his property, his widow and heirs at once become thereby vested with title in common with the ancestor himself, and such homestead remains as long as any of the heirs exist.

The judge below sustained this contention of appellee and held that the homestead right is a provision of our statute borrowed from the common law of the United States of America and relied on the opinion delivered by this Court in the case *Wiles v. Wiles*, handed down

in the year 1904 and reported at page 473 of volume one of the *Liberian Law Reports*, and stated further that said amendatory act of 1907 infringes the original Homestead Act as well as the Constitution of the Republic.

In the first place we fail to see from whence his honor derived his impression that the Homestead and Household Exemption Act is borrowed from the common law of the United States of America, when there is nothing like it known at common law.

“The homestead interest depends entirely on organic or statutory provisions, nothing like it being known at common law; and there can of course be no greater right in the homestead property than is created by these provisions. Because of the difference in the wording of the homestead laws in the various jurisdictions, the interest created thereby differs widely.”

29 C.J. 783, § 3.

As to the contention of appellee and the opinion of the judge below that the amendatory act of 1907 conflicts with the original Homestead Act and is therefore void, we have been unable to find out by what process of reasoning they arrived at such a conclusion, for the Act of Legislature of 1907 was intended by the Legislature to alter and amend the said original Homestead and Exemption Act, and it is admittedly within the province and power of the Legislature to amend, supplement, or repeal any act previously passed by them; and although appellee contends that the Act of 1907 is in conflict with the Act of 1889, which latter act is the original Homestead Act and the former an amendatory one passed by the Legislature with a deliberate intention to amend said original Act, the intention of the Legislature would not be effective unless said original act was thereby so amended.

The original Homestead and Household Exemption Act, his honor seemed to have overlooked, is not a constitutional provision that cannot be amended, supplemented or repealed by subsequent legislative enactment;

to uphold the proposition attempted to be advanced in the opinion of the trial judge would be an attempt to ignore an incontrovertible right of the Legislature to amend laws not in conflict with the organic law of the country.

His honor the judge below held further that the said Act of 1907 was unconstitutional; but failed to cite any provision of the Constitution which the said act violated; and we have seen no constitutional conflict with the provision of the said act.

Moreover the principle of homestead law enunciated in the case *Wiles v. Wiles* which his honor sought to apply to this case cannot be legally applied, for the opinion of this Court handed down in the said case was done in the year 1904 and the act in question was passed in the year 1907, three years after said opinion, so that obviously the provisions of said act could not have been involved in the said opinion. And it is the proper function of the Legislature to make laws, and the duty of this Court to construe them in harmony with the spirit and intention of those so made by the Legislature.

Now the Act of 1907 entitled: "An Act Amendatory to the Homestead Exemption Act" provides:

"That from and after the passage of this Act, any person or persons who have exempted or may hereafter exemp [*sic*] any part or parcel of their property, under the provisions of Homestead Exemption Act for the benefit of themselves and family, may revoke or dissolve such Exemption by filing a notice to that effect in the Clerk's office of the Probate Court. Said notice shall be probated and registered.

"The fee for such services shall be fifty cents to the Registra [*sic*].

"All laws or parts of laws conflicting with the provisions of this Act, be and they are hereby repealed.

"Approved Jan. 21st, 1907."

The late Jeffrey B. Horace having set apart for himself

and his family agreeably with the Household Exemption Act of 1889 his town Lot No. 10 situated in the upper ward of the Municipal District of Buchanan, Grand Bassa County, did in the year 1923 execute a notice of Revocation of said Homestead and thereby dissolved same, and mortgaged said town lot to the appellant as security against the payment of the sum of \$484.85 advanced to him by said appellant, which said sum up to the time of demise he had not fully paid off. Appellee sought by these proceedings to have same stricken from the inventory of the estate of the said late Jeffrey B. Horace, as homestead property and exempt from liability for any of the debts or claims against the estate of the said decedent; to which appellant objected as shown in a previous part of this opinion.

Beside the opinion and ruling expressed by the trial judge below in the case as recited hereinbefore and passed upon by us in this opinion, his honor went on further to show how he thinks a homestead could be revoked; he held *inter alia* that Louise Horace could not be estopped from asserting her claim in said piece of property as the said notice of homestead executed by the said Jeffrey B. Horace created an estate in coparcenary between the said Jeffrey B. Horace, his widow, and heirs and that her not having participated in the revocation of the homestead rendered its revocation by the original head of the family illegal and deprived her of property other than by the judgment of her peers or the law of the land.

On this position taken by the judge below we remark that it is not within the purview of the Court to say how a homestead may be revoked other than as the Legislature, which is the law-making branch of this Government, has by its enactment expressly provided; and how the judge could maintain that appellee would be deprived of property by said revocation of said homestead without the law of the land is beyond our comprehension, when the act of the Legislature above cited, which is the law

of the land, provides that the original head of the family, who sets apart any portion of his property under the Homestead and Household Exemption Act, may dissolve said homestead by filing a notice to that effect in the Probate Court, and having same probated and registered; all of which the said Jeffrey B. Horace did since 1923.

In view of the premises and the law controlling the case, we are of opinion that the ruling of the judge below is erroneous and should be reversed with cost against appellee. And it is so ordered.

Reversed.

MR. CHIEF JUSTICE GRIMES concurring.

I, as an individual Justice, consider the opinion just read by Mr. Justice Tubman, and concurred in by the rest of my colleagues, as the first step towards the gradual adoption by this Court of the views on the law of homestead expressed in the dissenting opinion I filed on January 14th last in the case *Perry v. Knight*, my only regret now being that my learned colleague did not in the opinion just read more fully expose the fallacy of considering a homestead estate as one in coparcenary, as I endeavored to do in the minority opinion above referred to. However, being fully in accord with the main line of reasoning he has pursued, I have attached my signature to our judgment reversing the judgment of the court below in this case.

MR. JUSTICE RUSSELL made and filed the following observations.

For the information of the members of the bar and the public in general, I am recording the following:

The portion of the paper read by His Honor the Chief Justice which says: "As the first step towards the gradual adoption by this Court of the views on the law of homestead expressed in the dissenting opinion I filed on Jan-

uary 14th last in the case *Perry v. Knight*, my only regret now being that my learned colleague did not in the opinion just read more fully expose the fallacy of considering a homestead estate as one in coparcenary, as I endeavored to do in the minority opinion above referred to," is unauthorized by us and therefore is not our opinion, neither our coinciding views expressed therein.

The opinion in the case of *Wiles v. Wiles* will remain a legal opinion of this Court until it is recalled by a majority opinion in a legal way known in this jurisdiction as well as in other jurisdictions. Therefore the above statement of His Honor the Chief Justice is not binding on us because it is of no legal effect.